

Bureau of Indian Affairs, Interior

§ 166.227

(1) Grant and approve the permit on behalf of Indian landowners where we are authorized to do so by law;

(2) Distribute the approved permit to the permittee(s) and, upon request, to the Indian landowner(s); and

(3) Record and maintain the approved permit.

§ 166.222 Are there standard permit forms?

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

PERMIT (LEASEHOLD) MORTGAGE

§ 166.223 Can I use a permit as collateral for a loan?

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the permit interest before it can be effective. We will record the approved leasehold mortgage instrument.

§ 166.224 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the permit interest, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new permit" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

§ 166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

§ 166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

MODIFYING A PERMIT

§ 166.227 How can Indian land be removed from an existing permit?

(a) We will remove Indian land from the permit if:

(1) The trust status of the Indian land terminates;

(2) The Indian landowners request removal of their interest, with the written approval of the majority interest of the fractionated tract to be removed,

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and we determine that the removal is beneficial to such interests;

(3) A tribe allocates grazing privileges for Indian land covered by your permit under §166.218 of this part;

(4) The permittee requests removal of the Indian land, the owners of the majority interest of the Indian land provides written approval of the removal of the Indian land, and we determine that the removal is warranted; or

(5) We determine that removal of the Indian land is appropriate, with the written approval of the owners of the majority interest of the Indian land.

(b) We will revise the grazing capacity to reflect the removal of Indian land and show it on the permit.

§ 166.228 How will the BIA provide notice if Indian land is removed from an existing permit?

If the reason for removal is:

(a) Termination of trust status. We will notify the parties to the permit in writing within 30 days. The removal will be effective on the next anniversary date of the permit.

(b) A request from Indian landowners or the permittee, or our determination. We will notify the parties to the permit in writing within 30 days of such request. The removal will be effective immediately if all sureties, Indian landowners, and permittee agree. Otherwise, the removal will be effective upon the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(c) Tribal allocation under §166.218 of this part. We will notify the parties to the permit in writing within 180 days of such action. The removal of tribal land will be effective on the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

§ 166.229 Other than to remove land, how can a permit be amended, assigned, subpermitted, or mortgaged?

(a) We must approve an amendment, assignment, subpermit, or mortgage with the written consent of the parties

to the permit in the same manner that the permit was approved, and the consent of the sureties.

(b) Indian landowners may designate in writing one or more of their co-owners or representatives to negotiate and/or agree to amendments on their behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the grazing rental payments payable to the other Indian landowners; or

(ii) Terminate the permit or modify the term of the permit.

(c) We may approve a permit for tribal land to individual members of a tribe which contains a provision permitting the assignment of the permit by the permittee or the lender without our approval when a lending institution or an agency of the United States:

(1) Accepts the interest in the permit (leasehold) as security for the loan; and

(2) Obtains the interest in the permit (leasehold) through foreclosure or otherwise.

(d) We will revise the grazing capacity and modify the permit.

§ 166.230 When will a BIA decision to approve an amendment, assignment, subpermit, or mortgage under a permit be effective?

Our decision to approve an amendment, assignment, subpermit, or mortgage under a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

§ 166.231 Must an amendment, assignment, subpermit, or mortgage approved under a permit be recorded?

An amendment, assignment, subpermit, or mortgage approved under a permit must be recorded in our Land Titles and Records Office which has jurisdiction over the Indian land. We will