

§ 162.414

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landowner or lessee being represented and the authority under which the action is taken.

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

(1) The obligations of the lessee and its sureties to the Indian landowners 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 § 162.014;

(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 BIA and the tribe with jurisdiction over the land to determine how to proceed and appropriate disposition;

(5) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with § 162.464, to enter the leased premises for inspection and to ensure compliance; and

(6) BIA may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA 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 Indian landowners 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 Indian landowners 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 Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.

(e) We may treat any provision of a lease document that violates Federal law as a violation of the lease.

§ 162.414 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.

§ 162.415 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 Indian landowners 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 Indian landowners, and become the property of the Indian landowners;

(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 Indian landowners with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

§162.416 How will BIA enforce removal requirements in a business lease?

(a) We 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 tribe, for tribal land or, where feasible, with Indian landowners for individually owned Indian land; and

(2) Before or after expiration, termination, or cancellation of the lease.

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

§162.417 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 Indian landowners and BIA 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 §162.467.

(c) BIA may waive the requirements in this section if such waiver is in the best interest of the Indian landowners.

(d) The requirements of this section do not apply to leases for religious,

educational, recreational, cultural, or other public purposes.

§162.418 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) If the tract is fractionated we will identify the undivided trust or restricted interests in the leased premises.

§162.419 May a business lease allow compatible uses?

A business lease may provide for the Indian landowners 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 Indian landowners will not reduce or offset the monetary compensation for the business lease.

MONETARY COMPENSATION
REQUIREMENTS

§162.420 How much monetary compensation must be paid under a business lease of tribal land?

(a) A business lease of tribal land may allow for any payment amount negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:

(1) Has negotiated compensation satisfactory to the tribe;

(2) Waives valuation; and

(3) Has determined that accepting such negotiated compensation and waiving valuation is in its best interest.

(b) The tribe may request, in writing, that we determine fair market rental, in which case we will use a valuation in accordance with §162.422. After providing the tribe with the fair market