



# CALIFORNIA INDIAN LEGAL SERVICES

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## TRIBAL ALERT

January 2, 2013

### **NEW LEASING REGULATIONS FROM THE BUREAU OF INDIAN AFFAIRS**

**Please post and distribute**

The Bureau of Indian Affairs (BIA) published new regulations clarifying the BIA's role in certain leases on Indian trust land, effective January 4, 2013. This will affect all Indian trust land, both tribal and individually held lands. The new regulations apply to all current and pending residential, business, and Wind and Solar Resource leases.

The new rules help clarify the role of BIA in the leasing process. The regulations significantly limit the role of the BIA in the leasing of Indian trust land, requiring deference to tribes in many situations. Among other aspects, the BIA will defer to the tribally negotiated lease value, defer to tribal determination allowing non-monetary compensation for leases, and defer to the tribe's determination that rental reviews and adjustments are not necessary.

BIA approval will not be required for permits, and only in certain circumstance for subleases and assignments. The documents required for each type of lease application are specified in the regulations. Timelines are implemented requiring BIA decision on leases, with an appeal process for inaction.

The burden of collecting the required documentation for a lease application is now shifted to the lease applicant. This may affect individual interest holders applying for homesite and other leases. The current practice places some of the required steps on the BIA, like the collection of consent of the co-interest holders. The new regulations clarify that while the BIA may assist, the applicant is responsible for submitting the completed application, including the consent of co-interest holders, thus removing the BIA's responsibility to assist. The regulations provide for the BIA to disclose contact information for individual co-owners of Indian trust lands.



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The new regulations are available on the BIA's website:

<http://www.bia.gov/cs/groups/mywcsp/documents/text/idc-037326.pdf>

Or in the Federal Register:

<http://www.gpo.gov/fdsys/pkg/FR-2012-12-05/pdf/2012-28926.pdf>

Suggested action for those with current and pending leases:

Review your current and pending leases for residential, business, and wind and solar resources. Speak with an attorney regarding the potential conflict between the leases and the new regulations.

For more information and assistance please contact your local CILS office.