



**Stephanie Garcia Richard  
Commissioner of Public Lands**

**Information Sheet Regarding Produced Water and Fracturing Fluids**

**Special Considerations for Operation on State Trust Lands:**

The State Land Office is dedicated to generating revenue to support New Mexico's public schools and institutions while ensuring the long-term health and productivity of the land. In keeping with this ongoing commitment we have evaluated the operations of containments, pits or ponds involving produced water and/or fracturing fluids. In the following two areas the NMSLO requires precautions in addition to compliance with the regulations set forth by the New Mexico Oil Conservation Division as well as all other federal, state and local requirements.

- 1. Design and Construction Specifications** In addition to compliance with all federal, state and local regulations Lessee shall
  - a. use factory welded seams whenever possible for the primary and secondary liners shall; and
  - b. use wildlife netting for all open containments, pits or ponds.
  
- 2. Surface Operations** In addition to compliance with all federal, state and local regulations
  - a. Lessee shall remove all surface trash and debris caused by their operations from the Leased Premises and shall keep such premises free and clear of such trash and debris. "Surface trash and debris" means all nonoperation and/or nonessential equipment resulting from the operations permitted pursuant to this Lease and includes, but is not limited to, garbage, rubbish, junk or scrap.
  - b. Lessor requires that a fence be present from the time the liner is installed in the pit through the satisfaction of closure and site reclamation requirements and the terms of the lease. Fencing shall be maintained with the intent to keep persons, livestock and wildlife out of the pit. The type of fence used shall be specific to the class of livestock in the area (either a site perimeter fence or pit fence). All fences shall be braced or constructed in such a manner as to keep wires tight with no sagging between posts. The Lessor will inspect and, if necessary, notify the Lessee of necessary repairs or requirements for maintaining the required condition of all fences associated with this Lease.
  - c. All releases and spills over one half barrel shall be reported to the Lessor within forty-eight (48) hours. All major and minor releases shall be treated and cleaned up pursuant to OCD regulations. All spills over one half barrel and less than five barrels shall be treated and cleaned up to the reasonable satisfaction of Lessor.



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Commissioner of Public Lands**

**APPLICATION CHECKLIST**

When submitting your application for a **frac pond, multi-well fluid management pit or recycling containment facility** please use the following list to ensure you have included all necessary documentation with your application packet. Incomplete applications will not be processed.

Application Form – completed, signed and notarized, labeled Exhibit\_\_\_\_\_.

Metes and Bounds Survey – refer to survey criteria, labeled Exhibit\_\_\_\_\_.

Copy of Access Survey (*optional*), labeled Exhibit\_\_\_\_\_.

Site Plan – showing placement of improvements, labeled Exhibit\_\_\_\_\_.

List of Equipment and Improvements, labeled  
Exhibit\_\_\_\_\_

\$500.00 Non-Refundable Application Fee.\*

Cultural Properties Protection Acknowledgment Form signed, and Instructions,  
labeled Exhibit\_\_\_\_\_.

NMSLO Cultural Resources Cover Sheet provided by your archaeological consultant (*if required*), labeled Exhibit\_\_\_\_\_.

Copy of NMOCD Forms (*i.e. C-144, C-147, etc.*),  
labeled Exhibit\_\_\_\_\_.

Copy of the Environmental Assessment (*if conducted by BLM or otherwise required by an outside agency*), labeled Exhibit\_\_\_\_\_.

Contacted NMSLO Commercial Resources Division to determine what forms will be required to obtain consent or partial relinquishment from existing surface lessee(s).

If you have any questions regarding the application procedure please contact the Commercial Resources Division at (505) 827-5797.

\* Applications received without payment will be automatically rejected without review. Please make checks payable to “*Commissioner of Public Lands*”. When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



**Stephanie Garcia Richard  
Commissioner of Public Lands**

**APPLICATION FOR A BUSINESS LEASE  
TO CONSTRUCT/OPERATE A  
FRAC POND, MULTI-WELL FLUID MANAGEMENT  
PIT, OR RECYCLING CONTAINMENT FACILITY**

To: Commissioner of Public Lands  
Attn: Commercial Resources Division  
P.O. Box 1148, Santa Fe, New Mexico 87504  
310 Old Santa Fe Trail, Santa Fe, New Mexico 87501

New Lease No. \_\_\_\_\_  
(assigned by NMSLO)

Existing Lease No. \_\_\_\_\_

I, \_\_\_\_\_ State of \_\_\_\_\_,  
(Name of the legal entity, or if applying as an individual, the personal name) (State of incorporation)

a citizen over the age of twenty-one years (or a corporation authorized to do business in New Mexico) do hereby make application for a business lease upon the following described lands, or such portion thereof as may be available for leasing, situated in the County of \_\_\_\_\_, State of New Mexico. I submit herewith a \$500.00 non-refundable application processing fee upon the following described lands:

**DESCRIPTION OF LAND** (Enter amount of acreage in each Quarter Quarter Subdivision.)

<u>TOWNSHIP</u>	<u>RANGE</u>	<u>SECTION</u>	<u>ALIQUOT (Subdivision)</u>	<u>ACRES</u>
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**Attach a metes and bounds survey with legal description when submitting the application.**

\*Please give general location or address of property if applicable:

1. Please check the box that matches the lease term you are requesting:

☐ 5-year lease.

☐ Long-term "bid lease". \*Enter the number of lease years requested: \_\_\_\_\_

\*A "bid lease" means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act. If you are requesting a "bid lease" please indicate the number lease years you are requesting.

2. State the proposed access to the site. *(Please note that a separate right-of-way easement must be obtained for any access over state trust lands.)*
3. The primary proposed use is for:
- |  |                                   |   |
|--|-----------------------------------|---|
| <input type="checkbox"/> Fresh Water Only Frac Pond;         | <input type="checkbox"/> Existing | <input type="checkbox"/> New Construction |
| <input type="checkbox"/> Multi-Well Fluid Management Pit;    | <input type="checkbox"/> Existing | <input type="checkbox"/> New Construction |
| <input type="checkbox"/> Recycling Containment and Facility; | <input type="checkbox"/> Existing | <input type="checkbox"/> New Construction |
4. The secondary proposed use includes: *(Please list all additional uses to be performed on the land.)*
5. Will this operation include facilities for recycling of produced water? ☐ Yes ☐ No
6. If this application is part of a larger project that will involve additional state trust lands and other instruments besides this lease please provide a summary of the project.
7. Will there be multiple operators using this facility? ☐ Yes ☐ No
8. Are there any existing improvements on the land: (If so, give type and description):
9. List all improvements and equipment you intend to place on the land and the approximate value of same, and attach a "Site Plan" showing improvements to be constructed and their location on the trust land: *(A separate sheet may be attached with this information.)*
10. Estimated completion of improvements installation (month day, year): \_\_\_\_\_
11. If you are required to file any permitting documents with the New Mexico Oil Conservation Division regarding this facility please provide a copy with the application.

## 12. Cultural Resource Protection

Parties are expected to review and abide by the laws and rules related to the protection of cultural properties, including the Cultural Properties Protection Rule (19.2.24 NMAC). Please indicate whether you have signed the enclosed Acknowledgment Form. Yes      No

The NMSLO Cultural Resources Cover Sheet (Exhibit \_\_\_\_\_) provided to you by the archaeological consultant is attached to your application and indicates whether:

an ARMS Inspection                      or an Archaeological Survey                      has been conducted for this project.  
(see 19.2.24.9 & 19.2.24.10 NMAC for exceptions of certain categories of activity that do not require an ARMS inspection or survey).

Does your project involve federal or other state agencies? Yes      No

In addition to complying with the requirements of the Cultural Properties Protection Rule, parties also must comply with all other applicable state and federal laws and rules, including laws and rules pertaining to endangered and threatened species and habitat protection.

13. Digital Files: Digital information of your project's location is required. Acceptable formats: shapefiles (preferred), gps coordinates, kml/kmz files or georeferenced AutoCAD files. Yes      No

Digital Files Custodian-Name if other than the applicant:

Email:

Phone Number:

14. If this application is part of a larger project involving federal land please provide a copy of the Environmental Assessment prepared by BLM.
15. If there is an existing surface lessee you will be required to furnish a “*Partial General Relinquishment*” or “*Consent to Lease Land Currently Leased*” granting permission to lease trust land under existing lease. ***Please contact the Commercial Resources Division to verify you are using the proper form and obtain contact information for the existing lessee.***
16. Please attach your proposed “Close-out Plan.” You may be required to post a bond to assure reclamation of the site. You will also be required to remove all your improvements upon termination of the lease.
17. Please provide contact information for the application process and the field contact for operations at the site.

### Required Applicant Contact Information

Applicant Contact: \_\_\_\_\_

Applicant Phone: \_\_\_\_\_

Applicant Email: \_\_\_\_\_

### Required Field Contact Information

Field Contact: \_\_\_\_\_

Field Phone: \_\_\_\_\_

Field Email: \_\_\_\_\_

*Affirmation on the following page.*

I, \_\_\_\_\_, the above applicant, do solemnly swear, or affirm,  
(Please print name of applicant or of attorney in fact / authorized agent)  
that each and every statement made in this application is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
State of Parent Corporation & Incorporation No.

\_\_\_\_\_  
Printed Name of Signatory

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Attorney in Fact or Authorized Agent

\_\_\_\_\_  
City, State and Zip Code

**Acknowledgment for an individual capacity:**

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ (month),

20\_\_\_\_ by \_\_\_\_\_ (name(s) of  
person(s).

(Seal)

\_\_\_\_\_

Signature of notarial officer

My commission

expires: \_\_\_\_\_

**For an acknowledgment in a representative capacity:**

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ (month),

20\_\_\_\_ by \_\_\_\_\_ (name(s) of person(s)) as

\_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.) of

\_\_\_\_\_ (name of party on behalf of whom

instrument was executed.)

(Seal)

\_\_\_\_\_

Signature of notarial officer

My commission

expires: \_\_\_\_\_

**\$500.00 NON-REFUNDABLE APPLICATION FEE\***

\* Applications received without payment will be automatically rejected without review. Please make checks payable to "Commissioner of Public Lands". When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



Stephanie Garcia Richard, Commissioner of Public Lands  
State of New Mexico

## **CULTURAL PROPERTIES PROTECTION ACKNOWLEDGMENT FORM**

**Exhibit \_\_\_\_\_**

All lessees, operators, grantees, permittees, and/or applicants (collectively, "Parties") requesting any authorization from the Commissioner of Public Lands, or conducting any project or activity on state trust land, are expected to review and abide by all applicable laws and rules related to the protection of cultural properties on state land, including the New Mexico State Land Office's ("NMSLO") Cultural Properties Protection Rule, 19.2.24 NMAC. The Cultural Properties Protection Rule can be viewed at <https://www.nmstatelands.org/culturalproperties/>.

Parties conducting surface-disturbing activity on state trust land must follow the procedures and timelines outlined in 19.2.24.8 NMAC. To minimize processing delays, Parties are strongly encouraged to supply NMSLO with appropriate documentation as early as possible pursuant to 19.2.24.8 (C), (D), (E) & (F) NMAC. Parties are advised to always exercise due caution to ensure that cultural properties on state trust land are not inadvertently excavated, disturbed, dislodged, damaged, destroyed, or removed by any person, pursuant to the Cultural Properties Protection Rule, 19.2.24.8 (A) NMAC and Section 18-6-9 (A) and (B), NMSA 1978.

By signing this acknowledgment form, Parties affirm that they have read this document, including the accompanying Instructions for Compliance, and have reviewed and agree to comply with NMSLO's Cultural Properties Protection Rule. If a Party is other than a natural person, the individual signing below attests that they have the authority to execute this acknowledgment on behalf of and bind that Party.

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### **Type and Number of Instrument (Lease Number):**

(Required for Oil & Gas Leases-eg. VB06320001; include if available for other leases: Business, Renewables, Minerals, Water Bureau, ROW or Agricultural leases-eg. BL05220001, GR0232, R40893, SW0520, HA0102)

**Name of Party** (Company Name, if applicable):

**Name of Signatory (Person Signing):**

**Relationship to Party/Title (position):**

(eg. lessee, operator, grantee, applicant, self or other)

**Phone Number:**

**Email Address:**

**Signature :** \_\_\_\_\_

**- Date:**

## INSTRUCTIONS FOR COMPLIANCE

### Cultural Properties Protection Rule (19.2.24 NMAC)

The following instructions apply to all lessees, operators, grantees, permittees, and/or applicants (collectively, “Parties”) that intend to conduct new surface disturbing activities on state trust lands. The instructions provide additional guidance for fulfilling the requirements of NMSLO’s Cultural Properties Protection Rule. A copy of the Cultural Properties Protection Rule can be found at <https://www.nmstatelands.org/culturalproperties/>.

We thank you in advance for your commitment to protecting New Mexico’s past and living history. NMSLO encourages all Parties to provide current and accurate documentation as early as possible to minimize processing delays.

Please do not hesitate to reach out to the Cultural Resources Office at [croinfo@nmslo.gov](mailto:croinfo@nmslo.gov) should you have any questions after reviewing these instructions or with NMSLO’s cultural properties review process.

#### **Part I: Archaeological Records Management Section (ARMS) Inspection (Records Review)**

1. The ARMS inspection is a records review and should comply with the pre-field requirements of 4.10.15.9 NMAC. An ARMS inspection must be conducted prior to any new surface-disturbing activities, in compliance with 19.2.24.8 (C) NMAC. The specific timing of when an ARMS inspection is required depends on the category of activity, as described in 19.2.24.8 (E) NMAC. The Cultural Properties Protection Rule provides exceptions for certain categories of activity that do not require an ARMS inspection or survey; see 19.2.24.9 NMAC and 19.2.24.10 NMAC.
2. Parties are expected to engage a permitted archaeologist to conduct the initial ARMS inspection. Permitted archaeologists are referred to in these Instructions as “archaeological consultants.” Only ARMS inspections from archaeological consultants will be accepted. The list of archaeological consultants in New Mexico is available at <http://www.nmhistoricpreservation.org/documents/consultants.html>. Scroll down past the headings for “Archaeological Permits” and “Official Scenic Markers” to “Preservation Consultants.” Click on the pdf document titled “Cultural Resource Consultants.” The list is updated regularly and arranged by county of location. Because costs vary, the NMSLO encourages Parties to contact more than one archaeological consultant.
3. The Party must provide the archaeological consultant with all relevant supporting documentation. This may include a description of the project, cadastral plats, and location information in digital form (ArcGIS shape files, kml/kmz format, GPS coordinates, CAD drawings, plats, or accurate depictions on USGS 1:24000 quadrangles).
4. The archaeological consultant will conduct an ARMS inspection of the entire area of potential effect (APE). Based on the ARMS inspection, the findings will be summarized into one of three results as indicated on the NMSLO Cultural Resources Cover Sheet (“Cover Sheet”). The Cover Sheet is a fillable PDF form (available from the Web Portal and also from NMSLO’s website and Cultural Resources Office):
  - (A) \_\_\_ The entire area of potential effect or project area has been previously surveyed to current standards and **no** cultural properties were found within the survey area.
  - (B) \_\_\_ The entire area of potential effect or project area has been previously surveyed to current standards and cultural properties were found within the survey area.
  - (C) \_\_\_ The entire area of potential effect or project area has **not** been previously surveyed or has not been surveyed to current standards. A complete archaeological survey must be conducted and submitted for review.
5. If the ARMS inspection indicates that the entire APE has been previously surveyed and no cultural properties were located (**result A above**), NMSLO’s Cultural Resources Office and the relevant leasing



division (e.g. Water Bureau, Minerals; Agricultural Leasing; Business Leasing, Renewable Energy, Rights-of-Way, etc.) will complete the process of review and approval. In the case of oil and gas lease projects, once the Cultural Resources Office reviews and approves the ARMS inspection results, no further archaeological review is required and the project may proceed.

6. For the ARMS Review (**result A above**), the archaeological consultant will complete and submit the ARMS Inspection/Desktop Review web form on the Cultural Compliance Web Portal (Web Portal), available at <http://culturalcompliance.nmstatelands.org/>. NMSLO's Cultural Resources Office will have immediate access to the submitted web form and accompanying documents.
7. If the ARMS inspection result indicates a previous survey showing the presence of cultural properties within the APE (**result B above**), the Party must propose avoidance and protection measures for the project as designed in collaboration with their archaeological consultant.
8. If the ARMS inspection shows that the entire APE has **not** been subject to archaeological survey or to a current standards survey (**result C above**), a complete archaeological survey must be conducted. The new survey need not include areas already subjected to acceptable surveys. See continued instructions below, Part II.
9. Because specific locational information of cultural properties that may be contained in an ARMS inspection or archaeological survey is confidential under New Mexico law (see Cultural Properties Act, Section 18-6-11.1, NMSA 1978, and Section 19-1-2.1, NMSA 1978), Parties should expect to receive a copy only of the Cover Sheet from their archaeological consultant, and should forward the Cover Sheet to the appropriate NMSLO leasing division with their application.
10. Parties conducting project activities on state land under oil and gas leases, like other Parties, will receive a copy of the Cover Sheet from their archaeological consultant. To provide information on their upcoming projects on state land, Parties will then fill in the Oil and Gas Project Description Web Form at <http://culturalcompliance.nmstatelands.org/> and will submit, along with the Cover Sheet, any necessary documentation for cultural compliance review pursuant 19.2.24.8 (E)(3) NMAC. Only on-lease oil and gas projects with activities that are not included in any other lease application at NMSLO (eg. Business or Right of Way) should utilize the Web Portal.

## **Part II: Archaeological Surveys and Compliance Measures**

1. If the ARMS inspection, in compliance with 19.2.24.8 NMAC, indicates that the entire APE has not been subject to archaeological survey (see Part I, Para. 4, **result C**), a complete archaeological survey must be conducted to current standards in compliance with 4.10.15 NMAC. The new survey need not include areas already subjected to acceptable surveys.
2. In compliance with 19.2.24.8 (F) NMAC, at least 15 calendar days prior to any survey activities, the archaeological consultant should fill in and submit a Notification of Intent to Conduct an Archaeological Survey through the Web Portal at <http://culturalcompliance.nmstatelands.org/>.
3. Only archaeological surveys from archaeological consultants will be accepted and must be conducted under current standards in compliance with 4.10.15 NMAC. Information on how to access the list of archaeological consultants is listed in Part I, Para. 2 above. NMSLO encourages Parties to contact more than one archaeological consultant in your location as proximity will be a factor in estimated costs of an archaeological survey.
4. Parties will be expected to design their project to avoid any cultural properties identified within the APE (as recorded on the Cover Sheet in Part I, Para. 4, **result B**) by the archaeological survey obtained in conjunction with a project or by pre-existing surveys, or provide other mitigation measures in collaboration with their archaeological consultant. Parties are encouraged to provide NMSLO with appropriate current and accurate documentation of the proposed activity as early as possible (preferably at least sixty calendar days prior to any surface disturbing activity) to minimize processing delays and ensure implementation of avoidance and protection measures.

- a. Pursuant to the Cultural Properties Protection Rule, 19.2.24.12 (A) NMAC, if any Party becomes aware of actual or imminent damage to cultural properties on state trust lands where that Party is conducting activities, that Party shall immediately notify NMSLO and suspend project activities in the immediate area of the damage or the threatened cultural property. Activities shall remain suspended until the State Historic Preservation Officer and NMSLO approve resumption of activities.
  - b. A Party that damages cultural properties on state trust land is responsible for the cost of an archaeological damage assessment, plus the remediation value of the affected cultural property as determined by that damage assessment. In addition, the Commissioner of Public Lands may file an action to recover an amount equal to twice the cost of restoration, stabilization, and interpretation of the damaged cultural property, in accordance with the Cultural Properties Act, Section 18-6-11.2(C), NMSA 1978.
5. The archaeological consultant, upon completion of the survey report, should submit the fillable, completed Cover Sheet to [croinfo@nmslo.gov](mailto:croinfo@nmslo.gov) with any relevant questions. Pursuant to the requirements of 4.10.8.18 NMAC, the Cultural Resources Office will review a complete copy of the survey report, its findings and any required compliance (avoidance or mitigation) measures and recommend revisions, if applicable. The Cultural Resources Office will provide further guidance on how archaeological consultants should submit complete survey reports and any required compliance measures for review. The Cultural Resources Office additionally may request electronic files of survey report(s), sites, location of findings, or survey areas in order to complete its review, all of which should be sent to [croinfo@nmslo.gov](mailto:croinfo@nmslo.gov).
6. The complete results of an archaeological survey are confidential under New Mexico law (see Cultural Properties Act, Section 18-6-11.1, NMSA 1978, and Section 19-1-2.1, NMSA 1978).
  - a. Upon approval of the final archaeological survey report and its findings/recommendations, the archaeological consultant will upload the final archaeological report along with all supporting documentation to the New Mexico Cultural Resources Information System (NMCRIS). Parties should expect to receive a copy of the Cover Sheet from their archaeological consultant, and should forward it to the appropriate leasing division with their application.
  - b. In the case of oil and gas leases only, Parties themselves will upload the Cover Sheet along with their Project Description Web Form documentation submitted via the Web Portal at <http://culturalcompliance.nmstatelands.org/>.
7. The website <http://nmstatelands.org/cultural-resources-office/> contains a list of State Trust Land Archaeologists within NMSLO's Cultural Resources Office (along with related contact info) to whom questions can be addressed.
8. Below is a list of useful links, emails, and phone numbers:
  - a. Cultural Compliance Portal: <http://culturalcompliance.nmstatelands.org>
  - b. Cultural Resources Office Website: <http://www.nmstatelands.org/cultural-resources-office/>
  - c. Cultural Properties Protection Rule and FAQs: <http://www.nmstatelands.org/culturalproperties/>
  - d. Historic Preservation Division-List of Archaeological consultants: <http://www.nmhistoricpreservation.org/documents/consultants.html>
  - e. Inquiries to the Cultural Resources Office: [croinfo@nmslo.gov](mailto:croinfo@nmslo.gov)
  - f. Main New Mexico State Land Office phone number: 505-827-5760



Stephanie Garcia Richard, Commissioner of Public Lands  
State of New Mexico

## NMSLO Cultural Resources Cover Sheet Exhibit

**NMCRIS Activity Number:**

(if applicable)

**Exhibit Type** (select one)

**ARMS Inspection/Review** - Summarize the results (select one):

- (A) The entire area of potential effect or project area has been previously surveyed to current standards and **no cultural properties** were found within the survey area.
- (B) The entire area of potential effect or project area has been previously surveyed to current standards and **cultural properties were found** within the survey area.
- (C) The entire area of potential effect or project area has **not** been previously surveyed or **has not been surveyed** to current standards. A complete archaeological survey will be conducted and submitted for review.

**Archaeological Survey**

**Findings:**

**Negative** - No further archaeological review is required.

**Positive** - Have avoidance and protection measures been devised? Select one:

**Comments:**

**Project Details:**

NMSLO Lease Number (if available):

Cultural Resources Consultant:

Project Proponent (Applicant):

Project Title/Description:

**Project Location:**

County(ies):

PLSS/Section/Township/Range):

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***For NMSLO Agency Use Only:***

NMSLO Lease Number:

Acknowledgment-Only:

Lease Analyst:

Date Exhibit Routed to Cultural Resources Office:

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*No person may alter the wording of the questions or layout of the cover sheet. The completion of this cover sheet by itself does not authorize anyone to engage in new surface disturbing activity before the review and approvals required by the Cultural Properties Protections Rule.*

### Survey Plats and Legal Description Requirements.

1. *Survey plats must show ties to PLSS corners (second division level or higher).*
2. Survey plats must include a legal description with the metes and bounds descriptions for each parcel, right-of-way, or easement.
3. Survey plats must show the land surveyed in aliquot parts, and for any partial quarter-quarter section, lot or partial lot included.
4. *Survey plats must show the acreage in each such partial quarter-quarter section, lot, or partial lot.*
5. The survey must identify every point where a proposed right-of-way enters or leaves state trust land.
6. Survey plats must be stamped and certified by a surveyor licensed in the State of New Mexico.
7. All plats are to be drawn in the appropriate zone of the *New Mexico State Plane Coordinate System, North American Datum 1983.*

### **Surveys that do not comply with these requirements will be rejected.**

In addition to a survey, the Commissioner of Public Lands may require an Improvement Location Report to be prepared in accordance with NMAC Section 12.8.2.10. If a parcel to be surveyed lies in an area not covered by the Public Land Survey System (PLSS) (e.g., land grants), then a PLSS framework must be projected onto the lands in question. The results of all surveys must be reported within the framework of the PLSS to the second division (see items 1 through 4 listed above).

### Electronic Format.

In addition to a physical plat, a digital file containing centerlines for Rights-Of-Ways and/or boundary lines for parcels or leased areas (including ROWs) must be included. The digital file shall contain all of the requirements in 19.2.10.12A NMAC. *The data must be drawn to scale and projected in the appropriate zone for the New Mexico State Plane Coordinate System, NAD83.* **The plat will not be approved until the spatial data has been submitted by the surveyor and is georeferenced correctly.**

Acceptable GIS formats: shapefiles or personal/file geodatabases (ESRI) containing a line feature class for centerlines and/or boundary area outlines. ESRI COGO traverse files are also acceptable. Projection information must be included (e.g., .prj file).



For further information, please contact:

**Land Office Geographic Information Center**

New Mexico State Land Office

LOGIC@nmslo.gov



**Stephanie Garcia Richard**  
**Commissioner of Public Lands**  
**State of New Mexico**

## **CONSENT FORM**

### **APPLICANT'S STATEMENT:**

\_\_\_\_\_ ("BL Applicant") is an applicant for a State Land Office Business Lease ("Proposed Lease") for the following described state trust lands:

<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>SUBDIVISION</u>	<u>ACRES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

with the following proposed use: \_\_\_\_\_

for a proposed term of: \_\_\_\_\_

Applicant states that: (a) Applicant is aware that all or some of the trust land to be covered by the Proposed Lease is currently leased under State Land Office lease number \_\_\_\_\_ ("Existing Lease"); (b) Applicant's rights and privileges under the Proposed Lease will be subject to rights and privileges of the lessee under the Existing Lease; and (c) the Proposed Lease will not unreasonably interfere with the uses permitted under the Existing Lease. Applicant requests that the lessee under the Existing Lease consent to the Proposed Lease and the Commissioner allow the Proposed Lease.

### **BL APPLICANT SIGNATURE:**

FOR NMSLO USE ONLY - Applicant Lease Number: \_\_\_\_\_

\_\_\_\_\_ Dated: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(print name)

### **CONSENT OF EXISTING LESSEE:**

\_\_\_\_\_, lessee under State Land Office lease number \_\_\_\_\_, having read the Applicant's Statement above, does hereby consent to the Proposed Lease. This consent shall be valid for so long as the use described above and the applicant remain unchanged.

### **EXISTING LESSEE SIGNATURE:**

\_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
(print name) (print name)

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_



**Stephanie Garcia Richard  
Commissioner of Public Lands  
State of New Mexico**

**PARTIAL RELINQUISHMENT, RELEASE, AND QUITCLAIM DEED**

I/We, \_\_\_\_\_  
(Name of individual, or corporation)

and \_\_\_\_\_  
(Name of spouse or additional party(s), if applicable)

whose address is: \_\_\_\_\_

for consideration paid do (does) hereby relinquish, release, and quitclaim unto the State of New Mexico all their/its right, title, and interest in and to that certain (lease type) \_\_\_\_\_ Lease No.

\_\_\_\_\_, issued by the State of New Mexico, and now held under assignment No. \_\_\_\_\_

insofar as the same affects the following described lands:

SECTION	TOWNSHIP	RANGE	SUBDIVISION	ACRES
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**WITNESS** my/our hand(s) and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATTEST:** \_\_\_\_\_

(For use by corporation)

**LESSEE SIGNATURE**

\_\_\_\_\_  
**ADDITIONAL LESSEE SIGNATURE** (if applicable)

**(PERSONAL ACKNOWLEDGMENT)**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires: \_\_\_\_\_

(ACKNOWLEDGMENT BY ATTORNEY-IN-FACT)

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_ attorney-in-fact in behalf of

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_  
(Name) (Title) (Corporation)

a \_\_\_\_\_ corporation, on behalf of said corporation.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Approved in favor of the above named Lessee this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
COMMISSIONER OF PUBLIC LANDS

**\$50.00 NON-REFUNDABLE APPLICATION FEE\***

\* Relinquishments received without payment will be processed. Please make checks payable to “*Commissioner of Public Lands*”. When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

## **NMSLO RULE 9 – 19.2.9 NMAC**

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 2    STATE TRUST LANDS**  
**PART 9        BUSINESS LEASING**

**19.2.9.1        ISSUING AGENCY:** Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.  
[19.2.9.1 NMAC - N, 05/15/2001]

**19.2.9.2        SCOPE:** Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.9 NMAC, governs the granting of business leases for commercial and business leasehold uses, as well as surface uses that are not otherwise provided for under other state land office rules, on those lands within the commissioner's constitutional jurisdiction.  
[19.2.9.2 NMAC - N, 05/15/2001]

**19.2.9.3        STATUTORY AUTHORITY:** N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978.  
[19.2.9.3 NMAC - N, 05/15/2001]

**19.2.9.4 DURATION:** Permanent.  
[19.2.9.4 NMAC - N, 05/15/2001]

**19.2.9.5        EFFECTIVE DATE:** May 15, 2001.  
[19.2.9.5 NMAC - N, 05/15/2001]

**19.2.9.6        OBJECTIVE:** The objectives of 19.2.9 NMAC are to obtain revenues from business leasing; to assure protection and maintenance of trust lands; to provide standard lease terms and conditions; and to provide an efficient process for business leasing.  
[19.2.9.6 NMAC - N, 05/15/2001]

**19.2.9.7        DEFINITIONS:** As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

- A.        "approval"** means written approval and includes only that which has been expressly approved and nothing further which might be implied;
- B.        "assignment"** means any direct or indirect transfer of a lessee's interest in a business lease or improvements, including, but not limited to, any conditional transfer or transfer by operation of law;
- C.        "authorized improvements"** means improvements which have the approval of the commissioner prior to being placed, developed, created, or constructed on, or obtained or developed for the benefit of, or made appurtenant to trust lands, or which have subsequently received that approval;
- D.        "bid lease"** means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act;
- E.        "business lease"** means a written lease of trust lands issued under this rule, 19.2.9 NMAC, for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules. The commissioner, in his discretion, shall resolve any uncertainty about whether a lease is a business lease;
- F.        "collateral assignment"** means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements;
- G.        "commissioner"** means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule;
- H.        "improvements"** means any of the following:



- (1) any item of tangible property developed, placed, created or constructed on trust lands including, but not limited to, buildings, roadways, equipment and fixtures;
- (2) water rights appurtenant to trust lands, including without limitation any water rights developed or used on trust land for the benefit of the trust land; and,
- (3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, trust lands that are designated as improvements in a business lease;

**I. “improvement value credit”** means a credit granted by the commissioner for permanent improvements which entitles the holder of the credit to certain rights upon the subsequent lease or sale of trust lands as provided in this rule and in a business lease;

**J. “lessee”** means the party of record at the state land office, who leases trust land from the commissioner under a business lease;

**K. “mortgage”** means the mortgage to a creditor as security for a debt of a lessee’s personal property interest in a business lease or improvements;

**L. “non-bid lease”** means a business lease entered into by the commissioner without public advertisement and public auction for a term not to exceed five years, or for a term not to exceed twenty-five years pursuant to Section 19-7-54 or 19-7-55 NMSA 1978;

**M. “permanent improvements”** means those authorized improvements that a business lease specifies shall not be removed upon the termination of the lease. “Permanent improvements” shall include water rights appurtenant to trust land and equipment and fixtures necessary for the development of the water;

**N. “removable improvements”** means authorized improvements that are not permanent improvements; **O.**

**“rent”** means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a business lease;

**P. “rent adjustment”** means a periodic increase of any rent amount;

**Q. “schedule of fees”** means a list of administrative fees which is issued and revised by the commissioner from time to time;

**R. “state land office”** means the New Mexico state land office;

**S. “sublease”** means a transaction or arrangement whereby a business lessee transfers to another either the use or possession of all or part of leased trust land, or the management and control of all or part of the improvements located on leased trust land;

**T. “termination”** means the end of a business lease whether by cancellation, relinquishment or the expiration of the lease term;

**U. “trust”** means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust’s assets, which are administered through the state land office by the commissioner;

**V. “trust land”** means all land owned by the trust; and

**W. “unauthorized improvements”** means improvements that have not received the commissioner’s approval. [19.2.9.7 NMAC - N, 05/15/2001]

#### **19.2.9.8 LEASING STANDARDS:**

**A.** The surface estate of any trust land may be leased under a business lease at the discretion of the commissioner. A business lease may include more than one use, and may encompass more than one parcel of trust land. For lands already under any surface lease, the applicant shall comply with the procedures in 19.2.9.21 NMAC.

**B.** After receipt of an application as provided in 19.2.9.9 NMAC, the commissioner may request additional information from the applicant, as provided in 19.2.9.10 NMAC, and may enter into negotiations for a non-bid lease.

**C.** After receipt of an application as provided in 19.2.9.9 NMAC, or on his own initiative, the commissioner may offer to lease trust land under a bid lease as provided in 19.2.9.11 NMAC.

**D.** Any applicant may withdraw an application for a business lease at any time.

**E.** Notwithstanding any other provision of 19.2.9 NMAC, and at any time before the execution of a business lease, the commissioner may, at the commissioner’s discretion, reject any

application or bid submitted under 19.2.9 NMAC and may withhold from business leasing any trust land subject to the commissioner's jurisdiction.

[19.2.9.8 NMAC - N, 05/15/2001]

**19.2.9.9 APPLICATION TO LEASE:** Any person may propose that the commissioner enter into a business lease by submitting an application on forms prescribed by the commissioner.

**A.** The application shall, at minimum, be made under oath and shall identify the applicant, the trust land proposed for leasing and the proposed uses of the trust land, including any proposed improvements.

**B.** The application shall include a written appraisal of the trust land proposed for lease made under oath by a disinterested and credible person. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisal shall be conclusive upon the commissioner.

**C.** The application shall include a nonrefundable application fee in the amount established in the schedule of fees.

[19.2.9.9 NMAC - N, 05/15/2001]

**19.2.9.10 SUPPLEMENTAL INFORMATION:** After review of an application and before entering into a business lease, the commissioner may require additional information and documentation from an applicant, including, but not limited to, an appraisal of the trust land proposed for lease, a survey of the land, a detailed development plan of the land, environmental analyses of the land, and cultural or biological resource investigations of the land.

[19.2.9.10 NMAC - N, 05/15/2001]

**19.2.9.11 BID LEASE:** The commissioner may, under the following procedures, offer a bid lease to the highest and best bidder at a public auction held at the county seat of the county where the offered trust land, or the major portion of the offered land, is located.

**A. Appraisal.** After a preliminary determination that a bid lease might be advantageous to the trust, the commissioner will cause an appraisal to be made. The appraisal will cover the trust land proposed for lease and any permanent improvements on, appurtenant to, or obtained or developed for the benefit of, the land. Thereafter, if the commissioner determines to offer the land for bid lease, a copy of the appraisal will be furnished to the applicant, if any, and to the holder of the improvement value credit as well as to any other interested parties. Prior to the advertisement of the lease sale, the commissioner shall determine that the terms of the bid lease being offered provide a return to the trust over the duration of the bid lease that is a fair rental value based on the appraisal.

**B. Advertisement.** A notice of the lease sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land.

**C. Notice.** The notice of lease sale shall contain:

- (1) The date, time and place of the auction;
- (2) A description of the trust land offered for lease, and any limitations on the uses of the land including any local land use restrictions, covenants, master plans or any restrictions established by the commissioner;
- (3) A summary of the basic provisions of the bid lease, including the term (and any extension periods), the rent (if fixed and not based on the highest bid) and the allowable uses of the trust land offered for lease;
- (4) Any requirements or qualifications for bidders;
- (5) The amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any improvement value credits;
- (6) A brief description of how the commissioner will determine the highest and best bidder; and
- (7) The name of a person to contact at the state land office for additional information on the auction and the trust land offered for lease.

**D. Deposit.** To qualify as a bidder, the prospective bidder shall deposit with the commissioner before the auction or at such other time provided in the notice of lease sale, the following amounts which shall be listed in the notice:

(1) The costs of the lease sale. The successful bidder shall pay the reasonable costs and expenses related to the lease sale, whether incurred by the state land office or by another entity at the request of the state land office. Such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning and brokerage or other real estate fees;

(2) The first rental payment under the bid lease; and

(3) If the offered trust land includes permanent improvements, either a sum equal to the improvement value credit attributable to the permanent improvements or a bill of sale or a waiver of payment signed by the holder of the improvement value credit or a bond sufficient to cover the value of the improvements if an appeal of the appraised value is to be taken, unless the prospective bidder is the holder of the improvement value credit. The improvement value credit shall be calculated and paid as provided in 19.2.9.18 NMAC. Upon completion of the lease sale, the commissioner shall return any deposits from unsuccessful bidders.

**E. Qualification of bidders.** The commissioner may establish additional qualifications for bidders based on the nature of the bid lease and the proposed uses of the offered trust land.

**F. Due diligence.** All bidders must undertake their own due diligence in preparation for the lease sale, including, but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering on trust land. The notice of lease sale may provide that additional information concerning the offered trust land is available at the state land office for viewing by any interested parties. The additional information may include, without limitation, a draft bid lease or a summary of bid lease provisions.

**G. Auction.** The auction may be conducted by oral auction or by the acceptance of sealed bids or proposals at the time of the auction. If awarded at all, the bid lease shall be awarded to the highest and best bidder.

**H. Highest and best bidder.** In determining the highest and best bidder, the commissioner shall establish criteria that will be described in the notice of lease sale. The criteria shall enable the commissioner to select the bid that is in the best interests of the trust considering the requirements of the bid lease and the proposed uses of the offered trust land. In addition to any offered bonus or rental amounts, the commissioner may, as appropriate, consider the qualifications of the bidders to develop the land or to construct the improvements contemplated by the proposed bid lease, and to provide the trust with sustainable long-term returns. The commissioner may divide the bid process into stages, and review the qualifications of bidders prior to, or in addition to, reviewing any financial proposals.

**I. Execution of bid lease.** The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within thirty days after the auction, enter into the bid lease. The commissioner may extend the period for entering into a bid lease to no greater than one hundred twenty days after the auction. The final bid lease shall not contain any provisions that vary from those described in the notice of lease sale. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the bid lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the highest and best, or terminate the lease sale.

[19.2.9.11 NMAC - N, 05/15/2001]

#### **19.2.9.12 BUSINESS LEASE:**

**A. Prerequisites.** Before taking possession of the leased trust land, the lessee must provide the commissioner with a legal description and a survey plat showing the exact location of the land.

(1) A legal description must be given in aliquot parts of at least forty (40) acres, or in some other form as may be required by the commissioner such as survey metes and bounds. The description shall include a reference to all encumbrances, easements, or other servitudes burdening or benefiting the trust land.

(2) The commissioner may provide specific instructions on the requirements for a survey plat.

**B. Leases.** All business leases shall be in a form and contain such provisions as may be prescribed by the commissioner from time to time, which provisions shall be deemed to include all pertinent statutes and state land office rules in effect at the time of lease issuance.

**C. Conditions.** The commissioner shall establish conditions in a business lease necessary for providing a secure return to the trust, managing the trust land in a commercially reasonable manner and

protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a business lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

**D. Uses.** A business lease shall designate the allowable uses of the leased trust land. A business lease may be issued for any use of the surface estate not otherwise provided for under other state land office rules.

(1) The commissioner may establish restrictions on the uses of the trust land, including restrictions contained in local land use rules, covenants or land use plans.

(2) A business lease may be issued to authorize the planning of trust land or the development of trust land pursuant to an approved plan. The lease may require that the lessee obtain local government approvals of the land use plan prior to development. The lease may provide for development to occur in phases, which phases may require further leases or sales of trust land.

**E. Rent.** Unless otherwise provided in a lease, rent shall be paid in advance in annual installments.

(1) If a business lease has a term of more than five years, the lease shall provide for a rent adjustment of any fixed periodic rent to occur no less often than every five years.

(2) As provided in Section 19-7-34 NMSA 1978, the commissioner shall have a first lien on any improvements on the leased trust land, prior and superior to any other lien or encumbrance, whether created with or without notice of the lien, for rental due or to become due. When any rental is due and unpaid the commissioner may attach all improvements or a portion of the improvements sufficient to pay the unpaid rental together with all costs incurred in the enforcement of the lien.

(3) The commissioner may, upon request and upon provision of adequate security as determined by the commissioner, agree to withhold enforcement of the rental lien. Adequate security may include prepayment of lease rent or some other acceptable form of financial assurance.

**F. Mineral reservation.** Each business lease shall reserve the mineral estate of the trust land to the commissioner and shall reserve the right to lease the mineral estate, or any portion of the mineral estate, for exploration, development, conservation and production of the mineral resources, including oil and natural gas. The reservation shall include all rights of access over, through or across trust lands necessary for a mineral lease. The commissioner may, in a business lease, agree, upon payment of an additional annual rent, not to exercise the right to lease the trust's mineral rights during the term of the lease. The additional rent shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential mineral value associated with the leased trust land.

**G. Easements and right of way.** Each business lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A business lease may provide that any easements or right of way granted across leased trust land shall be located to avoid unreasonable interference with the uses allowed under the lease. A business lease may require that the lessee acquire from the commissioner easements or right of way necessary for the development of the trust lands and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity.

[19.2.9.12 NMAC - N, 05/15/2001]

#### **19.2.9.13 LEASE EXTENSION AND NEW LEASE:**

**A. Bid lease.** The term of a bid lease may not be extended except as provided in the notice of lease sale and the original bid lease.

**B. Non-bid lease.** The term of a non-bid lease may not be extended. If, prior to the expiration of a non-bid lease, the lessee wants a new non-bid lease, for the same trust land and the same use, that will commence at the expiration of the current lease, and if the lessee has complied with all the terms of its lease, the lessee shall submit a sworn application, on such forms as the commissioner may require or provide, for a new lease. The commissioner may establish, in a business lease, additional requirements for applying for a new lease.

**C. Discretion.** Nothing in this rule shall limit the discretion of the commissioner, at the expiration of a business lease, to determine whether it is in the best interests of the trust to reject all applications to lease, or to offer a new non-bid lease on such terms as the commissioner determines or to sell or lease the trust land through a bid process.

[19.2.9.13 NMAC - N, 05/15/2001]

**19.2.9.14 SUBLEASE AND ASSIGNMENT:**

- A.** Any assignment or sublease for use of trust lands is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust. The commissioner may, in a lease, pre-approve certain assignments or subleases that he deems to be in the best interests of the trust.
- (1) No assignment or sublease of trust lands under a business lease shall be approved unless the lessee is in compliance with the terms of the lease.
  - (2) The commissioner's approval of a sublease or assignment shall not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease shall not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.
  - (3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.
- B.** Applications to sublease or assign shall be made by the current lessee under oath, on forms prescribed by the commissioner, and shall be accompanied by the fees shown on the schedule of fees.
- C.** No assignment or sublease shall extend the term of a business lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's business lease.
- D.** The termination of a business lease shall automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner.
- E.** A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.9.14 NMAC - N, 05/15/2001]

**19.2.9.15 COLLATERAL ASSIGNMENTS AND MORTGAGES:**

- A.** Unless otherwise provided in a business lease, and subject to the prior approval of the commissioner, a lessee's interest in a business lease or improvements may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall have a lien on the lessee's interest in the lease, as well as any improvements covered by the collateral assignment or mortgage, but shall not have a lien on the commissioner's interest in the lease and any improvements, or in the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a business lease, or in any improvements, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or improvements.
- (1) A lessee shall apply to the commissioner to collaterally assign or mortgage the lessee's interest in a business lease or any improvements in writing, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment agreement or mortgage and pay any applicable fees set out in the schedule of fees.
  - (2) The commissioner may approve the collateral assignment or mortgage subject to such terms and conditions which he deems to be in the best interests of the trust.
- B.** If the commissioner gives written notice to a business lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the business lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee shall be required.
- C.** An approved collateral assignee or mortgagee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A business lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the business lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment or mortgage of improvements does not change the status of any improvements as authorized, unauthorized, removable or permanent improvements.
- D.** A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or mortgagee upon making a collateral assignment or mortgage.
- (1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to

enforce or foreclose the collateral assignment or mortgage.

(2) Any successor in interest to a lessee's interest in a business lease, or in any improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under section 19.2.9.14 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.9.15 NMAC - N, 05/15/2001]

**19.2.9.16 APPROVAL OF IMPROVEMENTS:** No improvements shall be placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without the prior approval of the commissioner. Such approval may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, the provision of a bond or other adequate security to assure proper removal of improvements from trust land and the restoration of trust land.

**A.** A request for the commissioner's approval shall be made in writing on such forms and in such manner as may be required by the commissioner, and shall be accompanied by the fee set forth in the schedule of fees. The commissioner shall not be obligated to approve any improvements.

**B.** A business lease may identify existing and proposed improvements that are approved by the commissioner when he determines it is in the best interests of the trust.

**C.** If the commissioner does not grant prior approval for improvements, the commissioner may, in the best interests of the trust, approve improvements after the improvements have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.9.16 NMAC - N, 05/15/2001]

**19.2.9.17 REMOVAL OF IMPROVEMENTS:**

**A.** Upon the termination of a business lease, all removable or unauthorized improvements shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No improvement may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unauthorized improvements be left in place. Such improvements shall become the property of the commissioner and no person shall be entitled to any improvement value credit for such improvements.

(3) Any improvements left on trust lands without the commissioner's approval shall remain the property and liability of the lessee and shall constitute a nuisance until removed or abandoned. The commissioner may elect to either take any necessary action to abate such nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the lease, or to declare that the improvements are abandoned and have become the property of the commissioner.

**B.** In all cases where improvements are removed from trust land, the lessee shall be solely liable for the restoration of the trust land to its condition prior to the placement of such improvements. The lessee's obligation to remove improvements and to restore the trust land shall survive the termination of the lease.

**C.** All costs, fines and fees incurred by the commissioner as a result of improvements left on trust lands without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust lands and their improvements during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust lands, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.9.17 NMAC - N, 05/15/2001]

**19.2.9.18 IMPROVEMENT VALUE CREDIT:**

**A. Personal property.** Unless otherwise provided in a business lease or in this rule, improvements shall be the property of the lessee. The interest of a lessee in a business lease and in the improvements is a personal property interest. Unless otherwise provided in a business lease, improvement value credit is only granted for permanent improvements and is not granted for removable or unauthorized improvements. Water rights that are appurtenant to trust land shall be developed and held in the name of the commissioner.

**B. When payable.** When trust lands are sold or leased to a person other than the holder of any improvement value credit, the successor in interest shall pay to the commissioner the amount of the improvement value credit, if any. The commissioner shall pay to the holder of the improvement value credit the amount paid by the successor in interest, less any rent, costs or damages owed to the commissioner.

(1) In lieu of such payment, a successor in interest may file with the commissioner a bill of sale or waiver of payment signed by the holder of the improvement value credit or, if an appeal of the appraised value is taken, a bond sufficient to cover the value of the improvements as determined by the commissioner.

(2) Except for the transfer of funds for improvement value credit paid by a successor in interest as provided in this subsection, the commissioner shall not be liable for the payment of any improvement value credits. The commissioner may require a release or indemnity from the party receiving payment of the improvement value credit.

(3) The holder of the improvement value credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, collateral assignment or mortgage of improvements approved by the commissioner and filed with the state land office, the commissioner shall treat the former lessee as the holder of the improvement value credit and the party entitled to payment of any improvement value credit.

**C. Calculation of improvement value credit.** Unless otherwise provided in a lease, the holder of the credit is entitled to all of the improvement value credit attributable to the permanent improvement.

(1) A business lease may provide that the commissioner shall receive a specified portion of the improvement value credit attributable to a permanent improvement.

(2) Unless otherwise provided in a lease or in a statute, the improvement value credit will be the amount, if any, which the permanent improvement adds to the value of the trust land. The added value shall be determined, at the expense of the lessee or the holder of the credit, by an appraisal conducted by a certified real estate appraiser. The appraisal shall be submitted to the commissioner for review and approval. The commissioner may obtain further appraisals to ascertain the improvement value. The commissioner may require a successor in interest to reimburse the costs of appraising the improvements.

(3) The commissioner shall determine the value of the improvements and his determination shall be final unless the holder of the improvement value credit initiates a contest as provided under Section 19-7-64 NMSA 1978.

(4) A business lease may provide that an improvement value credit may be lost or depreciated if, after termination of the business lease, there is no successor in interest other than the commissioner.

[19.2.9.18 NMAC - N, 05/15/2001]

#### **19.2.9.19 RELINQUISHMENT:**

**A.** A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a business lease. The commissioner may, in a business lease, establish conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

**B.** A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and,

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

**C.** A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

**D.** A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

**E.** Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.9.19 NMAC - N, 05/15/2001]

**19.2.9.20 DEFAULT; REMEDIES:** Unless otherwise provided in a business lease, a lessee shall be in default under a business lease if a breach of the lease is not cured within thirty days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

**A. Notice.** Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

**B. Remedies.** On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the business lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.9.20 NMAC - N, 05/15/2001]

**19.2.9.21 EXISTING LEASES:** Except as provided in this section, the commissioner may not lease under a business lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes his interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed business lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new business lease in compliance with the following requirements.

**A.** The new business lease shall identify the existing lease, shall state that the new business lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new business lessee will not interfere with the uses permitted under the existing lease.

**B.** The existing lessee must consent in writing to the new business lease.

[19.2.9.21 NMAC - N, 05/15/2001]

#### **HISTORY of 19.2.9 NMAC:**

**Pre-NMAC History:** Material in this part was derived from that previously filed with the State Records Center and Archives:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 09-02-69.

CPL 71-2, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 12/16/71.

CPL 77-1, Rules and Regulations Concerning the Sale, Lease and other Disposition of NM Trust Lands, 01/07/77.

Rule 9, Relating To Business Leases On State Lands, 03/11/81

SLO Rule 9, Relating To Business Leases On State Lands, 01/20/84

SLO Rule 9, Relating To Business Leases On State Lands, 06/24/85.

#### **History of Repealed Material:**

SLO Rule 9, Relating To Business Leases On State Lands - Repealed, 05/15/2001.