



## The Pueblo of Sandia's Leasing Regulations and What Businesses Need to Do to Enter into Leases

The Pueblo of Sandia ("Pueblo") was the first tribe in New Mexico, and the second in the United States, to receive approval by the Secretary of the Interior for its tribal leasing regulations promulgated under the Helping Expedite and Advance Responsible Tribal Homeownership ("HEARTH") Act Amendments to the Indian Long-Term Leasing Act, 25 U.S.C. § 415. The HEARTH Act authorized Tribes to promulgate regulations governing leases of tribal land for residential, business, and other purposes. The Sandia Pueblo Tribal Council unanimously approved the regulations on March 5, 2013, determining that the business leasing regulations "will serve and promote the Pueblo's interests of sovereignty, self-determination and economic development." Resolution 2013-037. The Pueblo then submitted the regulations to the Bureau of Indian Affairs ("BIA") for approval, as required by the HEARTH Act. On March 14, 2013, then Secretary of the Interior Ken Salazar approved the Pueblo's leasing regulations at a signing ceremony held at the Tribal Council's offices outside of Albuquerque. Sandia's new leasing regulations govern business leases of Tribally-owned land held in trust or restricted status; the Pueblo may develop regulations for residential, agricultural, and wind and solar energy resources in the future.

Companies seeking to do business with Sandia Pueblo have much to gain from the approval of Sandia's regulations. Because the Pueblo may now negotiate for and approve business leases for its trust and restricted land, prospective lessees no longer need to seek federal government approval prior to entering into the lease. This should lower transaction costs and speed up the process significantly. The regulations also provide the Pueblo with rightful autonomy in determining the uses to which its sovereign territory should be placed. This article reviews some of the key provisions of the regulations.

**What Leases Are Governed by the New Regulations?** The regulations govern business leases, and assignment, sublease, and mortgage thereof, of Pueblo surface land held in trust or in restricted status. This includes ground leases and leases of development land for residential purposes that are not subject to other regulation; leases for religious, educational, recreational, cultural, or other public purposes; commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes. Leases of Pueblo land held in fee are governed by tribal law, and are not within the purview of the new regulations. The regulations do not apply to land use agreements entered into pursuant to authority other than 25 U.S.C. § 415(a) or (h), including but not limited to, leases for timber, grazing, rights of way, or water rights. Permits for use of Pueblo land do not require approval under the regulations, but must be filed with the appropriate Pueblo office. Proposed leases that were submitted to the BIA prior to the approval of the regulations will be processed by the BIA unless the prospective lessee withdraws the lease application and submits it to the Pueblo.

**Who Will Approve the Lease?** The Tribal Council "must consent to any grant of a lease on Pueblo Indian land and approve the terms of the lease." Section 012. The Responsible Official, an official designated by the Governor, will ultimately approve the lease. If the Pueblo land has been assigned, the consent of the assignee may be required. In seeking a lease, the prospective lessee will meet first with the Leasing Officer, a person designated by the Governor or Tribal Council (and may be the Governor or another official) to negotiate the lease, make necessary arrangements related to the lease, and, if the lease is approved, administer the lease. If a successful lease is negotiated, the Responsible Official is tasked with overseeing the regulatory requirements for approving and administering leases, including environmental review. The Responsible Official may delegate duties within the Tribal Government as required. The Responsible Official also is authorized to take emergency action if Pueblo land is threatened by natural or man-made disaster, including by the lessee. Amendments, assignments, subleases, and mortgages have separate approval processes that largely depend on the terms of the original lease.



Sandia Deer Petroglyph

The Responsible Official will approve the lease unless the application is not complete, the regulations would be violated, or there is “a compelling reason to withhold approval in order to protect the best interests of the Pueblo.” Section 441(a)(3). Unreasonable withholding of approval is not permitted. Once approved, the lease must be recorded with the Pueblo and the BIA.

### **What Is Needed to Submit a Business Lease for Approval by the Responsible Official?**

Section 438 lists the documents required to obtain approval. These include an executed lease with Tribal Council Authorization; valuation, proof of insurance, security, if required; a statement that the proposed use conforms with tribal law; a legal description of the land; other information to assist the Responsible Official, including information regarding the business organization. Archeological reports and cultural studies may be required as well. If appropriate, a prospective lessee may need to prepare a restoration and reclamation plan, demonstrate technical capability for the leases’ purposes, and a preliminary development plan. Due diligence is required if the lease will include permanent improvements. An environmental review is required for all proposed leases unless there will not be a significant change in use of the leased lands, or a separate environmental review was prepared within the prior 24 month period. The environmental review must provide public notice and the opportunity for public comment.

**What Are the Required Lease Terms?** The required lease terms are set forth in § 413. They include identification of the tract or parcel of land being leased; the purpose of the lease; authorized uses of the leased property; parties; term; ownership of and responsibilities related to permanent improvements; payment requirements; due diligence requirements (excused for religious, educational, or other purposes); insurance requirements; bonding requirements; a statement that the United States may enforce rights of the Pueblo; a prohibition on unlawful conduct, nuisance, or negligent use or waste of the leased premises; a statement requiring compliance with all applicable laws; a provision requiring a halt of activities if historic, archeological, or cultural items, or human remains, are discovered; a statement regarding the rights of the Responsible Official to enter and inspect; and provisions holding harmless and indemnifying the Pueblo and the United States. A business lease may provide authorization for the Pueblo to use or authorize the use of the leased premises for compatible purposes. The lease may provide for negotiated remedies in the case of a violation. Such a clause will bind the Pueblo but not the United States.



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**What Are the Required Fees?** Compensation for a lease must be negotiated with the Tribal Council, unless the Tribal Council directs the Responsible Official to obtain a valuation or determine fair market rental value. Payment of compensation may be either to the Pueblo or to the BIA, as negotiated in the lease, and, if negotiated, may be in-kind or variable. Unless the business lease includes an authorization by the Tribal Council that compensation review is not necessary, a review must be undertaken every fifth year. The lessee may be required to pay additional costs associated with the land, or, if the leased premise is within an Indian irrigation project or drainage district, the operation and maintenance charges associated with such a district. The lessee must provide security in the form of a performance bond, unless such requirement is waived by the Tribal Council. Insurance must be obtained, with the Pueblo and the United States identified as additional insured, unless waived.

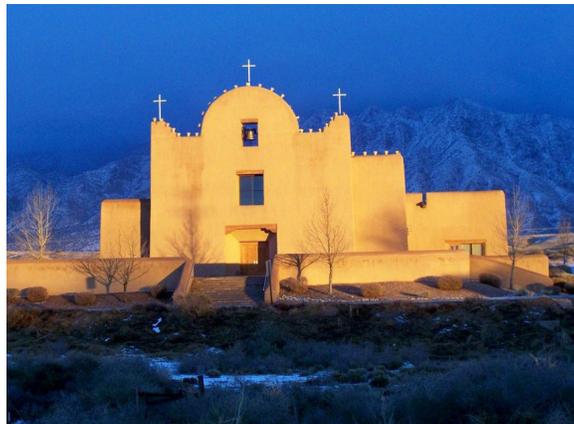
**What Laws Apply to the Lease?** Federal law and Tribal law. Leases approved under the regulations are not subject to State law unless the Pueblo, Congress, or a federal or tribal court has made it expressly applicable, or unless the parties have agreed to subject the lease to State or local law. Doing so does not waive the Pueblo’s sovereign immunity. When Tribal law requires a preference for employment of tribal members, this may be a term of the lease. State tax laws do not apply to the lease or the activities conducted or improvements made under the lease. The lease is limited to 75 years, pursuant to 25 U.S.C. § 415(h), permitting an initial term of 25 years and two renewals. The lease may include an option to renew.

**Is there an Appeals Process?** Yes. Decisions by the Responsible Official to disapprove a lease may be overturned only by the Tribal Council, and an appeal bond must be posted. A nonapproved lease may be appealed by the proposed lessee, the Leasing Officer, or any other party with a material interest. Grounds for appeal include violation of the regulations or the familiar grounds for appealing an administrative action, whether the challenged action was arbitrary, capricious, an abuse of discretion, not in accordance with law, or without sufficient evidence in the record. The appeal is filed with the Tribal Court where evidence and argument may be presented. The Tribal Court's decision is appealable to the Tribal Council, who will decide based on the record before the Court. The Tribal Court's decision is final, unless a party chooses to seek review by the Secretary of the Interior.

If the Responsible Official does not act within the relevant time period stated in the regulations during the lease approval process, a request to compel action may be filed with the Governor or Tribal Council.

**Other Tribes are Also Developing Regulations.** In addition to Sandia, the Federated Indians of Graton Rancheria, located in northern California, have received Secretary approval of their leasing regulations. Tribes around the United States, including the Ho-Chunk Nation, located in Wisconsin, and the Confederated Tribes of the Colville Reservation, located in Washington, currently are drafting lease regulations or have submitted regulations for approval by the Secretary.

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St. Anthony Catholic Church, Sandia Pueblo, NM  
Picture by [Amber Flores Jordan](#)