



**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**APPROVAL OF**

**APACHE TRIBE OF OKLAHOMA  
INDIAN LANDS LEASING ACT OF 2017**

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The attached Indian Lands Leasing Act of 2017, submitted by the Apache Tribe of Oklahoma (listed in the Federal Register, 82 FR 4915 (Jan. 17, 2017) as the Apache Tribe of Oklahoma), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 87 pages and adopted by the Apache Business Committee on September 13, 2017, is hereby approved.

Dated: December 28, 2017

Principal Deputy Assistant Secretary – Indian Affairs  
Exercising the Authority of the Assistant Secretary –  
Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8



511 East Colorado  
Post Office Box 1330  
ANADARKO, OKLAHOMA 73005

**RESOLUTION NO. ABC-2016-060**

**A RESOLUTION BY THE APACHE TRIBE OF OKLAHOMA BUSINESS  
COMMITTEE APPROVING THE APACHE TRIBE OF OKLAHOMA INDIAN  
LANDS LEASING ACT OF 2017**

- WHEREAS,** the Apache Tribe of Oklahoma (the "Tribe") is a sovereign, self-governing Indian tribe formally recognized by the United States Government;
- WHEREAS,** Article III of the Tribe's Constitution provides that the supreme governing body of the Tribe shall be the Tribal Council, which consists of all members of Tribe who are eighteen (18) years of age and older;
- WHEREAS,** Article IV of the Tribe's Constitution provides that the officers of the Tribe shall be the Chairman, Vice-Chairman and Secretary-Treasurer; and
- WHEREAS,** Article V of the Tribe's Constitution provides that the Apache Business Committee ("Business Committee") shall have such powers as may be delegated to it by appropriate resolutions of the Tribal Council;
- WHEREAS,** The Tribal Council has delegated authority to the Apache Business Committee to adopt laws, rules, and regulations for the Apache Tribe of Oklahoma; and
- WHEREAS,** The Business Committee wishes to replace the previously approved Apache Tribe of Oklahoma Indian Lands Leasing Act of 2017, in its entirety with the attached final Apache Tribe of Oklahoma Indian Lands Leasing Act of 2017, which contains revisions required by the Bureau of Indian Affairs.
- NOW, THEREFORE, BE IT RESOLVED,** that the Apache Business Committee approves and adopts the attached Apache Tribe of Oklahoma Indian Lands Leasing Act of 2017, which replaces the original draft previously approved in its entirety, and makes revisions as agreed to between the Tribe and the Bureau of Indian Affairs, the Business Committee concurs with all changes required by the Bureau of Indian Affairs.


**AND BE IT FINALLY RESOLVED**, that the Chairman shall submit this Resolution and the Apache Tribe of Oklahoma Indian Lands Leasing Act of 2017 to the U.S. Department of the Interior, Assistant Secretary—Indian Affairs as soon as possible for review, approval, and publication in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (also known as the “HEARTH Act”).

**CERTIFICATION**

We, the undersigned, hereby affirm that at an official meeting of the Apache Tribe of Oklahoma Business Committee, held on the 13th day of September 2017, at which a quorum was present, the above Resolution No. ABC-2016-060 was presented and approved by a vote of \_\_\_\_ For, \_\_\_\_ Against, and \_\_\_\_ Abstain.

  
Bobby Komardley, Chairman

ATTEST:

  
Cheryl A. Wetselline, Secretary-Treasurer



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## Apache Tribe of Oklahoma Indian Lands Leasing Act of 2017

### Chapter A-General Provisions

#### *Purpose, Definitions, and Scope*

##### § 1 *What is the purpose of this Act?*

(a) The purpose of this Act is to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112<sup>th</sup> Cong. (2012) (25 U.S.C. § 415 (h), (“HEARTH Act”), this Act and promote leasing on Apache Tribe Indian land for economic development and other purposes.

(b) This Act specifies:

- (1) Conditions and authorities under which the Apache Tribe will approve leases of Apache Tribe Indian land;
- (2) How to obtain leases;
- (3) Terms and conditions required in leases; and
- (4) How the Tribe administers and enforces leases.

(c) In addition to this Act itself, leases approved under this Act:

- (1) Are subject to applicable Federal laws and any specific Federal statutory requirements that are not incorporated in this Act;
- (2) Are subject to tribal law, subject to paragraph (b) of this section; and
- (3) Are not subject to State law or the law of a political subdivision thereof.

(d) Tribal laws generally apply to land under the jurisdiction of the Apache Tribe, except to the extent that those tribal laws are inconsistent with applicable Federal law. However, this Act may be substantively superseded, amended, or modified by other tribal laws or by amendment of this Act itself with approval of the Secretary, unless:

- (1) The Tribe has notified the lessee of the superseding or modifying effect of the tribal laws;
- (2) The superseding or modifying of the Act would not violate a Federal statute or judicial decision, or conflict with the general trust responsibility under Federal law; and
- (3) The superseding or modifying of the Act applies only to Apache Tribe Indian Land.

(e) Unless prohibited by Federal law, the parties to a lease may subject that lease to State or

Local law in the absence of Federal or tribal law, if:

- (1) The lease includes a provision to this effect; and
- (2) The Apache Tribe expressly agrees to the application of State or local law.

(f) An agreement under paragraph (c) of this section does not waive the Apache Tribe's sovereign immunity unless the Apache Tribe expressly states its intention to waive sovereign immunity in the lease of Apache Tribe Indian land.

(g) If any section, paragraph, or provision of this Act is stayed or held invalid, the remaining sections, paragraphs, or provisions of this Act remain in full force and effect.

(h) Nothing in this Act shall be construed to waive the sovereign immunity of the Apache Tribe, its elected officials, its agents, its economic arms, its agencies, its subsidiaries, or its enterprises.

## § 2 *How is this Act subdivided?*

(a) This Act includes multiple parts relating to:

- (1) General Provisions (Chapter A);
- (2) Agricultural Leases (Chapter B) [Reserved];
- (3) Residential Leases (Chapter C) [Reserved];
- (4) Business Leases (Chapter D);
- (5) Wind Energy Evaluation Leases (WEELs); Wind or Solar Resource Leases (WSRs) (Chapter E);
- (6) Records (Chapter F);
- (7) Environmental Review (Chapter G); and
- (8) Appeals (Chapter H).

(b) [Reserved].

## § 3 *what key terms do I need to know?*

*Act* means this Apache Tribe Indian Lands Leasing Act of 2017, as may be amended from time to time.

*Adult* means a person who is 18 years of age or older.

*Apache Tribe or Tribe* means the Apache Tribe of Oklahoma. When this Act refers to action to be taken by the Apache Tribe, such action may be taken by the Chairman, Business Committee, or their designee(s), as appropriate to the specific action at issue in

accordance with the Apache Tribe Constitution and as appropriately authorized in writing when necessary.

*Apache Tribe Indian land* means any tract in which the surface estate is held by the United States in trust or restricted status for the benefit of the Apache Tribe. The term also includes the surface estate of lands held by the United States in trust for an Apache Tribe Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. § 477) or chartered under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. § 503).

*Apache Tribe Tribal Court* means the Court of Indian Offenses for the Apache Tribe of Oklahoma located at the Anadarko Agency of the BIA, or such independent Apache Tribal Court as may take the place of the Court of Indian Offenses in the future.

*Appeal bond* means a bond posted upon filing of an appeal.

*Approval* means written authorization by the Business Committee or by an official delegated and duly authorized by Business Committee resolution in accordance with the Apache Tribe Constitution.

*Assignment* means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the lessee's obligations, under a lease.

*BLA* means the Secretary of the Interior or the Bureau of Indian Affairs within the United States Department of the Interior.

*Business Committee* means the Business Committee of the Apache Tribe. Definitions should be alphabetized move Business Committee Authorization and Business Committee.

*Business Committee authorization* means a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

*Business day* means Monday through Friday, excluding federally recognized holidays, Apache Tribe tribal holidays, and other days the applicable office of the Apache Tribe is closed to the public.

*Cancellation or Termination* means Apache Tribe action to end a lease pursuant to this Act.

*Chairman* means the Chairman of the Apache Tribe of Oklahoma.

*Consent* or *consenting* means written authorization by the Business Committee, on behalf of the Apache Tribe, to a specified action.

*Constructive notice* means notice:

- (1) Posted at the tribal government office and/ or tribal community building of the Apache Tribe; or
- (2) Published in the local newspaper(s) nearest to the affected land and/ or announced on a local radio station(s).

*Court of competent jurisdiction* means a Federal, Tribal, or State court with jurisdiction.

*Day* means a calendar day, unless otherwise specified.

*Environment* means the air, water, land, including drainage, significant and rare animal and plant species, and historic, traditional, or cultural properties and interests on or near Apache Tribe Indian Land;

*Environmental Review* means a review of the anticipated environmental effects of a proposed leasing transaction conducted under Chapter G of this Act.

*Equipment installation plan* means a plan that describes the type and location of any improvements to be installed by the lessee to evaluate the wind resources and a schedule showing the tentative commencement and completion dates for installation of those improvements.

*Fair market rental* means the amount of rental income that a leased tract of Apache Tribe Indian land would most probably command in an open and competitive market, or as determined by competitive bidding.

*Fee interest* means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

*General Council* means the Tribal Council of the Apache Tribe.

*Holdover* means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

*Housing for public purposes* means multi-family developments, single-family residential developments, and single-family residences:

- (1) Administered by the Apache Tribe or its tribally designated housing entity (TDHE); or
- (2) Substantially financed using a tribal, Federal, or State housing assistance program or TDHE.

*Interested party* means any person whose own direct economic interest is adversely affected by an action or decision.

*Lease* means a written contract between the Apache Tribe or an entity of the Apache Tribe and a lessee, whereby the lessee is granted a right to possess Apache Tribe Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Apache Tribe's right to possess the leased premises only to the extent provided in the lease.

*Lease document* means a lease, amendment, assignment, sublease, or leasehold mortgage.

*Leasehold mortgage* means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

*Leasing Officer* means the person or persons designated by the Business Committee in accordance with the Constitution of the Apache Tribe to negotiate a lease on behalf of the Apache Tribe, to make necessary arrangements related to leases, and to administer the lease if entered into, all from the Apache Tribe's commercial and economic perspective as landowner; provided that the Business Committee must designate a tribal employee or tribal official other than the Chairman to serve in such role; and provided further that, the Leasing Officer will be subordinate to and supervised by the Chairman in accordance with the Apache Tribe's personnel policies.

*Leasing Transaction* means the anticipated use of Apache Tribe Indian land that is subject to a proposed lease to be granted upon approval under this Act.

*Lessee* means a person or entity who has acquired a legal right to possess Apache Tribe Indian land by a lease under this Act.

*LTRO* means the Land Titles and Records Office of the BIA having jurisdiction for Apache Tribe Indian Land.

*Mail* means to send something by U.S. Postal Service or commercial delivery service.

*Mortgagee* means the holder of a leasehold mortgage.

*NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq.

*Nominal rental* or *nominal compensation* means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

*Notice of violation* means a letter notifying the lessee of a violation of the lease or the Act and providing the lessee with a specified period of time to show because why the lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.

*Performance bond* means security for the performance of certain lease obligations, as furnished by the lessee, or a guaranty of such performance as furnished by a third-party surety.

*Permanent improvements* mean buildings, other structures, and associated infrastructure attached to the leased premises.

*Permit* means a written, non-assignable agreement between the Apache Tribe and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Apache Tribe Indian land, for a specified purpose.

*Permittee* means a person or entity who has acquired a privilege to use Apache Tribe Indian land by a permit.

*Public* means, for purposes of environmental review process, any person who: (a) is a tribal member; (b) resides on land held in trust for the benefit of the Apache Tribe or an individual tribal member; and (c) will be directly affected by any Significant Effects of a proposed Lease on the Environment.

*Realty Office* means the Realty Office of the Apache Tribe.

*Responsible Official* means the person designated and duly authorized from time to time by the Business Committee pursuant to the Apache Tribe Constitution to oversee the regulatory requirements for approving and administering leases pursuant to this Act, including environmental review pursuant to Chapter G, provided that the duties of the Responsible Official may be delegated among several persons on the Apache Tribe staff (e.g., the Apache Tribe Realty Office, the Apache Tribe Environmental Department, Apache Tribe Legal staff, etc.), as appropriate; and provided further that in instances in which the Chairman is not serving as the Responsible Official for delegated duties, such Responsible Official will be subordinate to and supervised by the Chairman in accordance with the Apache Tribe's personnel policies and procedures. Unless otherwise delegated by this Act, by Business Committee action, or otherwise by tribal law, the Chairman is the Responsible Official under this Act.

*Restoration and reclamation plan* means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

*Secretary* means the United States Secretary of the Interior.

*Significant effect* means an effect of a proposed leasing transaction that will have a material and demonstrable impact on the Environment on or near Apache Tribe Indian land

*Single family residence* means a building with one to four dwelling units on a tract of land under a single residential lease, or as defined by applicable tribal law or other tribal authorization.

*Single family residential development* means two or more single-family residences owned, managed, or developed by a single entity.

*Sublease* means a written agreement by which the lessee grants to an individual or entity

a right to possession no greater than that held by the lessee under the lease.

*Surety* means one who guarantees the performance of another.

*TDHE* means a tribally designated housing entity under 25 U.S.C. § 4103(22), a tribally sponsored or tribally sanctioned not-for-profit entity, or any limited partnership or other entity organized for the purpose of developing or improving low-income housing utilizing tax credits.

*Termination or Cancellation* means action by the Apache Tribe to end a lease.

*Trespass* means any unauthorized occupancy, use of, or action on any Apache Tribe Indian land.

*Tribal law* means the body of non-Federal law that governs lands and activities under the jurisdiction of the Apache Tribe, including ordinances or other enactments by the Apache Tribe's Business Committee, and tribal court rulings.

*Trust or restricted land* means any tract, or interest therein, held in trust or restricted status.

*Trust or restricted status* means:

(1) The United States holds title to the tract in trust for the benefit of the Apache Tribe; or

(2) The Apache Tribe holds title to the tract, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

*USPAP* means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

*Violation* means a failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of Apache Tribe's enforcement of a lease under this Act no matter how "violation" or "default" is defined in the lease.

#### § 4 *To what land does this Act apply?*

This Act applies solely to Indian land owned by the Apache Tribe, or a federally chartered corporation of the Apache Tribe, in trust or restricted status, referred to herein as "Apache Tribe Indian Land." This Act does not apply to any fee land owned by the Apache Tribe that is not in trust or restricted status or to lands owned in trust or restricted status by individuals. The leasing of any such fee lands shall be governed by tribal law, custom, and practice other than this Act.

#### *When to Get a Lease*

§ 5 *When do I need a lease to authorize possession of Apache Tribe Indian land?*

- (a) If you are a person or legal entity other than an enterprise owned and operated by the Apache Tribe who is not an owner of the Apache Tribe Indian land, then you must obtain a lease under this Act from the Apache Tribe before taking possession of the land or any portion thereof, unless you are authorized to possess or use the Apache Tribe Indian land by a land use agreement not subject to this Act under § 6(b), by other tribal or federal law, or by a permit.
- (b) You must obtain a lease under this Act to possess Apache Tribe Indian land held under the corporate charter of a corporate entity of the Apache Tribe organized and established pursuant to 25 U.S.C. § 477 or 25 U.S.C. § 503.
- (c) You do not need a lease to possess Apache Tribe Indian land if:
  - (1) You are the Apache Tribe, a federally chartered corporation of the Apache Tribe, or an enterprise of the Apache Tribe who owns 100 percent of the trust or restricted interests in a tract; or
  - (2) If you receive Business Committee authorization to manage specific Apache Tribe Indian Land and are an agency of the Apache Tribe, an enterprise wholly owned by the Apache Tribe, or another Apache Tribe of Oklahoma 25 U.S.C. § 477 or 25 U.S.C. § 503 corporate entity, which manages or has the power to manage the tribal land directly under its federal charter or under a tribal authorization (not under a lease from the Apache Tribe), you must record documents in accordance with § 443.

§ 6 *what type of land use agreements does this Act apply?*

- (a) This Act applies to leases of Apache Tribe Indian land entered into under this Act
- (b) This Act does not apply to:
  - (1) Land use agreements entered into under other statutory authority, such as the following:

<i>This Act does not apply to:</i>	<i>Covered by:</i>
(i) Contracts or agreements encumbering tribal land under 25 U.S.C. § 81	25 CFR Part 84
(ii) Traders' licenses	25 CFR Part 140
(iii) Timber contracts	25 CFR Part 163
(iv) Grazing permits	25 CFR Part 166
(v) Rights of way	25 CFR Part 169
(vi) mineral leases, prospecting permits, or mineral development agreements	25 CFR Parts 211, 212, 213, 225, 226, 227
(vii) Tribal land assignments and similar instruments authorizing uses of tribal land	Other tribal laws

- (2) Leases of water rights associated with Apache Tribe Indian land, except to the extent the use of water rights is incorporated in a lease of the land itself.

§ 7 *to what permits do this Act apply?*

(a) Permits for the use of Apache Tribe Indian land do not require approval under this Act; however, the permittee must fulfill the following requirements:

- (1) Ensure that permitted activities comply with all applicable environmental and cultural resource laws; and
- (2) Submit all permits to the appropriate Apache Tribe office to allow them to maintain a copy of the permit in their records. If the Apache Tribe or an office of the Apache Tribe determines within ten (10) days of submission that the document does not meet the definition of "permit" but instead grants a legal interest in Apache Tribe Indian land, the Apache Tribe will notify the permittee that a lease is required under this Act.

(b) The following table provides examples of some common characteristics of permits versus leases.

Permits	Leases
Permits can be given without any terms being negotiated between two parties	Leases require an agreement between two parties: usually referred to as the landlord and the tenant
Permit does not place affirmative duties on permit holder	Leases places specific duties on the lease holder, for instance, up-keep and rental payments.
Permits do not authorize any use other the specific use for which the permit is issued.	Leases authorize the lease holder to lawfully possess and use the land leased for any lawful purpose unless otherwise limited in the agreement.
Permits are not transferrable	Leases can be transferrable.
Permits are revocable.	Leases are not revocable except as specified in the agreement.

(c) The BIA will not administer or enforce permits on Apache Tribe Indian land.

§ 8 *Does this Act apply to lease documents I submitted to BLA for approval prior to BLA approval of this Act?*

This Act applies to all lease documents submitted for approval by the Apache Tribe after BIA approval of this Act. If you submitted your lease document to BIA for approval before the approval of this Act, approval of the submitted lease documents will be processed pursuant to 25 C.F.R., Part 162, unless you withdraw them from BIA review and submit them to the Apache Tribe for approval under this Act.

§ 9 *Do I need Apache Tribe approval of a sublease hold mortgage?*

Unless the lease or sublease provides otherwise, or the parties request, you do not need the Apache Tribe's approval of a sublease hold mortgage. Sublease hold mortgages in excess of the total value of the sublease hold interest are prohibited. If the lease or sublease requires, or parties request, the Apache Tribe's approval, the Apache Tribe will use the procedures governing its review of leasehold mortgages.

*How to Get a Lease*

§ 10 *How do I obtain a lease?*

(a) This section establishes the basic steps to obtain a lease.

- (1) Prospective lessees must:
  - (i) Directly negotiate with the Leasing Officer, or in certain instances the Responsible Official, of the Apache Tribe for a lease; and
  - (ii) Provide any and all information requested or required by the Leasing Officer and Responsible Official for use in negotiating, compliance review, presentation to Business Committee for consideration, and any other reasonable purpose consistent with this Act.
- (2) Prospective lessees or the Leasing Officer of the Apache Tribe must submit the lease, and required information and analyses, to the Responsible Official and/ or his duly authorized delegates for review; and
- (3) The Responsible Official, and/ or his duly authorized delegates must:
  - (i) Submit the proposed lease to the Business Committee for approval of its terms after review by the Responsible Official for compliance with this Act and after the Responsible Official determines the lease application package is complete; and
  - (ii) Prepare the required information and analyses, including information to facilitate Responsible Official's analysis under applicable environmental and cultural resource requirements; and
  - (iii) Ensure the lease complies with the requirements in Chapter B for agricultural leases, Chapter C for residential leases, Chapter D for business leases, or Chapter E for wind energy evaluation, wind resource, or solar resource leases.

(b) Generally, residential, business, wind energy evaluation, wind resource and solar resource leases will not be advertised for competitive bid.

§ 11 *how does a prospective lessee identify and contact the Apache Tribe to negotiate a lease of Apache Tribe Indian Land?*

(a) Prospective lessees may submit a written request to the Chairman of the Apache Tribe to identify and provide contact information for the Leasing Officer of the Apache Tribe with whom the prospective lessee may seek to negotiate a lease.

(b) The Chair's office may assist prospective lessees in contacting the Leasing Officer and any other designated officials of the Apache Tribe for the purpose of negotiating a lease, upon request.

§ 12 *what are the consent requirements for a lease?*

(a) The Business Committee must consent to any grant of a lease on Apache Tribe Indian land and must approve the terms of the lease in order for any lease to be valid.

§ 13 *who is authorized to consent to a lease?*

The Business Committee has the sole authority to consent to a lease of Apache Tribe Indian land on behalf of the Apache Tribe.

#### *Lease Administration*

§ 14 [Reserved].

§ 15 *May a lease contain a preference consistent with tribal law for employment of tribal members?*

A lease of Apache Tribe Indian land may include a provision, consistent with tribal law, requiring the lessee to give a preference to qualified tribal members, based on their political affiliation with the tribe.

§ 16 [Reserved].

§ 17 *What taxes apply to leases approved under this Act?*

(a) Permanent improvements on the leased land, without regard to ownership of those improvements, may be subject to taxation by the Apache Tribe under the Apache Tribe's Tax Code.

(b) Activities under a lease conducted on the leased premises may be subject to taxation by the Apache Tribe under the Apache Tribe's Tax Code.

(c) The leasehold or possessory interest may be subject to taxation by the Apache Tribe under the Apache Tribe's Tax Code.

§ 18 [Reserved].

§ 19 *May a lease address access to the leased premises may roads or other infrastructure?*

A lease may address access to the leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 CFR Part 169. Roads or other infrastructure within the leased premises do not require compliance with 25 CFR Part 169 during the term of the lease, unless otherwise stated in the lease.

§ 20 *May a lease combine tracts?*

(a) The Apache Tribe may approve a lease that combines multiple tracts of Apache Tribe Indian land into a unit, if the Business Committee determines that unitization is:

- (1) In the Apache Tribe's best interest; and
- (2) Consistent with the efficient administration of Apache Tribe Indian land.

(b) For a lease that covers multiple tracts, the Apache Tribe consent requirement applies to each tract separately.

§ 21 *What are the Responsible Official's responsibilities in overseeing the regulatory requirements for approving and administering leases?*

- (a) The Responsible Official will work to provide assistance to the Apache Tribe in leasing its Apache Tribe Indian land, either through negotiations or advertisement.
- (b) The Responsible Official will promote tribal control and self-determination over Apache Tribe Indian land and other land under the Apache Tribe's jurisdiction, including through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f *et. seq.*
- (c) The Responsible Official will promptly respond to requests by Business Committee for information and materials needed by Business Committee for approval of leases, as specified in § 440.
- (d) The Responsible Official will work to ensure that the use of Apache Tribe Indian land is consistent with the Business Committee's wishes on behalf of the Apache Tribe and applicable tribal law.

§ 22 *what are the Responsible Official's responsibilities in administering and enforcing leases?*

- (a) Upon receipt of information that the lessee has failed to comply with the terms and conditions of the lease, the Responsible Official will promptly take appropriate action, as specified in § 464. Nothing in this Act prevents the Apache Tribe from exercising remedies available to the Apache Tribe under the lease or applicable law.
- (b) The Responsible Official will promptly respond to requests for Business Committee approval of amendments, assignments, leasehold mortgages, and subleases, as specified in Chapters B, C, D and E.

(c) The Responsible Official will respond to the Business Committee's concerns regarding the management of Apache Tribe Indian land.

(d) The Responsible Official will take emergency action as needed to preserve the value of Apache Tribe Indian land under § 24.

*§ 23 What if an Individual or entity takes possession of or uses Apache Tribe Indian land without an approved lease or other proper authorization?*

If an individual or entity takes possession of, or uses, Apache Tribe Indian land without a lease and a lease is required, the unauthorized possession or use is a trespass. The Apache Tribe may take action to recover possession, including eviction, on its own behalf and

Pursue any additional remedies available under applicable law.

*§ 24 May the Apache Tribe take emergency action if Apache Tribe Indian land is threatened?*

(a) The Apache Tribe may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm to Apache Tribe Indian land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm, or involving BIA pursuant to the terms and limitations of federal law.

(b) The Apache Tribe will make reasonable efforts to notify all parties interested in the lease before and after taking emergency action. In all cases, the Apache Tribe will notify all parties interested in the lease after taking emergency action by actual or constructive notice. The Responsible Official will provide written notification of any action to the Chairman and Business Committee after taking emergency action and before taking emergency action when at all possible.

*§ 25 May decisions under this Act be appealed?*

Appeals from Responsible Official actions and decisions and from Business Committee disapprovals of leases under this Act may be taken under Chapter H of this Act, except as otherwise provided in this Act. For purposes of appeals from Responsible Official decisions under this Act, "interested party" is defined as shown in the definitions. Business Committee decisions to approve or disapprove a lease, and to amend, assign, cancel, or terminate a lease are final.

*§ 26 Who can answer questions about leasing?*

A prospective lessee may contact the Chair's office for answers to questions about the leasing process.

*§ 27 What documentation may the Responsible Official require in overseeing the regulatory requirements for approving leases for administering, and for enforcing leases?*

(a) The Responsible Official may require that the parties provide any pertinent environmental and technical records, reports, and other information (e.g., records of lease payments), related to approval of lease documents and enforcement of leases.

(b) The Responsible Official may adopt environmental assessments and environmental impact statements prepared by a Federal agency, Indian tribe, entity, or person under 43 CFR § 46.320 and 42 CFR § 1506.3, including those prepared under 25 U.S.C. § 4115 and 25 CFR part 1000, or may conduct his or her own review under Chapter G of this Act. The Responsible Official may use any reasonable evidence that a Federal agency has accepted the environmental report, including but not limited to, letters of approval or acceptance.

(c) Upon the Responsible Official's request, the parties must make appropriate records, reports, or information available for the Responsible Official's inspection and duplication. The Responsible Official will keep confidential any information that is marked confidential or

proprietary and will exempt it from public release to the extent allowed by law. The Responsible Official may, at his or her discretion, treat a lessee's failure to cooperate with such request, provide data, or grant access to information or records as a lease violation.

*§ 28 How may Apache Tribe Departments and Authorities obtain information about leases on Apache Tribe Indian land?*

Upon request of Apache Tribe Department or Authority, the Responsible Official will promptly provide information on the status of leases on tribal land.

*§ 29 How does the Responsible Official provide notice to the parties to a lease?*

(a) For leases of Apache Tribe Indian land, when this Act requires the Responsible Official to notify the parties of the status of his or her review of a lease document (including but not limited to, providing notice to the parties of the date of receipt of a lease document, informing the parties of the need for additional review time, and informing the parties that a lease proposal package is not complete), the Responsible Official will notify the lessee and the Apache Tribe Business Committee Secretary by mail.

(b) For leases of Apache Tribe Indian land, when this Act requires the Responsible Official to notify the parties of the Business Committee's determination to approve or disapprove a lease document, and to provide any right of appeal the Responsible Official will notify the lessee and the Apache Tribe Business Committee Secretary by mail.

## **Chapter B -Agricultural Leases**

[RESERVED].

## **Chapter C -Residential Leases**

[RESERVED].

## **Chapter D -Business Leases Business Leasing General Provisions**

*§ 401 What type of leases do this Chapter cover?*

(a) This Chapter covers both ground leases (undeveloped land) and leases of developed land (together with the permanent improvements thereon) on Apache Tribe Indian land that are not covered in another Chapter of this Act, including:

- (1) Leases for agricultural purposes that are not covered in Chapter B;
- (2) Leases for residential purposes that are not covered in Chapter C;
- (3) Leases for business purposes that are not covered in Chapter E;

(4) Leases for religious, educational, recreational, cultural, or other public purposes; and

(5) Commercial or industrial leases for retail, office, entertainment, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) Leases covered by this Chapter may authorize the construction of single-purpose or mixed-use projects designed for use by any number of lessees or occupants.

§ 402 *Is there a model business lease form?*

There is no model business lease form because of the need for flexibility in negotiating and writing business leases; however, the Leasing Officer or Responsible Official, as the case may be, may:

(a) Provide other guidance, such as checklists and sample lease provisions, to assist in the lease negotiation process; and

(b) Assist, upon request, in developing appropriate lease provisions that conform to the requirements of this Act.

§ 403 - § 410 [Reserved].

*Lease Requirements*

§ 411 *How long may the term of a business lease run?*

(a) A business lease must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a lease approved under this Act may not exceed 75 years (consisting of an initial term not to exceed 25 years and two renewals not to exceed 25 years).

(b) When negotiating leases for Apache Tribe Indian land, the Responsible Official and Leasing Officer will defer to the Business Committee's determination that the lease term, including any renewal, is reasonable.

(c) The lease may not be extended by holdover.

§ 412 *What must the lease include if it contains an option to renew?*

(a) If the lease provides for an option to renew, the lease must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to the Responsible Official and Leasing Officer, unless the lease provides for automatic renewal;

(3) Whether Apache Tribe consent to the renewal is required;

- (4) That the lessee must provide notice of the renewal to the Responsible Official and Leasing Officer and any sureties and mortgagees;
- (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
- (6) Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).

(b) The Responsible Official or Leasing Officer will record any renewal of a lease in the Apache Tribe Realty Office and the LTRO.

§ 413 *Are there mandatory provisions that a business lease must contain?*

(a) All business leases must identify:

- (1) The tract or parcel of land being leased;
- (2) The purpose of the lease and authorized uses of the leased premises;
- (3) The parties to the lease;
- (4) The term of the lease;
- (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements under § 415;
- (6) Payment requirements and late payment charges, including interest and penalties;
- (7) Due diligence requirements under § 417 (unless the lease is for religious, educational, recreational, cultural, or other public purposes);
- (8) Insurance requirements under § 437; and
- (9) Bonding requirements under § 434. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) Where a representative executes an approved lease on behalf of the Apache Tribe or lessee, the lease must identify that the Apache Tribe or the lessee is being represented by such representative and must identify the authority under which the action is taken.

(c) All business leases must include the following provisions:

The obligations of the lessee and its sureties to the Apache Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;

- (1) There must not be any unlawful conduct, creation of a nuisance, illegal

activity, or negligent use or waste of the leased premises;

(2) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 14;

(3) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact the Responsible Official to determine how to proceed and appropriate disposition;

(4) The Responsible Official has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with § 464, to enter the leased premises for inspection and to ensure compliance; and

(6) The Responsible Official may, at his or her discretion, treat as a lease violation any failure by the lessee to cooperate with the Responsible Official's request to make appropriate records, reports, or information available for the Responsible Official's inspection and duplication.

(d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States and the Apache Tribe harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises; and

(2) The lessee indemnifies the United States and the Apache Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Apache Tribe for liability or cost arising from the Apache Tribe's negligence or willful misconduct.

(e) The Responsible Official may treat any provision of a lease document that violates Federal or tribal law as a violation of the lease.

§ 414 *May permanent improvements be made under a business lease?*

The lessee may construct permanent improvements under a business lease if the business lease specifies, or provides for the development of:

(a) A plan that describes the type and location of any permanent improvements to be constructed by the lessee; and

(b) A general schedule for construction of the permanent improvements, including dates for commencement and completion of construction.

§ 415 *how must a business lease address ownership of permanent improvements?*

(a) A business lease must specify who will own any permanent improvements the lessee constructs during the lease term and may specify under what conditions, if any; permanent improvements the lessee constructs may be conveyed to the Apache Tribe during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee constructs will:

- (1) Remain on the leased premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Apache Tribe, and become the property of the Apache Tribe;
- (2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or
- (3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the permanent improvements must also provide the Apache Tribe with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

§ 416 *how will the Apache Tribe enforce removal requirements in a business lease?*

(a) The Responsible Official may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

- (1) In consultation with the Business Committee; and
- (2) Before or after expiration, termination, or cancellation of the lease.

(b) The Responsible Official may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

§ 417 *What requirements for due diligence must a business lease include?*

(a) If permanent improvements are to be constructed, the business lease must include due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Leasing Officer and Responsible Official with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 467.

(c) The Business Committee may waive the requirements in this section upon request if such waiver is in the best interest of the Apache Tribe.

(d) The requirements of this section do not apply to leases for religious, educational, recreational, cultural, or other public purposes.

§ 418 *How must a business lease describe the land?*

(a) A business lease must describe the leased premises by reference to an official or certified survey, if possible. If the land cannot be so described, the lease must include one or more of the following:

- (1) A legal description;
- (2) A survey-grade global positioning system description; or
- (3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

(b) Any description of real property must be sufficient and adequate for purposes of recording with the LTRO.

§ 419 *May a business lease allow compatible uses?*

A business lease may provide for the Apache Tribe to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the business lease and consistent with the terms of the business lease. Any such use or authorization by the Apache Tribe will not reduce or offset the monetary compensation for the business lease.

*Monetary Compensation Requirements*

§ 420 *How much monetary compensation must be paid under a business lease of Apache Tribe Indian land?*

(a) A business lease of Apache Tribe Indian land may allow for any payment amount negotiated by the Apache Tribe, and the Responsible Official will defer to the Business Committee and not require a valuation if the Business Committee submits a Business Committee authorization expressly stating that it:

- (1) Finds the negotiated compensation is satisfactory to the Apache Tribe;
- (2) Waives valuation; and
- (3) Has determined that accepting such negotiated compensation and waiving valuation is in the Apache Tribe's best interest.

(b) The Business Committee may request, in writing, that the Responsible Official determine fair market rental, in which case the Responsible Official will use a valuation in accordance with § 422. After providing the Business Committee with the fair market rental, the

Responsible Official will defer to the Business Committee's decision to allow for any payment amount negotiated by the Apache Tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, the Responsible Official will require that the lease provide for fair market rental based on a valuation in accordance with § 422.

§ 421 [Reserved].

§ 422 *how will the Responsible Official determine fair market rental for a business lease?*

(a) The Responsible Official will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before the Business Committee approves a business lease, at the request of the Business Committee, for Apache Tribe Indian land.

(b) The Responsible Official will either:

- (1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or
- (2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Apache Tribe or lessee.

(c) The Responsible Official will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:

- (1) Has been prepared in accordance with USP AP or another recognized valuation method deemed appropriate and authorized by the Business Committee;  
and
- (2) Complies with Apache Tribe policies regarding appraisals, including third-party appraisals.

(d) The Responsible Official may use competitive bidding as a valuation method.

§ 423 *When are monetary compensation payments due under a business lease?*

(a) A business lease must specify the dates on which all payments are due.

(b) Payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

§ 424 *Must a business lease specify who receives monetary compensation payments?*

(a) Under a business lease, the lessee will make payments directly to the Apache Tribe (direct pay).

- (1) The lease must include provisions for proof of payment upon BIA's request.

(2) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(3) Unless the lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Apache Tribe.

(4) Direct payments must continue through the duration of the lease.

§ 425 *What form of monetary compensation payment are acceptable under a business lease?*

Payments made directly to the Apache Tribe must be in a form of payment acceptable to the Apache Tribe of Oklahoma.

§ 426 *May the business lease provide for non-monetary or varying types of compensation?*

(a) A lease may provide for the following, subject to the conditions in paragraph (b) of this section:

(1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

(2) Varying types of compensation at specific stages during the life of the lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(b) The Responsible Official will defer to the Business Committee's determination that the compensation under paragraph (a) of this section is in the Apache Tribe's best interest, if the Business Committee submits a Business Committee resolution or other Business Committee authorization stating that the Business Committee has determined the compensation under paragraph (a) of this section to be in the Apache Tribe's best interest.

§ 427 *Will the Apache Tribe notify a lessee when payment is due under a business lease?*

The Leasing Officer or Responsible Official may issue invoices to a lessee in advance of the dates on which payments are due under a business lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

§ 428 *Must a business lease provide for compensation reviews or adjustments?*

(a) For a business lease of Apache Tribe Indian land, unless the lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the Business Committee states in its authorizing resolution or other Business Committee authorization that it has determined that not having compensation reviews and/ or adjustments is in the Apache Tribe's best interest.

(b) If the conditions in paragraph (a) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease. The lease must specify:

- (1) When adjustments take effect;
- (2) Who can make adjustments;
- (3) What the adjustments are based on; and
- (4) How to resolve disputes arising from the adjustments.

(c) When a review results in the need for adjustment of compensation, the Apache Tribe must consent to the adjustment in accordance with § 12, unless the lease provides otherwise.

§ 429 *What other types of payments are required under a business lease?*

- (a) The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Apache Tribe, except as provided in § 17. The lessee must pay these amounts to the appropriate office at the Apache Tribe.
- (b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of Title 25 of the C.F.R., the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Responsible Official will treat failure to make these payments as a violation of the lease.
- (c) Where the property is subject to at least one other lease for another compatible use, the lessees may agree among them how to allocate payment of the Indian irrigation operation and maintenance charges.

*Bonding and Insurance*

§ 434 *Must a lessee provide a performance bond for a business lease?*

The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (f) of this section.

(a) The performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

(1) No less than:

(i) The highest annual rental specified in the lease, if compensation is paid annually; or

(ii) If the compensation is not paid annually, another amount established by the Responsible Official in consultation with the Leasing Officer for Apache Tribe Indian land;

(2) The construction of any required permanent improvements;

(3) The operation and maintenance charges for any land located within an irrigation project; and

- (4) The restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition.
- (b) The performance bond or other security must be deposited with the Responsible Official and made payable only to the Apache Tribe, and may not be modified without the Apache Tribe's approval.
- (c) The lease must specify the conditions under which the Responsible Official may adjust security or performance bond requirements to reflect changing conditions, including consultation with the Business Committee before the adjustment.
- (d) The Responsible Official may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.
- (e) The performance bond or other security instrument must require the surety to provide notice to the Responsible Official at least sixty (60) days before canceling a performance bond or other security. This will allow the Responsible Official to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.
- (f) Apache Tribe may waive the requirement for a performance bond or alternative form of security if either:
  - (1) The lease is for religious, educational, recreational, cultural, or other public purposes; or
  - (2) The Leasing Officer or Responsible Official requests it and Business Committee determines a waiver is in the Apache Tribe's best interest.
- (g) The Responsible Official will defer to the Business Committee's determination that a waiver of a performance bond or alternative form of security is in the Apache Tribe's best interest.

§ 435 *What forms of security are acceptable under a business lease?*

- (a) The Responsible Official will accept a performance bond only in one of the following forms:
  - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) Negotiable Treasury securities; or
  - (4) Surety bonds issued by a company approved by the U.S. Department of

the Treasury.

(b) The Responsible Official may accept an alternative form of security approved by the Business Committee that provides adequate protection for the Apache Tribe, including but not limited to, an escrow agreement and assigned savings account.

(c) All forms of performance bonds or alternative security must, if applicable:

- (1) Indicate on their face that the Apache Tribe's approval is required for redemption;
- (2) Be accompanied by a statement granting full authority to the Apache Tribe to make an immediate claim upon or sell them if the lessee violates the lease;
- (3) Be irrevocable during the term of the performance bond or alternative security; and
- (4) Be automatically renewable during the term of the lease.

(d) The Responsible Official will not accept cash bonds.

§ 436 *What is the release process for a performance bond or alternative form of security under a business lease?*

(a) Upon expiration, termination, or cancellation of the lease, the lessee may ask the Apache Tribe in writing to release the performance bond or alternative form of security.

(b) Upon receiving a request under paragraph (a) of this section, the Responsible Official will:

- (1) Confirm with the Leasing Officer that the lessee has complied with all lease obligations; and
- (2) Release the performance bond or alternative form of security to the lessee, unless the Responsible Official determines that the bond or security must be redeemed to fulfill the contractual obligations.

§ 437 *Must a lessee provide insurance for a business lease?*

Except as provided in paragraph (c) of this section, a lessee must provide insurance necessary to protect the interests of the Apache Tribe and in the amount sufficient to protect all insurable permanent improvements on the premises.

(a) The insurance may include property, crop, liability, and casualty insurance, depending on the Apache Tribe's interests to be protected.

(b) Both the Apache Tribe and the United States must be identified as additional insured parties.

(c) The Business Committee may waive the requirement for insurance upon the request of the Leasing Officer or Responsible Official, if a waiver is determined to be in the best interest of the Apache Tribe by the Business Committee, including if the lease is for less than fair market rental or nominal compensation. The Responsible Official will defer to the Business Committee's determination that a waiver is in the Apache Tribe's best interest.

#### *Approval*

§ 438 what *documents are required for Business Committee approval of a business lease?*

A lessee or the Leasing Officer must submit the following documents to the Responsible Official for review and for presentation to Business Committee for approval of a business lease:

- (a) A lease negotiated by the Apache Tribe and the lessee that meets the requirements of this Act;
- (b) A valuation, if required under § 420;
- (c) Proof of insurance, if required under § 437;
- (d) A performance bond or other security, if required under § 434;
- (e) Statement from the appropriate Tribal authority that the proposed use is in conformance with applicable Tribal law, if required by the Responsible Official or Business Committee;
- (f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and Tribal environmental and land use requirements, including any documentation prepared under § 27 (b) or required under Chapter G;
- (g) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;
- (h) Where the lessee is not an entity owned and operated by the Apache Tribe, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (i) A preliminary plan of development that describes the type and location of any permanent improvements the lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate;
- (j) A description of the land under § 418;
- (k) Information to assist the Responsible Official's and Business Committee's evaluation of the factors in this Act; and
- (l) If the lessee is a corporation, limited liability company, partnership, joint venture, or other

legal entity, except a Tribal entity, information such as organizational documents, Certificates, filing records, and resolutions that demonstrates that:

- (1) The representative has authority to execute a lease;
- (2) The lease will be enforceable against the lessee; and
- (3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

§ 439 *Will the Responsible Official review a proposed business lease before or during preparation of the environmental review statement?*

Upon request of the Leasing Officer, the Responsible Official will review the proposed business lease for compliance with this Act after negotiation by the parties, before or during preparation of the environmental review statement and any valuation. Within 60 days of receiving the proposed lease, the Responsible Official will provide an acknowledgement of the terms of the lease and identify any provisions that, based on this acknowledgment review, would justify disapproval of the lease under the terms of this Act, pending results of the environmental review and any valuation.

§ 440 *What is the approval process for a business lease?*

(a) Upon receiving a business lease package, the Responsible Official will review the package for compliance with this Act. Where applicable, the Responsible Official will conduct necessary measures under this Act, including but not limited to environmental review and valuation. Once the Responsible Official conducts the compliance review and determines that the package is complete, the Responsible Official will submit the business lease package to Business Committee for Business Committee determination of approval or disapproval of the lease.

(b) The Responsible Official will promptly notify the parties whether the business lease package is or is not complete. A complete package includes all the information and supporting documents required under this Act, including but not limited to, environmental review documentation and valuation documentation, where applicable.

(c) If the business lease package is not complete, the Responsible Official's letter will identify the missing information or documents required for a complete package. If the Responsible Official does not respond to the submission of a business lease package, the parties may take action under § 463.

(d) If the business lease package is complete, the Responsible Official will notify the parties of the date of its receipt. Within sixty (60) days of the receipt date, the Responsible Official will submit the business lease package to Business Committee for approval or disapproval of the lease, return the package for revision, or inform the parties in writing that he or she needs additional review time. If the Responsible Official informs the parties in writing that he or she needs additional time, then:

- (i) The Responsible Official's letter informing the parties that he or she needs

additional review time must identify the Responsible Official's initial Concerns and invite the parties to respond within 15 days of the date of the letter.

(ii) The Responsible Official has 30 days from the due date of the parties' response to the Responsible Official's letter described in (2)(i) above to submit the package to Business Committee for approval or disapproval the lease.

(iii) The Responsible Official has thirty (30) days from the date of receipt of a complete revised business lease application in response to the Responsible Official's letter described in (2) above to submit the revised package to Business Committee for approval or disapproval the lease.

(e) If the Responsible Official does not meet the deadlines in this section, then the parties may take appropriate action under § 463.

(f) Upon receiving the business lease package from the Responsible Official and before approving a business lease, Business Committee must determine that the lease is in the best interest of the Apache Tribe. In making that determination, the Business Committee will:

- (1) Review the lease and supporting documents;
- (2) Consider the Responsible Official's findings regarding potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
- (3) Require any lease modifications or mitigation measures necessary to satisfy any requirements, including Chapter G and any other Federal or tribal land use requirements; and
- (4) Have opportunity to hear recommendations regarding approval or disapproval from the Responsible Official, based on the Responsible Official's review of the lease package for compliance with this Act.

(g) The Business Committee will approve or disapprove the business lease package by resolution or other written Business Committee certification and, if applicable, the resolution or a separate signed Business Committee certification will meet the requirements of § 420(a), § 426(b), and § 428(a).

(h) The Responsible Official will provide any lease approval or disapproval and the basis for the Business Committee's determination, along with notification of any appeal rights under Chapter H of this Act, in writing to the parties to the lease.

(i) The Responsible Official will provide approved business leases on Apache Tribe Indian land to the lessee and provide a copy to the Leasing Officer.

§ 441 *how will the Business Committee decide whether to approve a business lease?*

(a) The Business Committee in its discretion may approve a business lease unless:

- (1) The required consents have not been obtained from the parties to the lease;
- (2) The requirements of this Act have not been met; or
- (3) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

§ 442 *When will a business lease be effective?*

- (a) A business lease may become effective on the date that the Business Committee approves the lease, even if an appeal is filed under Chapter Hof this Act.
- (b) The lease may specify a date on which the obligations between the parties to the business lease are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

§ 443 *Must a business lease document be recorded?*

- (a) Any business lease document must be recorded in the Apache Tribe's Realty Office and the BIA's Land Titles and Records Office.
  - (1) The Responsible Official will record the lease document within one business day immediately following the date of Business Committee approval.
  - (2) If approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Apache Tribe's Realty Office and the LTRO.
- (b) A copy of the lease and related documents must be provided to the Agency for the purposes of encoding prior to being forwarded to the LTRO for recording purposes.

§ 444 *Will the Apache Tribe require an appeal bond for an appeal of a decision on a business lease document?*

- (a) If a party appeals the Responsible Official's determination of a package's noncompliance with this Act or determination of a package's incompleteness for a lease, assignment, amendment, or sublease, the Business Committee shall determine whether to require the appellant to post an appeal bond in an amount reasonably estimating any damage to the Apache Tribe from deferring any action pending appeal. The Apache Tribe will not require an appeal bond:
  - (1) For an appeal of a decision on a leasehold mortgage; or
  - (2) If the Apache Tribe is a party to the appeal and requests a waiver of the appeal bond.
- (b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the Business Committee reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final.

§ 445 *May the parties amend a business lease?*

The parties may amend a business lease by obtaining:

- (a) The lessee's signature;
- (b) The Apache Tribe's consent under the requirements in § 446; and
- (c) The Business Committee's approval of the amendment under § 447 and § 448.

§ 446 *What are the consent requirements for an amendment to a business lease?*

- (a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed amendment; and
- (b) Apache Tribe consent to an amendment of a business lease is required for the amendment to be effective.

§ 447 *what is the approval process for an amendment to a business lease?*

- (a) When the Responsible Official receives a written amendment that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. The Responsible Official has 30 days from receipt of the amendment, proof of required consents, and required documentation to submit the amendment to Business Committee to approve or disapprove the amendment or inform the parties in writing that he or she needs additional review time. The Business Committee's determination whether to approve the amendment will be by resolution or other written Business Committee certification and will state the basis for approval or disapproval.
- (b) The Responsible Official's letter informing the parties that he or she needs additional review time must identify his or her initial concerns and invite the parties to respond within fifteen (15) days of the date of the letter. The Responsible Official has thirty (30) days from the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the package to Business Committee for approval or disapproval.
- (c) Unless the lease provides otherwise, provisions of the amendment that are inconsistent with tribal and/ or federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.

§ 448 *How will the Business Committee decide whether to approve an amendment to a business lease?*

- (a) The Business Committee may disapprove a business lease amendment if one or more of the following is true:
  - (1) The Apache Tribe has not consented;
  - (2) The lessee's mortgagees or sureties have not consented;
  - (3) The lessee is in violation of the lease;

- (4) The requirements of this Chapter have not been met; or
- (5) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

### *Assignments*

#### *§ 449 May a lessee assign a business lease?*

- (a) A lessee may assign a business lease meeting the consent requirements in § 450 by obtaining the Business Committee's approval of the assignment under § 451 and § 452, or by meeting the conditions in paragraphs (b) or (c) of this section.
- (b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining the Business Committee's approval of the assignment, as long as the lessee notifies the Responsible Official of the assignment within thirty (30) days after it is executed:
  - (1) Not more than three distinct legal entities specified in the lease; or
  - (2) The lessee's wholly owned subsidiaries.
- (c) The lessee may assign the lease without Business Committee approval or meeting consent requirements if the assignee is a leasehold mortgagee or its designee, acquiring the lease Either through foreclosure or by conveyance;
- (d) All assignees must agree in writing to assume all of the obligations and conditions of the lease and that any transfer of the lease will be in accordance with applicable law under § 14.

#### *§ 450 What are the consent requirements for an assignment of a business lease?*

- (a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed assignment.
- (b) Except as provided in § 449, the Apache Tribe must consent to an assignment of a business lease for the assignment to be effective.
- (c) The lessee must obtain the consent of the holders of any bonds or mortgages.

#### *§ 451 What is the approval process for an assignment of a business lease?*

- (a) When the Responsible Official receives an assignment that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. If Business Committee approval is required, the Responsible Official has 30 days from receipt of the assignment, proof of required consents, and required documentation to submit the assignment package to Business Committee for approval or disapproval of the assignment. The Business Committee's determination whether to approve the assignment will be by resolution or other written Business Committee certification and will state the basis for approval or disapproval.

(b) If the Responsible Official does not meet the deadline in this section, the lessee or Apache Tribe may take appropriate action under § 463.

§ 452 *How will the Business Committee decide whether to approve an assignment of a business lease?*

(a) The Business Committee may disapprove an assignment of a business lease if one or more of the following is true:

- (1) The Apache Tribe has not consented, and consent is required;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;
- (4) The assignee does not agree to be bound by the terms of the lease;
- (5) The requirements of this Chapter have not been met; or
- (6) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

(b) In making the finding required by paragraph (a)(6) of this section, the Business Committee may consider whether:

- (1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and
- (2) If a performance bond is required, the assignee has posted the bond or security and provided supporting documents that demonstrate that:
  - (i) The lease will be enforceable against the assignee; and
  - (ii) The assignee will be able to perform its obligations under the lease or assignment.

*Subleases*

§ 453 *May a lessee sublease a business lease?*

(a) A lessee may sublease a business lease by meeting the consent requirements in § 454 and obtaining approval of the sublease under §§ 455 and 456, or by meeting the conditions in paragraph (b) of this section.

(b) Where the sublease is part of a commercial development or residential development, the lessee may sublease without meeting consent requirements or obtaining Business Committee approval of the sublease, if:

- (1) The lease provides for subleasing without meeting consent requirements or obtaining Business Committee approval;

- (2) The sublease does not relieve the lessee/ sublessor of any liability; and
- (3) The parties provide the Responsible Official and Leasing Officer with a copy of the sublease within 30 days after it is executed.

§ 454 *what are the consent requirements for a sublease of a business lease?*

- (a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed sublease.
- (b) Except as provided in § 453, the Apache Tribe must consent to a sublease of a business lease in order for the sublease to be effective.

§ 455 *What is the approval process for a sublease of a business lease?*

- (a) When the Responsible Official receives a sublease that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. If the Business Committee's approval is required, he or she has thirty (30) days from receipt of the sublease, proof of required consents, and required documentation to review the sublease package for compliance with this Act and to submit the sublease package to Business Committee for approval or disapproval the sublease, or to inform the parties in writing that he or she needs additional review time. The Business Committee's determination whether to approve the sublease will be by resolution or other written Business Committee certification and will state the basis for approval or disapproval.
- (b) The Responsible Official's letter informing the parties that he or she needs additional review time must identify any initial concerns and invite the parties to respond within 15 days of the date of the letter. The Responsible Official has thirty (30) days from the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the sublease package to Business Committee for approval or disapproval.
- (c) Unless the lease provides otherwise, provisions of the sublease that are inconsistent with Tribal or federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

§ 456 *How will the Business Committee decide whether to approve a sublease of a business lease?*

- (a) The Business Committee may disapprove a sublease of a business lease if one or more of the following is true:
  - (1) The Apache Tribe has not consented;
  - (2) The lessee's mortgagees or sureties have not consented;
  - (3) The lessee is in violation of the lease;
  - (4) The lessee will not remain liable under the lease;

(5) The requirements of this Chapter have not been met; or

(6) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

(b) In making the finding required by paragraph (a) (6) of this section, the Business Committee may consider whether the value of any part of the leased premises not covered by the sublease would be adversely affected.

### *Leasehold Mortgages*

#### *§ 457 May a lessee mortgage a business lease?*

(a) A lessee may mortgage a business lease by meeting the consent requirements in § 458 and obtaining approval of the leasehold mortgage under § 459 and § 460.

(b) Refer to § 449(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

(c) In no event shall a leasehold mortgage exceed one hundred percent (100%) of the total leasehold value.

#### *§ 458 what are the consent requirements for a leasehold mortgage of a business lease?*

(a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed leasehold mortgage.

(b) The Apache Tribe must consent to a leasehold mortgage of a business lease for the leasehold mortgage to be effective.

#### *§ 459 What is the approval process for a leasehold mortgage of a business lease?*

(a) When the Responsible Official receives a leasehold mortgage that meets the requirements of this Chapter, he or she will notify the parties of the date he or she received it. The Responsible Official has thirty (30) days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to submit the leasehold mortgage package to Business Committee for approval or disapproval of the leasehold mortgage. The Business Committee's determination whether to approve the leasehold mortgage will be by resolution or other written Business Committee certification and will state the basis for approval or disapproval.

(b) If the Responsible Official does not meet the deadline in this section, the lessee may take appropriate action under § 463.

#### *§ 460 How will the Business Committee decide whether to approve a leasehold mortgage of a business lease?*

(a) The Business Committee may disapprove a leasehold mortgage of a business lease if one or more of the following is true:

- (1) The Apache Tribe has not consented;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The requirements of this Chapter have not been met; or
- (4) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

(b) In making the finding required by paragraph (a)(4) of this section, the Business Committee may consider whether:

- (1) The leasehold mortgage proceeds would be used for purposes unrelated to the leased premises; and
- (2) The leasehold mortgage is limited to the leasehold.

#### *Effectiveness, Compliance, and Enforcement*

§ 461 *When will an amendment, assignment, sublease, or leasehold mortgage of a business lease be effective?*

(a) An amendment, assignment, sublease, or leasehold mortgage of a business lease will be effective when approved and executed by the proper parties, whichever date is later, even if an appeal is filed under Chapter H of this Act, except that an assignment that does not require approval under § 449(b) or § 449(c) or a sublease that does not require approval under § 453(b) becomes effective on the effective date specified in the assignment or sublease. If the assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.

(b) The Responsible Official will provide copies of approved documents to the party requesting approval to the Leasing Officer, and upon request, to other parties to the lease document.

(c) The Responsible Official will provide copies of approved documents to the party requesting approval, to the Tribe, and upon request, to other parties to the lease document.

§ 462 *What happens if the Business Committee disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease?*

If the Business Committee disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease, the Responsible Official will notify the parties no later than one business day after the Business Committee's determination. All decisions by the Business Committee to approve or disapprove an amendment, assignment, sublease, or leasehold mortgage of a business lease are final.

§ 463 *What happens if the Responsible Official does not meet a deadline prescribed by this Chapter?*

(a) If the Responsible Official does not meet a deadline prescribed in this Chapter regarding a

lease, amendment, assignment, sublease, or leasehold mortgage, the parties may file a written notice to compel action with the Chair, unless the Chairman is acting as the Responsible Official in that instance, in which case the notice to compel action shall be filed with Business Committee.

(b) The Chairman or Business Committee, as the case may be, has fifteen (15) days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

(c) If the original notice under subsection (a) was filed with the Chair, the parties may file a written notice to compel action with the Business Committee, in the event:

(1) The Chairman does not meet the deadline in paragraph (b) of this section; or

(2) The Responsible Official does not perform the required action within the time set by the Chairman under paragraph (b) of this section.

(d) If the notice by the parties was filed under paragraph (c), the Business Committee has fifteen (15) days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

(e) If the Responsible Official does not perform the required action within the time set out in the order under paragraph (d), then the Business Committee may designate another individual or individuals to serve as the Responsible Official for the purpose of performing the required action within 15 days from the expiration of the time set out in the order.

§ 464 *May the Responsible Official investigate compliance with a business lease?*

(a) The Responsible Official may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Apache Tribe and to determine if the lessee is in compliance with the requirements of the lease.

(b) If the Leasing Officer notifies the Responsible Official that a specific lease violation has occurred, the Responsible Official will promptly initiate an appropriate investigation. The Responsible Official, upon written authorization from the Business Committee, may also provide notice to the BIA pursuant to 25 U.S.C. § 415(h)(7)(B)

§ 465 *May a business lease provide for negotiated remedies if there is a violation?*

(a) A business lease of Apache Tribe Indian land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not limited to, the power to terminate the lease. If the lease provides one or both parties with the power to terminate the lease:

(1) Business Committee approval of the termination is not required;

(2) The termination is effective without Business Committee cancellation; and

(3) The Leasing Officer or another appropriate Apache Tribe official must notify the Responsible Official of the termination so that he or she may record it in the Apache Tribe Realty Office.

(b) The parties must notify any surety or mortgagee of any violation that may result in termination of a business lease.

(c) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Business Committee, as specified in the lease. The Apache Tribe may request BIA's assistance in enforcing negotiated remedies.

(d) A business lease may provide that lease violations will be addressed by a process established by the Apache Tribe, and that lease disputes will be resolved by the Apache Tribe Tribal Court, by the Business Committee, or through an alternative dispute resolution method.

§ 466 *What will the Responsible Official do about a violation of a business lease?*

(a) In the absence of actions or proceedings described in § 465(d), the Responsible Official will follow the procedures in paragraphs (b) and (c) of this section.

(b) If the Responsible Official determines there has been a violation of the conditions of a business lease, other than a violation of payment provisions covered by paragraph (c) of this section, he or she will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested.

(1) The Responsible Official will send a copy of the notice of violation to the Leasing Officer and the Business Committee. The notice of violation will advise the lessee that, within ten (10) business days of the receipt of a notice of violation, the lessee must: Cure the violation and notify the Responsible Official, the Leasing Officer, and the Business Committee, in writing that the violation:

(i) has been cured;

(ii) Dispute the Responsible Official determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(2) The notice of violation may order the lessee to cease operations under the lease.

(c) A lessee's failure to pay compensation in the time and manner required by a business Lease is a violation of the lease, and the Responsible Official will issue a notice of violation in accordance with this paragraph.

(1) The Responsible Official will send the lessees and any surety and mortgagee a notice of violation by certified mail, return receipt requested, promptly following the date on which the payment was due, if the lease requires that payments be made to the Apache Tribe.

(2) The Responsible Official will send a copy of the notice of violation to Leasing Officer and the Business Committee.

(3) The notice of violation will require the lessee to provide adequate proof of payment.

(d) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

§ 467 *What will the Responsible Official do if the lessee does not cure a violation of a business lease on time?*

(a) If the lessee does not cure a violation of a business lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Responsible Official will consult with the Business Committee and Leasing Officer, and determine whether:

(1) The Apache Tribe should cancel the lease;

(2) The Apache Tribe wishes to invoke any remedies available to it under the lease;

(3) The Apache Tribe should invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to BIA with a request for further referral to the U.S. Department of the Treasury for collection; or

(4) The lessee should be granted additional time in which to cure the violation.

(b) Following consultation with the Leasing Officer and Business Committee, the Responsible Official may take action to recover unpaid compensation and any associated late payment charges.

(1) The Apache Tribe does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.

(2) The Apache Tribe may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Business Committee decides to cancel the lease, the Responsible Official will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within five (5) business days of the decision. The Responsible Official will send a copy of the cancellation letter to the Leasing Officer and Business Committee. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of any right to appeal under Chapter H, including the possibility that the Business Committee may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action the Business Committee deems necessary to protect the Apache Tribe.

(d) The Apache Tribe may invoke any other remedies available to it under the lease, including collecting on any available performance bond, and the Apache Tribe may pursue any available remedies under tribal law.

§ 468 *Will late payment charges or special fees apply to delinquent payments due under a business lease?*

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) The Responsible Official may assess the following special fees to cover administrative costs incurred by the Apache Tribe or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Apache Tribe under the lease:

<i>The lessee will pay:</i>	<i>For:</i>
\$50.00	Any dishonored check
\$15.00	Processing of each notice or demand letter
18% of balance due	Treasury processing following referral for collection of delinquent debt that is accepted by the BIA and Treasury

§ 469 *How will payment rights relating to a business lease be allocated?*

The business lease may allocate rights to payment for insurance proceeds, trespass damages, condemnation awards, settlement funds, and other payments between the Apache Tribe and the lessee. If not specified in the lease, insurance policy, order, award, judgment, or other document, the Apache Tribe or lessees will be entitled to receive these payments.

§ 470 *When will a cancellation of a business lease be effective?*

A cancellation involving a business lease pursuant to this Act will not be effective until thirty-one (31) days after the lessee receives the cancellation letter from the Responsible Official, or forty-one (41) days from the date the Responsible Official mailed the letter, whichever is earlier.

§ 471 *What will the Apache Tribe do if a lessee remains in possession after a business lease expires or is terminated or cancelled?*

If a lessee remains in possession after the expiration, termination, or cancellation of a business lease, the Apache Tribe may treat the unauthorized possession as a trespass under applicable law. Unless the Apache Tribe and lessee are engaged in good faith negotiations with the holdover lessee to obtain a new lease, the Apache Tribe may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

§ 472 *Will appeal bond requirements apply to cancellation decisions involving business leases?*

(a) Except as provided in paragraph (b) of this section, such appeal bond requirements as may be established by Business Committee will apply to appeals from lease cancellation decisions; provided that the amount of any such bond shall reasonably estimate any damage to the Apache Tribe from deferring any action pending appeal.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the Business Committee reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision by the Business Committee is final.

§ 473 *When will the Tribal Court issue a decision on an appeal regarding a business lease?*

The Tribal Court will issue a decision on an appeal from a business leasing decision as described in Chapter H.

§ 474 *What happens if the lessee abandons the leased premises?*

If a lessee abandons the leased premises, the Apache Tribe will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

## Chapter E-Wind Energy Evaluation, Wind Resource and Solar Resource Leases

### *General Provisions Applicable to WEELs and WSR Leases*

#### § 501 *What types of leases do this Chapter cover?*

(a) This Chapter covers:

(1) Wind energy evaluation leases (WEELs), which are short-term leases that authorize possession of Apache Tribe Indian land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation; and

(2) Wind and solar resource (WSR) leases, which are leases that authorize possession of Apache Tribe Indian land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/ or solar energy to generate and supply electricity:

- (i) For resale on a for-profit or non-profit basis;
- (ii) To a utility grid serving the public generally; or
- (iii) To users within the local community (*e.g.*, on and adjacent to Apache Tribe Indian land).

(b) If the generation of electricity is solely to support a use approved under Chapter B, Agricultural Leases; Chapter C, Residential Leases; or Chapter D, Business Leases (including religious, educational, recreational, cultural, or other public purposes), for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed by Chapter B, C, or D, as appropriate.

#### § 502 *Who must obtain a WEEL or WSR lease?*

(a) Anyone seeking to possess Apache Tribe Indian land to conduct activities associated with the evaluation of wind resources must obtain a WEEL, except that a WEEL is not required if use or possession of the Apache Tribe Indian land to conduct wind energy evaluation activities is authorized:

- (1) Under § 5(b);
- (2) By a permit from the Apache Tribe under § 7; or
- (3) By the Apache Tribe on its land under 25 U.S.C. § 81.

(b) Except as provided in § 5(b), § 501, and paragraph (c) of this section, anyone seeking to possess Apache Tribe Indian land to conduct activities associated with the development of wind and/ or solar resources must obtain a WSR lease.

(c) When the Apache Tribe or its wholly owned tribal enterprises conduct wind and solar resource activities on Apache Tribe Indian land, it does not need a WEEL or WSR under this Chapter.

#### § 503 *Is there a model WEEL or WSR lease?*

There is no model WEEL or WSR lease because of the need for flexibility in negotiating and writing WEELs and WSR leases; however, the Leasing Officer or Responsible Official, as the case may be, may:

- (a) Provide other guidance, such as checklists and sample lease provisions, to assist in the lease negotiation process; and
- (b) Assist, upon request, in developing appropriate lease provisions or in using tribal lease forms that conform to the requirements of this Chapter.

## *WEELs*

### *§ 511 What is the purpose of a WEEL?*

A WEEL is a short-term lease that allows the lessee to possess trust or restricted lands for the purpose of evaluating wind resources. The lessee may use information collected under the WEEL to assess the potential for wind energy development, and determine future placement and type of wind energy technology to use in developing the energy resource potential of the leased area.

### *§ 512 how long may the term of a WEEL run?*

- (a) A WEEL must provide for a definite term, state if there is an option to renew and if so, provide for a definite term for the renewal period. WEELs are for project evaluation purposes, and therefore may have:
  - (1) An initial term that is no longer than 3 years; and
  - (2) One renewal period not to exceed 3 years.
- (b) The exercise of the option to renew must be in writing and the WEEL must specify:
  - (1) The time and manner in which the option must be exercised or is automatically effective;
  - (2) That confirmation of the renewal will be submitted to the Responsible Official, unless the WEEL provides for automatic renewal; and
  - (3) Additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term.

### *§ 513 Are there mandatory provisions a WEEL must contain?*

- (a) All WEELs must identify:
  - (1) The tract or parcel of land being leased;
  - (2) The purpose of the WEEL and authorized uses of the leased premises;
  - (3) The parties to the WEEL;

- (4) The term of the WEEL;
  - (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, under § 515;
  - (6) Payment requirements and late payment charges, including interest; and
  - (7) Due diligence requirements, under § 517.
- (b) Where a representative executes a lease on behalf of the Apache Tribe or lessee, the lease must state such and must identify the party being represented and the authority under which the action is taken.
- (c) All WEELs must include the following provisions:
- (1) The obligations of the lessee and its sureties to the Apache Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;
  - (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of leased premises;
  - (3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 14;
  - (4) If historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, and the lessee will contact the Responsible Official to determine how to proceed and appropriate disposition;
  - (5) The Responsible Official has the right, at any reasonable time during the term of the lease, and upon reasonable notice, in accordance with § 589, to enter the leased premises for inspection; and
  - (6) The Responsible Official may, at his or her discretion, treat as a lease violation any failure by the lessee to cooperate with the Responsible Official's request to make appropriate records, reports, or information available for the Responsible Official's inspection and duplication.
- (d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:
- (1) The lessee holds the United States and the Apache Tribe harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;
  - (2) The lessee indemnifies the United States and the Apache Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term,

regardless of fault, with the exception that the lessee is not required to indemnify the Apache Tribe for liability or cost arising from the Apache Tribe's negligence or willful misconduct.

§ 514 *May permanent improvements are made under a WEEL?*

(a) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of development. These facilities and associated infrastructure are considered permanent improvements. A lessee may construct permanent improvements if the WEEL specifies. An equipment installation plan must be submitted with the lease under § 528(g).

(b) If any of the following changes are made to the equipment installation plan, the Business Committee must approve the revised plan and the lessee must provide a copy of the revised plan to the Apache Tribe:

- (1) Location of permanent improvements;
- (2) Type of permanent improvements; or
- (3) Delay of ninety (90) days or more in any phase of development.

§ 515 *how must a WEEL address ownership of permanent improvements?*

(a) A WEEL must specify who will own any permanent improvements the lessee installs during the lease term. In addition, the WEEL must indicate whether any permanent improvements the lessee installs:

- (1) Will remain on the premises upon expiration, termination, or cancellation of the lease whether or not the WEEL is followed by a WSR lease, in a condition satisfactory to the Apache Tribe;
- (2) May be conveyed to the Apache Tribe during the WEEL term and under what conditions the permanent improvements may be conveyed;
- (3) Will be removed within a time period specified in the WEEL, at the lessee's Expense, with the leased premises to be restored as closely as possible to their condition before installation of the permanent improvements; or
- (4) Will be disposed of by other specified means.

(b) A WEEL that requires the lessee to remove the permanent improvements must also provide the Apache Tribe with an option to take possession and title to the permanent improvements if the improvements are not removed within the specified time period.

§ 516 *How will the Responsible Official enforce removal requirements in a WEEL?*

(a) The Responsible Official may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

- (1) In consultation with the Business Committee; and

- (2) After termination, cancellation, or expiration of the WEEL.

§ 517 *What requirements for due diligence must a WEEL include?*

- (a) A WEEL must include due diligence requirements that require the lessee to:
  - (1) Install testing and monitoring facilities within twelve (12) months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and
  - (2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Business Committee and Responsible Official with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities.
- (b) Failure of the lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to:
  - (1) Cancellation of the WEEL under § 592; and
  - (2) Application of the requirement that the lessee transfer ownership of energy resource information collected under the WEEL to the Apache Tribe under § 520.

§ 518 *How must a WEEL describe the land?*

- (a) A WEEL must describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include one or more of the following:
  - (1) A legal description;
  - (2) A survey-grade global positioning system description; or
  - (3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.
- (b) Any description of real property must be sufficient and adequate for purposes of recording with the LTRO.

§ 519 *May a WEEL allow for compatible uses by the Apache Tribe?*

The WEEL may provide for the Apache Tribe to use, or authorize others to use, the leased premises for other noncompeting uses compatible with the purpose of the WEEL. This may include the right to lease the premises for other compatible purposes. Any such use by the Apache Tribe will not reduce or offset the monetary compensation for the WEEL.

§ 520 *Who own the energy resource information obtained under the WEEL?*

- (a) The WEEL must specify the ownership of any energy resource information the lessee obtains during the WEEL term.

(b) Unless otherwise specified in the WEEL, the energy resource information the lessee obtains through the leased activity becomes the property of the Apache Tribe at the expiration, termination, or cancellation of the WEEL or upon failure by the lessee to diligently install testing and monitoring facilities on the leased premises in accordance with § 517.

(c) The Apache Tribe will keep confidential any information it is provided that is marked confidential or proprietary and that is exempt from public release, to the extent allowed by law.

*§ 521 May a lessee incorporate its WEEL analyses into its WSR lease analyses?*

Any analyses a lessee uses to bring a WEEL activity into compliance with applicable laws, ordinances, rules, regulations under § 14 and any other legal requirements may be incorporated by reference, as appropriate, into the analyses of a proposed WSR lease.

*§ 522 May a WEEL contain an option for the lessee to enter into a WSR lease?*

(a) A WEEL may provide for an option period following the expiration of the WEEL term during which the lessee and the Apache Tribe may enter into a WSR lease.

(b) The Business Committee's approval of a WEEL that contains an option to enter into a WSR lease does not guarantee or imply Apache Tribe's approval of any WSR lease.

*WEEL monetary Compensation Requirements*

*§ 523 How much compensation must be paid under a WEEL?*

(a) The WEEL must state how much compensation will be paid.

(b) A WEEL must specify the date on which compensation will be due.

(c) Failure to make timely payments is a violation of the WEEL and may lead to cancellation of the WEEL.

(d) The lease compensation requirements of §§ 552 through 558 also apply to WEELs.

*§ 524 Will the Apache Tribe require a valuation for a WEEL?*

The Apache Tribe will not require a valuation for a WEEL.

*WEEL Bonding and Insurance*

*§ 525 Must a lessee provide a performance bond for a WEEL?*

The Apache Tribe will not require the lessee to provide a performance bond or alternative form of security for a WEEL.

*§ 526 [Reserved].*

*§ 527 Must a lessee provide insurance for a WEEL?*

Except as provided in paragraph (d) of this section, a lessee must provide insurance necessary to protect the interests of the Apache Tribe and in the amount sufficient to protect all insurable permanent improvements on the leased premises.

- (a) The insurance may include property, crop, liability, and casualty insurance, depending on the Apache Tribe's interests to be protected.
- (b) Both the Apache Tribe and the United States must be identified as additional insured parties.
- (c) Lease insurance may be increased and extended for use as the required WSR lease assurance.
- (d) The Business Committee may waive the requirement for insurance, if a waiver is in the best interest of the Apache Tribe, including if the lease is for less than fair market rental or nominal compensation.

#### *WEEL Approval*

##### § 528 What documents are required for Business Committee approval of a WEEL?

The Responsible Official must submit the following documents to the Business Committee to obtain approval of a WEEL:

A WEEL negotiated by the Apache Tribe and the lessee that meets the requirements of

- (a) This Act;
- (b) Proof of insurance, as required by § 527;
- (c) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the Business Committee;
- (d) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements, including any documentation prepared under § 27(b);
- (e) An equipment installation plan;
- (f) A restoration and reclamation plan (and any subsequent modifications to the plan);
- (g) Where the lessee is not an entity owned and operated by the Apache Tribe, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;

(h) A description of the land under § 518;

(i) If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except an Apache Tribe tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:

(1) The representative has authority to execute a lease;

(2) The lease will be enforceable against the lessee; and

(3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

*§ 529 Will the Responsible Official review a proposed WEEL before or during preparation of the environmental review documentation?*

Upon request of the Leasing Officer, the Responsible Official will review the proposed WEEL for compliance with this Act after negotiation by the parties, before or during preparation of the environmental review documentation. Within ten (10) days of receiving the proposed WEEL, the Responsible Official will provide an acknowledgement of the terms of the lease and identify any provisions that based on this acknowledgment review, would justify disapproval of the lease under the terms of this Act, pending results of the environmental review.

*§ 530 what is the approval process for a WEEL?*

(a) Upon receiving a WEEL package, the Responsible Official will review the package for compliance with this Act. Where applicable, the Responsible Official will conduct necessary Measures under this Act, including but not limited to environmental review and valuation. Once the Responsible Official conducts the compliance review and determines that the package is complete, the Responsible Official will submit the WEEL package to Business Committee for Business Committee determination of approval or disapproval of the lease.

(b) The Responsible Official will promptly notify the parties whether the package is or is not complete. A complete package includes all the information and supporting documents required for a WEEL, including but not limited to, environmental review documentation, where applicable.

(1) If the WEEL package is not complete, the letter issued by the Responsible Official will identify the missing information or documents required for a complete package. If the Responsible Official does not respond to the submission of a WEEL package, the parties may take action under § 588.

(2) If the WEEL package is complete, the Responsible Official will notify the parties of the date he or she received the complete package, and, within twenty (20) days of the date of the Responsible Official's receipt of the package, will submit the WEEL package to Business Committee for approval or disapproval of the WEEL, return the package for revision, or inform the parties in writing that he or she needs additional review time. If the Responsible Official informs the parties in writing that he or she needs additional time, then:

- (i) The Responsible Official's letter informing the parties that he or she needs additional review time must identify the Responsible Official's initial Concerns and invite the parties to respond within fifteen (15) days of the date of the letter.
  - (ii) The Responsible Official has thirty (30) days from the due date of the parties' response to the Responsible Official's letter described in (2)(i) above to submit the package to Business Committee for approval or disapproval the lease.
  - (iii) The Responsible Official has thirty (30) days from the date of receipt of a complete revised business lease application in response to the Responsible Official's letter described in (2) above to submit the revised package to Business Committee for approval or disapproval the lease.
- (c) If the Responsible Official does not meet the deadline in this section, then the parties may take appropriate action under §588.
- (d) Upon receiving the WEEL package from the Responsible Official and before approving a WEEL, Business Committee must determine that the WEEL is in the best interest of the Apache Tribe. In making that determination, the Business Committee will:
  - (1) Review the WEEL and supporting documents;
  - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
  - (3) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other federal or tribal land use requirements; and
  - (4) Have opportunity to hear recommendations regarding approval or disapproval from the Responsible Official, based on the Responsible Official's review of the lease for compliance with this Act.
- (e) The Business Committee will approve or disapprove the WEEL by resolution or other written Business Committee certification.
- (f) The Responsible Official will provide any WEEL approval determination and the basis for the determination, along with notification of any appeal rights under Chapter H of this Act, in writing to the parties to the WEEL.
- (g) The Responsible Official will provide the approved WEEL on Apache Tribe Indian land to the lessee and provide a copy to the Business Committee.

§ 531 *How will the Business Committee decide whether to approve a WEEL?*

- (a) The Business Committee in its discretion may approve a WEEL unless:
  - (1) The required consents have not been obtained from the parties to the WEEL;
  - (2) The requirements applicable to WEELs have not been met; or

- (3) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

§ 532 *When will a WEEL be effective?*

- (a) A WEEL may become effective on the date on which the Business Committee approves the WEEL, even if an appeal is filed under Chapter H of this Act.
- (b) The WEEL may specify a date on which the obligations between the parties to a WEEL are triggered. Such date may be before or after the approval date under paragraph (a) of this section.
- (c) WEEL lease documents not requiring approval by the Business Committee are effective upon execution by the parties, or on the effective date specified in the lease document. If the WEEL lease document does not specify an effective date, it becomes effective upon execution by the parties.

§ 533 *Must a WEEL/ lease document be recorded?*

Any WEEL lease document must be recorded in the Apache Tribe Realty Office.

- (1) The Responsible Official will record the lease document immediately following Business Committee approval.
- (2) If the Business Committee's approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Apache Tribe Realty Office.
- (3) A copy of the lease and related documents must be provided to the Agency for the purposes of encoding prior to being forwarded to the LTRO for recording purposes.

### *WEEL Administration*

#### *§ 534 May the parties amend, assign, sublease, or mortgage a WEEL?*

The parties may amend, assign, sublease, or mortgage a WEEL by following the procedures and requirements for amending, assigning, subleasing, or mortgaging a WSR lease.

### *WEEL Compliance and Enforcement*

#### *§ 535 What effectiveness, compliance, and enforcement provisions apply to WEELs?*

- (a) The provisions at § 586 apply to WEEL lease documents.
- (b) The provisions at §§ 587 through 589 and 591 through 599 apply to WEELs, except that any references to § 590 will apply instead to § 536.

#### *§ 536 under what circumstances may a WEEL be terminated?*

A WEEL must state whether, and under what conditions, the parties may terminate the WEEL.

#### *§ 537 [Reserved].*

### *WSR Leases*

#### *§ 538 What is the purpose of a WSR lease?*

A WSR lease authorizes a lessee to possess Apache Tribe Indian land to conduct activities related to the installation, operation, and maintenance of wind and/or solar energy resource development projects. Activities include installing instrumentation facilities and infrastructure associated with the generation, transmission, and storage of electricity and other related activities. Leases for biomass or waste-to-energy purposes are governed by Chapter D of this Act.

#### *§ 539 Must a WEEL be obtained before obtaining a WSR lease?*

Parties may enter into a WSR lease without a WEEL. While parties may enter into a lease as a direct result of energy resource information gathered from a WEEL activity, obtaining a WEEL is not a precondition to entering into a WSR lease.

#### *§ 540 How long may the term of a WSR lease run?*

- (a) A WSR lease must provide for a definite lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period.
- (b) For Apache Tribe Indian land, the Responsible Official will defer to the Business Committee's determination that the lease term, including any renewal, is reasonable.

- (c) The lease may not be extended by holdover.

§ 541 *What must the lease include if it contains an option to renew?*

- (a) If the lease provides for an option to renew, the lease must specify:

- (1) The time and manner in which the option must be exercised or is automatically effective;
- (2) That confirmation of the renewal will be submitted to the Responsible Official, unless the lease provides for automatic renewal;
- (3) Whether Apache Tribe's consent to the renewal is required;
- (4) That the lessee must provide notice of the renewal to the Responsible Official and any sureties and mortgagees;
- (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
- (6) Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).

- (b) The Responsible Official will record any renewal of a lease in the Apache Tribe Realty Office.

§ 542 *Are there mandatory provisions a WSR lease must contain?*

- (a) All WSR leases must identify:

- (1) The tract or parcel of land being leased;
- (2) The purpose of the lease and authorized uses of the leased premises;
- (3) The parties to the lease;
- (4) The term of the lease;
- (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing, WSR equipment, roads, transmission lines and related facilities under § 543;
- (6) Who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission;
- (7) Payment requirements and late payment charges, including interest;
- (8) Due diligence requirements, under § 546;
- (9) Insurance requirements, under § 562; and

- (10) Bonding requirements under § 559. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.
- (b) Where a representative executes a lease on behalf of the Apache Tribe or lessee, the lease must state such and must identify the party being represented and the authority under which the action is taken.
- (c) All WSR leases must include the following provisions:
- (1) The obligations of the lessee and its sureties to the Apache Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;
  - (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
  - (3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 14;
  - (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact the Responsible Official to determine how to proceed and appropriate disposition;
  - (5) The Responsible Official has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with § 589, to enter the leased premises for inspection and to ensure compliance; and
  - (6) The Responsible Official may, at his or her discretion, treat as a lease violation any failure by the lessee to cooperate with a Responsible Official request to make appropriate records, reports, or information available for the Responsible Official's inspection and duplication.
- (d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:
- (1) The lessee holds the United States and the Apache Tribe harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises; and
  - (2) The lessee indemnifies the United States and the Apache Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Apache Tribe for liability or cost arising from the Apache Tribe's negligence or willful misconduct.
- (e) The Responsible Official may treat any provision of a lease document that violates federal law or Tribal law as a violation of the lease.

§ 543 *May permanent improvements be made under a WSR lease?*

(a) A WSR lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity, in accordance with § 19. These facilities and associated infrastructure are considered permanent improvements. A resource development plan must be submitted for approval with the lease under § 563(h).

(b) If the parties agree to any of the following changes to the resource development plan after lease approval, they must submit the revised plan to the Responsible Official for the file:

- (1) Location of permanent improvements;
- (2) Type of permanent improvements; or
- (3) Delay of ninety (90) days or more in any phase of development.

§ 544 *How must a WSR lease address ownership of permanent improvements?*

(a) A WSR lease must specify who will own any permanent improvements the lessee installs during the lease term and may specify under what conditions, if any; permanent improvements the lessee constructs may be conveyed to the Apache Tribe during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee installs will:

- (1) Remain on the leased premises upon the expiration, termination, or cancellation of the lease, in a condition satisfactory to the Apache Tribe and become the property of the Apache Tribe;
- (2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before installation of the permanent improvements; or
- (3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the permanent improvements must also provide the Apache Tribe with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

§ 545 *how will the Responsible Official enforce removal requirements in a WSR lease?*

(a) The Responsible Official may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

- (1) In consultation with the Business Committee; and
- (2) Before or after expiration, termination, or cancellation of the lease.

(b) The Responsible Official may collect and hold the performance bond until removal and restoration are completed.

§ 546 *What requirements for due diligence must a WSR lease include?*

- (a) A WSR lease must include due diligence requirements that require the lessee to:
  - (1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe in the resource development plan;
  - (2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Responsible Official and the Business Committee with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;
  - (3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and
  - (4) Repair, place into service, or remove from the site within a time period specified in the lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).
- (b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 592.

§ 547 *How must a WSR lease describe the land?*

- (a) A WSR lease must describe the leased premises by reference to a private or public survey, if possible. If the land cannot be so described, the lease must include one or more of the following:
  - (1) A legal description;
  - (2) A survey-grade global positioning system description; or
  - (3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

§ 548 *May a WSR lease allow compatible uses?*

The lease may provide for the Apache Tribe to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the WSR lease and consistent with the terms of the WSR lease. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Apache Tribe will not reduce or offset the monetary compensation for the WSR lease.

*WSR Lease Monetary Compensation Requirements*

§ 549 *How much monetary compensation must be paid under a WSR lease of Apache Tribe Indian land?*

(a) A WSR lease of Apache Tribe Indian land may allow for any payment negotiated by the Apache Tribe, and the Responsible Official will defer to the Business Committee and not require a valuation if the Business Committee submits a written resolution or other appropriate tribal authorization expressly stating that it:

- (1) Finds the negotiated compensation is satisfactory to the Apache Tribe;
- (2) Waives valuation; and
- (3) Has determined that accepting such negotiated compensation and waiving valuation is in the Apache Tribe's best interest.

(b) The Business Committee may request, in writing, that the Responsible Official determine fair market rental, in which case the Responsible Official will use a valuation in accordance with § 551. After providing the Business Committee with the fair market rental, the Responsible Official will defer to the Business Committee's decision to allow for any payment amount negotiated by the Apache Tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, the Responsible Official will require that the lease provide for fair market rental based on a valuation in accordance with § 551.

§ 550 [Reserved].

§ 551 *How will the Responsible Official determine fair market rental for a WSR lease?*

(a) The Responsible Official will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before Business Committee approves a WSR lease of Apache Tribe Indian land.

(b) The Responsible Official will either:

- (1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or
- (2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Apache Tribe or lessee.

(c) The Responsible Official will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:

- (1) Has been prepared in accordance with USPAP or a valuation method deemed appropriate and authorized by the Business Committee; and
- (2) Complies with Apache Tribe policies regarding appraisals, including third-party appraisals.

(d) The Apache Tribe may use competitive bidding as a valuation method.

§ 552 *When are monetary compensation payments due under a WSR lease?*

(a) A WSR lease must specify the dates on which all payments are due.

(b) Unless the lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

(c) Payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

§ 553 *Must a WSR lease specify who receives monetary compensation payments?*

(a) Under a WSR lease, the lessee will make payments directly to the Apache Tribe (direct pay).

(1) The lease must include provisions for proof of payment upon BIA request.

(2) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(3) Unless the lease provides otherwise, payments may not be made payable directly to anyone other than the Apache Tribe.

(4) Direct payments must continue through the duration of the lease.

§ 554 *What form of monetary compensation payment is acceptable under a WSR lease?*

Payments made directly to the Apache Tribe must be in a form of payment acceptable to the Apache Tribe.

§ 555 *May a WSR lease provide for non-monetary or varying types of compensation?*

(a) A WSR lease may provide for the following, subject to the conditions in paragraph (b) of this section:

(1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

(2) Varying types of consideration at specific stages during the life of the lease, including but not limited to fixed annual payments during installation, payments based on income during an operational period, and bonuses.

(b) The Responsible Official will defer to the Business Committee's determination that the compensation in paragraph (a) of this section is in the Apache Tribe's best interest, if the Business Committee submits Business Committee Resolution or other Business Committee authorization stating that it has determined the compensation in paragraph (a) of this section to be in its best interest.

§ 556 *Will the Leasing Officer or Responsible Official notify a lessee when a payment is due under a WSR lease?*

The Leasing Officer or Responsible Official may issue invoices to a lessee in advance of the dates on which payments are due under a WSR lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not delivered or received.

§ 557 *Must a WSR lease provide for compensation reviews or adjustments?*

(a) For a WSR lease of Apache Tribe Indian land, unless the lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the Business Committee states in a Resolution that it has determined that not having reviews and/or adjustments is in the best interest of the Apache Tribe.

(b) If the conditions in paragraph (a) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease. The lease must specify:

- (1) When adjustments take effect;
- (2) Who can make adjustments;
- (3) What the adjustments are based on; and
- (4) How to resolve disputes arising from the adjustments.

(c) When a review results in the need for adjustment of compensation, the Apache Tribe must consent to the adjustment in accordance with § 12, unless the lease provides otherwise.

§ 558 *What other types of payments are required under a WSR lease?*

(a) The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Apache Tribe, except as provided in § 17. The lessee must pay these amounts to the appropriate office at the Apache Tribe.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of title 25 of the C.F.R., the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Responsible Official will treat failure to make these payments as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, such as grazing, the lessees may agree among themselves how to allocate payment of the operation and maintenance charges.

*WSR Lease Bonding and Insurance*

§ 559 *Must a lessee provide a performance bond for a WSR lease?*

The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (f) of this section.

(a) The performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

- (1) No less than:
  - (i) The highest annual rental specified in the lease, if the compensation is paid annually; or

- (ii) If the compensation is not paid annually, another amount established by the Responsible Official in consultation with the Business Committee for Apache Tribe Indian land;
- (2) The installation of any required permanent improvements;
- (3) The operation and maintenance charges for any land located within an irrigation project; and
- (4) The restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition.
- (b) The performance bond or other security must be deposited with the Responsible Official and made payable only to the Apache Tribe, and may not be modified without Apache Tribe approval.
- (c) The lease must specify the conditions under which the Responsible Official may adjust security or performance bond requirements to reflect changing conditions, including consultation with the Business Committee before adjustment.
- (d) The Responsible Official may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.
- (e) The performance bond or other security instrument must require the surety to provide notice to the Responsible Official at least sixty (60) days before canceling a performance bond or other security. This will allow the Responsible Official to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.
- (f) The Responsible Official may waive the requirement for a performance bond or alternative forms of security if the Business Committee determines a waiver is in the Apache Tribe's best interest. The Responsible Official will defer to the Business Committee's determination that a waiver of the performance bond or alternative form of security is in the Apache Tribe's best interest.

§ 560 *What forms of security are acceptable under a WSR lease?*

- (a) The Responsible Official will accept a performance bond only in one of the following forms:
  - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) Negotiable Treasury securities; or
  - (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(b) The Responsible Official may accept an alternative form of security approved by the Business Committee that provides adequate protection for the Apache Tribe, including but not limited to an escrow agreement and assigned savings account.

(c) All forms of performance bonds or alternative security must, if applicable:

- (1) Indicate on their face that the Apache Tribe's approval is required for redemption;
- (2) Be accompanied by a statement granting full authority to the Apache Tribe to make an immediate claim upon or sell them if the lessee violates the terms of the lease;
- (3) Be irrevocable during the term of the performance bond or alternative security; and
- (4) Be automatically renewable during the term of the lease.

(d) The Responsible Official will not accept cash bonds.

§ 561 *What is the release process for a performance bond or alternative form of security under a WSR lease?*

(a) Upon expiration, termination, or cancellation of the lease, the lessee must ask the Apache Tribe in writing to release the performance bond or alternative form of security.

(b) Upon receiving the request under paragraph (a) of this section, the Responsible Official will:

- (1) Confirm with the Leasing Officer that the lessee has complied with all lease obligations; and
- (2) Release the performance bond or alternative form of security to the lessee unless the Responsible Official determines that the bond or security must be redeemed to fulfill the contractual obligations.

§ 562 *Must a lessee provide insurance for a WSR lease?*

Except as provided in paragraph (c) of this section, a lessee must provide insurance when necessary to protect the interests of the Apache Tribe and in the amount sufficient to protect all insurable permanent improvements on the leased premises.

(a) The insurance may include property, liability, and casualty insurance, depending on the Apache Tribe's interests to be protected.

(b) Both the Apache Tribe and the United States must be identified as additional insured parties.

The Business Committee may waive the requirement for insurance upon the request of the Leasing Officer or Responsible Official, if a waiver is determined to be in the best interest of the Apache Tribe by the Business Committee, including if the lease is for less than fair

market rental or nominal compensation. The Responsible Official will defer to the Business Committee's determination that a waiver is in the Apache Tribe's best interest.

### *WSR Lease Approval*

#### *§ 563 What documents are required for Business Committee approval of a WSR lease?*

A lessee or the Leasing Officer must submit the following documents to the Responsible Official for review and for presentation to Business Committee for approval of a WSR lease:

- (a) A lease negotiated by the Apache Tribe and the lessee that meets the requirements of this Act;
- (b) A valuation, if required under § 549;
- (c) Proof of insurance, if required under § 562;
- (d) A performance bond or other security, if required under § 559;
- (e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the Responsible Official or Business Committee;
- (f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements, including any documentation prepared under § 27(b) or required under Chapter G;
- (g) A resource development plan that describes the type and location of any permanent improvements the lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;
- (h) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;
- (i) Where the lessee is not an entity owned and operated by the Apache Tribe, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (j) A description of the land under § 547;
- (k) If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
  - (1) The representative has authority to execute a lease;
  - (2) The lease will be enforceable against the lessee; and

- (3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

§ 564 *Will the Responsible Official review a proposed WSR lease before or during preparation of the environmental review documentation?*

Upon request of the Leasing Officer, the Responsible Official will review the proposed WSR lease for compliance with this Act after negotiation by the parties, before or during preparation of the environmental review documentation and any valuation. Within 60 days of receiving the proposed lease, the Responsible Official will provide an acknowledgement of the terms of the lease and identify any provisions that, based on this acknowledgment review, would justify disapproval of the lease, pending results of the environmental review and any valuation.

§ 565 *What is the approval process for a WSR lease?*

(a) Upon receiving a WSR package, the Responsible Official will review the package for compliance with this Act. Where applicable, the Responsible Official will conduct necessary measures under this Act, including but not limited to environmental review and valuation. Once the Responsible Official conducts the compliance review and determines that the package is complete, the Responsible Official will submit the WSR package to Business Committee for Business Committee determination of approval or disapproval of the lease.

(b) Upon receiving a WSR lease package, the Responsible Official will promptly notify the parties whether the package is or is not complete. A complete package includes all the information and supporting documents required under this Act, including but not limited to, environmental review documentation and valuation documentation, where applicable.

(1) If the WSR lease package is not complete, the Responsible Official's letter will identify the missing information or documents required for a complete package. If the Responsible Official does not respond to the submission of a WSR lease package, the parties may take action under § 588.

(2) If the WSR lease package is complete, the Responsible Official will notify the parties of the date of receipt. Within sixty (60) days of the receipt date, the Responsible Official will submit the WSR package to Business Committee for approval or disapproval of the WSR, return the package for revision, or inform the parties in writing that we need additional review time. If the Responsible Official informs the parties in writing that he or she needs additional time, then:

(i) The Responsible Official's letter informing the parties that the Responsible Official needs additional review time must identify his or her initial concerns and invite the parties to respond within fifteen (15) days of the date of the letter; and

(ii) The Responsible Official has thirty (30) days from the due date of the parties' response to the Responsible Official's letter described in (2)(i) above to submit the package to Business Committee for approval or disapproval of the lease.

(iii) The Responsible Official has thirty (30) days from the date of receipt of a complete revised business lease application in response to the Responsible

Official's letter described in (2) above to submit the revised package to Business Committee for approval or disapproval the lease.

(c) If the Responsible Official does not meet the deadlines in this section, then the parties may take appropriate action under § 588.

(d) Upon receiving the WSR package from the Responsible Official and before approving a WSR, Business Committee must determine that the lease is in the best interest of the Apache Tribe. In making that determination, the Business Committee will:

(1) Review the lease and supporting documents;

(2) Consider the Responsible Official's findings regarding potential environmental impacts and compliance with all applicable environmental laws, land use laws, and ordinances;

(3) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and

(4) Have opportunity to hear recommendations regarding approval or disapproval from the Responsible Official, based on the Responsible Official's review of the lease for compliance with this Act.

(e) The Business Committee will approve or disapprove the WSR lease by written Resolution or other Business Committee authorization which, if applicable, must meet the requirements of § 549(a), § 555(b), and § 557(a), or for a separate signed certification, the requirements of § 555(b) and § 557(a)).

(f) The Responsible Official will provide any lease approval or disapproval and the basis for the determination, along with notification of any appeal rights under Chapter H, in writing to the parties to the lease.

(g) The Responsible Official will provide approved WSR leases on Apache Tribe Indian land to the lessee and provide a copy to the Leasing Officer.

§ 566 *How will the Business Committee decide whether to approve a WSR lease?*

(a) The Business Committee may approve a WSR lease unless:

(1) The required consents have not been obtained from the parties to the lease;

(2) The requirements of this Act have not been met; or

(3) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

§ 567 *When will a WSR lease be effective?*

(a) A WSR lease may become effective on the date that the Business Committee approves the lease, even if an appeal is filed under Chapter H of this Act.

(b) The lease may specify a date on which the obligations between the parties to the lease are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

§ 568 *Must a WSR lease document be recorded?*

(a) Any WSR lease document must be recorded in the Apache Tribe Realty Office and the BIA's Land Titles and Records Office.

(1) The Responsible Official will record the lease document immediately following approval.

(2) If the Business Committee's approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Apache Tribe Realty Office.

(b) A copy of the lease and related documents must be provided to the Agency for the purposes of encoding prior to being forwarded to the LTRO for recording purposes.

§ 569 *Will the Apache Tribe require an appeal bond for an appeal of a decision on a WSR lease document?*

(a) If a party appeals the Responsible Official's determination of a WSR package's noncompliance with this Act or determination of a package's incompleteness for a lease, assignment, amendment, or sublease, the Business Committee shall determine whether to require the appellant to post an appeal bond in an amount reasonably estimating any damage to the Apache Tribe &om deferring any action pending appeal. The Apache Tribe will not require an appeal bond:

(1) For an appeal of a decision on a leasehold mortgage; or

(2) If the Apache Tribe is a party to the appeal and requests a waiver of the appeal bond.

(b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the Business Committee reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final.

*WSR Lease Amendments*

§ 570 *May the parties amend a WSR lease?*

The parties may amend a WSR lease by obtaining:

(a) The lessee's signature;

(b) The Apache Tribe's consent under the requirements in §571; and

(c) The Business Committee's approval of the amendment under § 572 and § 573.

§ 571 *What are the consent requirements for an amendment to a WSR lease?*

(a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed amendment.

(b) The Apache Tribe must consent to an amendment to a WSR lease in order for the amendment to be effective.

§ 572 *What is the approval process for an amendment to a WSR lease?*

(a) When the Responsible Official receives an amendment that meets the requirements of this Chapter, the Responsible Official will notify the parties of the date of receipt. The Responsible Official has 30 days from receipt of the executed amendment, proof of required consents, and required documentation to submit the amendment to Business Committee to approve or disapprove the amendment or inform the parties in writing that the Responsible Official needs additional review time. The Business Committee's determination whether to approve the amendment will be in writing and will state the basis for approval or disapproval.

(b) The Responsible Official's letter informing the parties that the Responsible Official needs additional review time must identify the Responsible Official's initial concerns and invite the parties to respond within 15 days of the date of the letter. The Responsible Official has 30 days from the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the amendment to Business Committee for approval or disapproval.

(c) Unless the lease provides otherwise, provisions of the amendment that are inconsistent with tribal and/ or federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.

§ 573 *How will the Business Committee decide whether to approve an amendment to a WSR lease?*

(a) The Business Committee may disapprove a WSR lease amendment if one or more of the following is true:

- (1) The Apache Tribe has not consented;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;
- (4) The requirements of this Act have not been met; or
- (5) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

*WSR Lease Assignments*

§ 574 *May a lessee assign a WSR lease?*

(a) A lessee may assign a WSR lease by meeting the consent requirements in § 575 and obtaining our approval of the assignment under § 576 and § 577 or by meeting the conditions in paragraphs (b) or (c) of this section.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining Business Committee approval of the assignment, as long as the lessee notifies the Responsible Official of the assignment within thirty (30) days after it is executed:

- (1) Not more than three distinct legal entities specified in the lease; or
- (2) The lessee's wholly owned subsidiaries.

(c) The lessee may assign the lease without Business Committee approval or meeting consent requirements if:

- (1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;
- (2) The assignee agrees in writing to assume all of the obligations and conditions of the lease; and
- (3) The assignee agrees in writing that any transfer of the lease will be in accordance with applicable law under § 14.

§ 575 *What are the consent requirements for an assignment of a WSR lease?*

- (a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed assignment.
- (b) Except as provided in § 574, the Apache Tribe must consent to an assignment of a WSR lease.

§ 576 *What is the approval process for an assignment of a WSR lease?*

(a) When the Responsible Official receives an assignment that meets the requirements of this Chapter, the Responsible Official will notify the parties of the date of receipt. If Business Committee approval is required, the Responsible Official has thirty (30) days from receipt of the assignment, proof of required consents, and required documentation to submit the assignment to Business Committee to approve or disapprove the assignment. The Business Committee's determination whether to approve the assignment will be in writing and will state the basis for approval or disapproval.

(b) If the Responsible Official does not meet any of the deadlines in this section, the lessee or Apache Tribe may take appropriate action under §588.

§ 577 *How will the Business Committee decide whether to approve an assignment of a WSR lease?*

(a) The Business Committee may disapprove an assignment of a WSR lease if one or more of the following is true:

- (1) The Apache Tribe has not consented, and consent is required;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;

- (4) The assignee does not agree to be bound by the terms of the lease;
- (5) The requirements of this Chapter have not been met; or
- (6) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

(b) In making the finding required by paragraph (a)(6) of this section, the Business Committee may consider whether:

- (1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and
- (2) If a performance bond is required, the assignee has posted the bond or security and has provided supporting documents that demonstrate that:
  - (i) The lease will be enforceable against the assignee; and
  - (ii) The assignee will be able to perform its obligations under the lease or assignment.

#### *WSR Lease Subleases*

##### *§ 578 May a lessee sublease a WSR lease?*

- (a) A lessee may sublease a WSR lease by meeting the consent requirements in § 579 and obtaining the Business Committee's approval of the sublease under § 580 and § 581, or by meeting the conditions in paragraph (b) of this section.
- (b) The lessee may sublease without meeting consent requirements or obtaining the Business Committee's approval of the sublease, if:
  - (1) The lease provides for subleasing without meeting consent requirements or obtaining the Business Committee's approval;
  - (2) The sublease does not relieve the lessee/sublessor of any liability; and
  - (3) The parties provide the Responsible Official with a copy of the sublease within thirty (30) days after it is executed.

##### *§ 579 What are the consent requirements for a sublease of a WSR lease?*

- (a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed sublease.
- (b) Except as provided in § 578, the Apache Tribe must consent to a sublease in order for the sublease to be effective.

##### *§ 580 What is the approval process for a sublease of a WSR lease?*

(a) When the Responsible Official receives a sublease that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. If the Business Committee's approval is required, the Responsible Official has thirty (30) days from receipt of the sublease, proof of required consents, and required documentation to submit the sublease package to Business Committee to approve or disapprove the sublease or inform the parties in writing that he or she needs additional review time. The Business Committee's determination whether to approve the sublease will be by resolution or other written Business Committee certification and will state the basis for approval or disapproval.

(b) The Responsible Official's letter informing the parties that he or she needs additional review time must identify any initial concerns and invite the parties to respond within fifteen (15) days of the date of the letter. The Responsible Official has thirty (30) days from the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the sublease package to Business Committee for approval or disapproval.

(c) Unless the lease provides otherwise, provisions of the sublease that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

§ 581 *How will the Business Committee decide whether to approve a sublease of a WSR lease?*

(a) The Business Committee may disapprove a sublease of a WSR lease if one or more of the following is true:

- (1) The Apache Tribe has not consented;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;
- (4) The lessee will not remain liable under the lease; and
- (5) The requirements of this Chapter have not been met; or
- (6) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

(b) In making the finding required by paragraph (a)(6) of this section, the Business Committee may consider whether the value of any part of the leased premises not covered by the sublease would be adversely affected.

*WSR Leasehold Mortgages*

§ 582 *May a lessee mortgage a WSR lease?*

(a) A lessee may mortgage a WSR lease by meeting the consent requirements in § 583 and obtaining the Business Committee's approval of the leasehold mortgage under § 584 and § 585.

(b) Refer to § 574(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

(c) In no event shall a leasehold mortgage exceed one hundred percent (100%) of the total leasehold value.

§ 583 *What are the consent requirements for a leasehold mortgage of a WSR lease?*

(a) Unless the lease provides otherwise, the lessee must notify the Apache Tribe of the proposed leasehold mortgage.

(b) The Apache Tribe must consent to a leasehold mortgage in order for the leasehold mortgage to be effective.

§ 584 *What is the approval process for a leasehold mortgage of a WSR lease?*

(a) When the Responsible Official receives a leasehold mortgage that meets the requirements of this Chapter, the Responsible Official will notify the parties of the date of receipt. The Responsible Official has twenty (20) days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to submit the leasehold mortgage package to Business Committee to approve or disapprove the leasehold mortgage. The Business Committee's determination whether to approve the leasehold mortgage will be in writing and will state the basis for approval or disapproval.

(b) If the Responsible Official does not meet the deadline in this section, the lessee may take appropriate action under § 588.

§ 585 *How will the Business Committee decide whether to approve a leasehold mortgage of a WSR lease?*

(a) The Business Committee may disapprove a leasehold mortgage of a WSR lease if one or more of the following is true:

- (1) The Apache Tribe has not consented;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The requirements of this Act have not been met; or
- (4) The Business Committee finds a compelling reason to withhold approval in order to protect the best interests of the Apache Tribe.

(b) In making the finding required by paragraph (a)(4) of this section, the Business Committee may consider whether:

- (1) The leasehold mortgage proceeds would be used for purposes unrelated to the leased premises; and
- (2) The leasehold mortgage is limited to the leasehold.

*WSR Lease Effectiveness Compliance and Enforcement*

§ 586 *When will an amendment, assignment, sublease, or leasehold mortgage of a WSR lease be effective?*

(a) An amendment, assignment, sublease, or leasehold mortgage of a WSR lease will be effective when approved, even if an appeal is filed under Chapter H, except that an

assignment that does not require Business Committee approval under § 574(b) or a sublease that does not require Business Committee approval under § 578(b) becomes effective on the effective date specified in the assignment or sublease.

(b) If the assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.

(c) The Responsible Official will provide copies of approved documents to the party requesting approval, to the Tribe, and upon request, to other parties to the lease document.

*§ 587 What happens if the Business Committee disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease?*

If the Business Committee disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease, the Responsible Official will notify the parties no later than one business day after the Business Committee's determination. All decisions by the Business Committee to approve or disapprove an amendment, assignment, sublease, or leasehold mortgage of a WSR lease are final.

*§ 588 What happens if the Responsible Official does not meet a deadline for issuing a decision on a lease document?*

(a) If the Responsible Official does not meet a deadline prescribed in this Chapter regarding a lease, amendment, assignment, sublease, or leasehold mortgage, the parties may file a written notice to compel action with the Chair, unless the Chairman is acting as the Responsible Official in that instance, in which case the notice to compel action shall be filed with Business Committee.

(b) The Chairman or Business Committee, as the case may be, has fifteen (15) days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

(c) If the original notice under subsection (a) was filed with the Chair, the parties may file a written notice to compel action with the Business Committee, in the event:

(1) The Chairman does not meet the deadline in paragraph (b) of this section; or

(2) The Responsible Official does not perform the required action within the time set by the Chairman under paragraph (b) of this section.

(d) If the notice by the parties was filed under paragraph (c), the Business Committee has fifteen (15) days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

(e) If the Responsible Official does not perform the required action within the time set out in the order under paragraph (d), then the Business Committee may designate another individual or individuals to serve as the Responsible Official for the purpose of performing the required action within fifteen (15) days from the expiration of the time set out in the order.

*§ 589 May the Responsible Official investigate compliance with a WSR lease?*

(a) The Responsible Official may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Apache Tribe and to determine if the lessee is in compliance with the requirements of the lease.

(b) If the Leasing Officer notifies the Responsible Official that a specific lease violation has occurred, the Responsible Official will promptly initiate an appropriate investigation. The Responsible Official, upon authorization from the Business Committee, may also provide notice to the BIA pursuant to 25 U.S.C. § 415(h)(7)(B).

§ 590 *May a WSR lease provide for negotiated remedies if there is a violation?*

(a) A WSR lease of Apache Tribe Indian land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not limited to, the power to terminate the lease. If the lease provides one or both parties with the power to terminate the lease:

- (1) Business Committee approval of the termination is not required;
- (2) The termination is effective without Business Committee cancellation; and
- (3) The Leasing Officer or other appropriate Apache Tribe official must notify the Responsible Official of the termination so that the Responsible Official may record it in the Apache Tribe Realty Office.

(b) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Business Committee, as specified in the lease. The Apache Tribe may request BIA assistance in enforcing negotiated remedies.

(c) A WSR lease may provide that lease violations will be addressed by the Tribe, and that lease disputes will be resolved by the Apache Tribe Tribal Court, or by Business Committee, or through an alternative dispute resolution method.

§ 591 *What will the Responsible Official do about a violation of a WSR lease?*

(a) In the absence of actions or proceedings described in § 590(c), the Responsible Official will follow the procedures in paragraphs (b) and (c) of this section.

(b) If the Responsible Official determines there has been a violation of the conditions of a WSR lease, other than a violation of payment provisions covered by paragraph (c) of this section, the Responsible Official will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested.

- (1) The Responsible Official will send a copy of the notice of violation to Leasing Officer and the Business Committee.
- (2) The notice of violation will advise the lessee that, within ten (10) business days of the receipt of a notice of violation, the lessee must:

- (i) Cure the violation and notify the Responsible Official, the Leasing Officer and the Business Committee, in writing that the violation has been cured;

- (ii) Dispute the Responsible Official's determination that a violation has occurred; or
  - (iii) Request additional time to cure the violation.
- (3) The notice of violation may order the lessee to cease operations under the lease.
- (c) A lessee's failure to pay compensation in the time and manner required by a WSR lease is a violation of the lease, and the Responsible Official will issue a notice of violation in accordance with this paragraph.
  - (1) The Responsible Official will send the lessees and any surety and mortgagee a notice of violation by certified mail, return receipt requested, promptly following the date on which payment was due, if the lease requires that payments be made to the Apache Tribe.
  - (2) The Responsible Official will send a copy of the notice of violation to the Leasing Officer and the Business Committee.
  - (3) The notice of violation will require the lessee to provide adequate proof of payment.
- (d) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires or is terminated or cancelled.

§ 592 *What will the Responsible Official do if a lessee does not cure a violation of a WSR lease on time?*

- (a) If the lessee does not cure a violation of a WSR lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Responsible Official will consult with the Business Committee and the Leasing Officer, and determine whether:
  - (1) The Apache Tribe should cancel the lease;
  - (2) The Apache Tribe wishes to invoke any remedies available under the lease;
  - (3) The Apache Tribe should invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to BIA with a request for further referral the Department of the Treasury for collection; or
  - (4) The lessee should be granted additional time in which to cure the violation.
- (b) Following consultation with the Business Committee and Leasing Officer, the Responsible Official may take action to recover unpaid compensation and any associated late payment charges.
  - (1) The Apache Tribe does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.

(2) The Apache Tribe may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Business Committee decides to cancel the lease, the Responsible Official will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within five (5) business days of the decision. The Responsible Official will send a copy of the cancellation letter to the Leasing Officer and the Business Committee. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of any right to appeal under Chapter H of this Act, if any, including the possibility that the Business Committee may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action the Responsible Official deems necessary to protect the Apache Tribe.

(d) The Apache Tribe may invoke any other remedies available under the lease, including collecting on any available performance bond, and the Apache Tribe may pursue any available remedies under tribal law.

§ 593 *Will late payment charges or special fees apply to delinquent payments due under a WSR lease?*

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) The Responsible Official may assess the following special fees to cover administrative costs incurred by the Apache Tribe or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to late payment charges that must be paid to the Apache Tribe under the lease:

§ 594 *How will payment rights relating to WSR leases be allocated?*

The WSR lease may allocate rights to payment for insurance proceeds, trespass damages, compensation awards, settlement funds, and other payments between the Apache Tribe and the lessee. If not specified in the lease, insurance policy, order, award, judgment, or other document, the Apache Tribe will be entitled to receive these payments.

§ 595 *When will a cancellation of a WSR lease be effective?*

A cancellation involving a WSR lease will not be effective until 31 days after the lessee receives a cancellation letter from the Responsible Official, or 41 days from the date the Responsible Official mailed the letter, whichever is earlier.

*§ 596 What will the Apache Tribe do if a lessee remains in possession after a WSR lease expires or is terminated or cancelled?*

If a lessee remains in possession after the expiration, termination, or cancellation of a WSR lease, the Apache Tribe may treat the unauthorized possession as a trespass under applicable law. Unless the Apache Tribe and the lessee are engaged in good faith negotiations with the holdover lessee to obtain a new lease, the Apache Tribe may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

*§ 597 Will appeal bond regulations apply to cancellation decisions involving WSR leases?*

(a) Except as provided in paragraph (b) of this section, such appeal bond requirements as may be established by Business Committee will apply to appeals from lease cancellation decisions; provided that the amount of any such bond shall reasonably estimate any damage to the Apache Tribe from deferring any action pending appeal.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that Business Committee reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision by Business Committee is final.

*§ 598 When will the Tribal Court issue a decision on an appeal from a WSR leasing decision?*

The Tribal Court will issue a decision on an appeal from a WSR leasing decision pursuant to Chapter H of this Act.

*§ 599 What happens if the lessee abandons the leased premises?*

If a lessee abandons the leased premises, the Apache Tribe will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

## **Chapter F-Records**

*§ 601 Who owns the records associated with this Act?*

(a) Records are the property of the United States if they:

(1) Are made or received by the Apache Tribe in the conduct of a Federal trust function under 25 U.S.C. §§ 450f *et seq.*, including the operation of a trust program and not pursuant to tribal authority pursuant to 25 U.S.C. § 415(h); and evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function and not pursuant to tribal authority under this Act.

(b) Records not covered by paragraph (a) of this section that are made or received by the Apache Tribe under this Act are the property of the Apache Tribe.

*§ 602 How must records associated with this Act be preserved?*

The Apache Tribe should preserve the records identified in § 601(b) of this Act, for the period of time authorized by the Archivist of the United States for similar Department of

the Interior records under 44 U.S.C. Chapter 33. If the Apache Tribe does not preserve records associated with this Act, it may prevent the Apache Tribe from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

## Chapter G-Environmental Review

### § 700 *What is the purpose of this Chapter?*

The purpose of this Chapter is to ensure that prior to approval of any lease pursuant to this Act, a process is followed that:

- (a) Identifies and evaluates any significant effects of a proposed leasing transaction on the environment;
- (b) Ensures that the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impact of the proposed leasing transaction identified by the Apache Tribe; and
- (c) The Apache Tribe provides responses to relevant and substantive public comments on any such impacts before the Apache Tribe approves the lease.

### § 705 [Reserved].

### § 710 *What is the purpose of an environmental review statement and when must it be prepared?*

The purpose of an environmental review statement is to allow the Responsible Official to identify and evaluate the significant effects of a proposed leasing transaction on the environment.

The Responsible Official must ensure that an environmental review statement is prepared for all proposed leasing transactions, except those:

- (1) That will not result in any significant change in use of the leased Apache Tribe Indian lands; or
- (2) That are covered by an earlier environmental review statement prepared not more than twenty-four months earlier for a substantially identical leasing transaction on the same parcel as determined and documented by the Responsible Official.

### § 715 *What involvement does the public have in the environmental review process?*

(a) The Responsible Official shall prepare an environmental review statement in which such Responsible Official:

- (1) Identifies any significant effects of the proposed leasing transaction on the environment;
- (2) Considers whether there are any commercially reasonable actions that may be taken to mitigate such significant effects on the environment as part of the proposed leasing transaction; and
- (3) Determines whether any such actions should be required as a condition of approval of a lease.

(b) A notice of availability of the completed environmental review statement shall be:

(1) Published in a newspaper of general circulation in a community immediately adjacent to the Apache Tribe Indian land at issue; or

Disseminated in such other manner or by such other means as may reasonably be expected to inform the public of: (A) the fact that a lease is under consideration for approval pursuant to this Act; (B) a copy of the environmental review statement is available to any member of the public requesting it without charge; and (C) the public is being provided with a reasonable opportunity to comment on the significant effects a proposed leasing transaction may have on the environment prior to approval or disapproval of such lease under this Act. The notice shall invite comments on the environmental review statement during a period not more than thirty (30) days following such publication or dissemination. The Responsible Official shall consider all comments received, shall provide a response to all relevant and substantive public comments within thirty (30) days of closure of the comment period and prior to approving the lease, and may revise environmental review statement and/or impose restrictions or requirements on the proposed leasing transaction as a condition of approval based on comments received without need of initiating another comment period.

§ 720 *What are the contents of an environmental review statement?*

(a) In addition to the matters described in § 715(a), an environmental review statement shall include brief discussions of:

- (1) The proposed leasing transaction; and
- (2) The need for the proposed leasing transaction.

(b) The environmental review statement need only consider the substantive features of the proposed leasing transaction and does not need to consider alternative actions or leasing transactions, including a no action alternative, but shall consider the matters described in § 715(a).

(c) A proposed leasing transaction may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the leasing transaction and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(d) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant effects on the environment and if there are commercially reasonable ways to mitigate them.

§ 725 *How is an environmental review statement formatted?*

(a) An environmental review statement may be prepared in any format useful to facilitate identification of significant effects on the environment, and appropriate public participation as described § 715 above.

(b) An environmental review statement may be accompanied by or incorporate any other planning or decision-making document.

§ 730 *May an environmental assessment prepared by another agency, entity, or person be adopted?*

The Responsible Official may adopt an environmental assessment prepared in accordance with NEPA by another agency, entity, or person, provided that the public comment and response requirements of §715 are substantially complied with. However, if the leasing transaction involves funding from a federal agency, the Apache Tribe, acting through the Responsible Official, shall have authority to rely on the environmental review process of the applicable federal agency rather than any tribal environmental review process under this Act.

§ 735 *How is the environmental review statement process concluded?*

Upon review of the environmental impacts by the Responsible Official, publication of the environmental review statement, acceptance of public comments and delivery of the Apache Tribe's response to such comments, the environmental review statement process concludes and the Responsible Official may submit the proposed lease package to Business Committee to approve or disapprove of the proposed lease, subject to appeal of the Responsible Official's determination under Chapter H below.

## **Chapter H-Appeals**

§ 800 *Who may appeal an action taken pursuant to this Act?*

(a) Any proposed lessee of a proposed lease that is not approved pursuant to this Act due to Responsible Official action or inaction may appeal to the Apache Tribe Tribal Courts such action or inaction taken by the Responsible Official affecting the leasing transaction on the grounds that the action or inaction was taken in violation of the terms of this Act.

(b) Any proposed lessee of a proposed lease that is not approved pursuant to this Act due to Business Committee's determination not to approve the proposed lease may appeal to the Apache Tribe Tribal Courts such Business Committee determination not to approve the proposed lease on the grounds that Business Committee's determination not to approve the proposed lease is in violation of the terms of this Act.

(c) The proposed lessee or Leasing Officer may appeal to the Apache Tribe Tribal Courts the Responsible Official's action or inaction resulting in the disapproval of the proposed lease or the Business Committee's determination not to approve the proposed lease as being (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law; and/ or (ii) without reasonable support on the record before the Responsible Official or Business Committee taken as a whole.

(d) For purposes of this section, the term "lease" includes leases, lease amendments, lease assignments, and lease subleases.

§ 805 *On what grounds may appeals be based?*

Appeals of actions taken under this Act may be taken solely by the persons identified at § 800(a), (b) or (c) and may be based only upon the grounds described therein as applicable to such person's interest in the leasing transaction.

§ 810 *When and how must an appeal be filed?*

An appeal by a person identified in Section 800(a), (b) or (c) and based on the grounds stated therein must be filed with the Apache Tribe Tribal Court within fifteen (15) days of the date the action appealed from was taken. All appeals shall be by written notice filed with the Apache Tribe Tribal Court describing in reasonable detail (a) the interest of the appellant and (b)(i) alleged violation of this Act, or (ii) if the appellee is a proposed lessee or Leasing Officer, the grounds stated in Subsection 800(c) upon which such appeal is based.

§ 815 *How will the appeal be processed?*

The Apache Tribe Tribal Court will process the appeal pursuant to applicable Apache Tribal law, including the Apache Tribe Civil Procedure Code. The Apache Tribe Tribal Court shall decide the appeal pursuant to applicable Apache Tribe law, including the Apache Tribe Civil Procedure Code.

§ 820 *How is a decision made on an appeal?*

The Apache Tribal Court shall review the administrative record, briefs by the parties, and applicable law, and shall conduct a hearing before reaching a decision.

§ 825 *May an interested party seek further review of the decision on appeal?*

(a) The Apache Tribe Tribal Court's decision upon an appeal pursuant to § 800 shall be final and binding on all parties and for all purposes.

Only upon exhaustion of tribal remedies as provided in this Chapter H, may a party to an appeal pursuant to § 800 seek Secretarial review of an appeal pursuant with Subsection 800(a) or (b) regarding the Apache Tribe's compliance with this Act in accordance with 25 U.S.C. § 415(h) (8). Any such Secretarial review shall be subject to all terms and conditions of 25 U.S.C. § 415(h)(8). The Apache Tribe will respond to and/or cure any Secretarial determination of non-compliance in accordance with the procedures provided by 25 U.S.C. § 415(h)(8)(C).