

**§ 162.007**

**25 CFR Ch. I (4–1–14 Edition)**

the use of water rights is incorporated in a lease of the land itself.

(3) The following leases, which do not require our approval, except that you must record these leases in accordance with §§162.343, 162.443, and 162.568:

- (i) A lease of tribal land by a 25 U.S.C. 477 corporate entity under its charter to a third party for a period not to exceed 25 years; and
- (ii) A lease of Indian land under a special act of Congress authorizing leasing without our approval.

**§162.007 To what permits does this part apply?**

(a) Permits for the use of Indian land do not require our approval; however, you 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 BIA office to allow us to maintain a copy of the permit in our records. If we determine within 10 days of submission that the document does not meet the definition of “permit” and grants a legal interest in Indian land, we will notify you that a lease is required.

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

Permit	Lease
Does not grant a legal interest in Indian land.	Grants a legal interest in Indian land.
Shorter term .....	Longer term.
Limited use .....	Broader use with associated infrastructure.
Permittee has non-possessory right of access.	Lessee has right of possession, ability to limit or prohibit access by others.
Indian landowner may terminate at any time.	Indian landowner may terminate under limited circumstances.

(c) We will not administer or enforce permits on Indian land.

(d) We may grant permits for the use of Government land. The leasing regulations in this part will apply to such permits, as appropriate.

**§162.008 Does this part apply to lease documents I submitted for approval before January 4, 2013?**

This part applies to all lease documents, except as provided in §162.006. If you submitted your lease document to

us for approval before January 4, 2013, the qualifications in paragraphs (a) and (b) of this section also apply.

(a) If we approved your lease document before January 4, 2013, this part applies to that lease document; however, if the provisions of the lease document conflict with this part, the provisions of the lease govern.

(b) If you submitted a lease document but we did not approve it before January 4, 2013, then:

- (1) We will review the lease document under the regulations in effect at the time of your submission; and
- (2) Once we approve the lease document, this part applies to that lease document; however, if the provisions of the lease document conflict with this part, the provisions of the lease document govern.

**§ 162.009 Do I need BIA approval of a subleasehold mortgage?**

Unless the lease provides otherwise, sublease, or by request of the parties, you do not need our approval of a subleasehold mortgage. If the lease or sublease requires, or parties request, our approval, we will use the procedures governing our review of leasehold mortgages.

**HOW TO GET A LEASE**

**§ 162.010 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 Indian landowners for a lease; and
  - (ii) For fractionated tracts, notify all Indian landowners and obtain the consent of the Indian landowners of the applicable percentage of interests, under §162.012; and
- (2) Prospective lessees and Indian landowners must:
  - (i) Prepare the required information and analyses, including information to facilitate our analysis under applicable environmental and cultural resource requirements; and
  - (ii) Ensure the lease complies with the requirements in subpart C for residential leases, subpart D for business leases, or subpart E for wind energy evaluation, wind resource, or solar resource leases; and

(3) Prospective lessees or Indian landowners must submit the lease, and required information and analyses, to the BIA office with jurisdiction over the lands covered by the lease, for our review and approval.

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

**§ 162.011 How does a prospective lessee identify and contact individual Indian landowners to negotiate a lease?**

(a) Prospective lessees may submit a written request to us to obtain the following information. The request must specify that it is for the purpose of negotiating a lease:

- (1) Names and addresses of the individual Indian landowners or their representatives;
- (2) Information on the location of the parcel; and
- (3) The percentage of undivided interest owned by each individual Indian landowner.

(b) We may assist prospective lessees in contacting the individual Indian landowners or their representatives for the purpose of negotiating a lease, upon request.

(c) We will assist individual Indian landowners in lease negotiations, upon their request.

**§ 162.012 What are the consent requirements for a lease?**

(a) For fractionated tracts:

(1) Except in Alaska, the owners of the following percentage of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a lease of that tract:

If the number of owners of the undivided trust or restricted interest in the tract is . . .	Then the required percentage of the undivided trust or restricted interest is . . .
(i) One to five, .....	90 percent;
(ii) Six to 10, .....	80 percent;
(iii) 11 to 19, .....	60 percent;
(iv) 20 or more, .....	Over 50 percent.

(2) Leases in Alaska require consent of all of the Indian landowners in the tract.

(3) If the prospective lessee is also an Indian landowner, his or her consent will be included in the percentages in paragraphs (a)(1) and (2) of this section.

(4) Where owners of the applicable percentages in paragraph (a)(1) of this section consent to a lease document:

(i) That lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document; and

(ii) That lease document will not bind a non-consenting Indian tribe, except with respect to the tribally owned fractional interest, and the non-consenting Indian tribe will not be treated as a party to the lease. Nothing in this paragraph affects the sovereignty or sovereign immunity of the Indian tribe.

(5) We will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the percentages in paragraph (a)(1) of this section based on our records on the date on which the lease is submitted to us for approval.

(b) Tribal land subject to a tribal land assignment may only be leased with the consent of the tribe.

**§ 162.013 Who is authorized to consent to a lease?**

(a) Indian tribes, adult Indian landowners, and emancipated minors, may consent to a lease of their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

- (1) An adult with legal custody acting on behalf of his or her minor children;
- (2) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;
- (3) Any person who is authorized to practice before the Department of the Interior under 43 CFR 1.3(b) and has been retained by the Indian landowner for this purpose;

(4) BIA, under the circumstances in paragraph (c) of this section; or

(5) An adult or legal entity who has been given a written power of attorney that:

- (i) Meets all of the formal requirements of any applicable law under § 162.014;