

****REQUEST FOR PUBLIC COMMENTS****

To: Bois Forte Band Members
Bois Forte Tribal Government Departments

From: Bois Forte Reservation Tribal Council

Re: Seeking Comments on Draft Bois Forte Leasing Policy

Date: January 17, 2023



The RTC is currently seeking comments from Bois Forte members and Bois Forte Tribal Government Departments and employees on the attached draft Bois Forte Leasing Policy. **Please review the draft Policy and submit any comments to Executive Assistant, Bois Forte Tribal Government, via email at executiveassistant@boisforte-nsn.gov or mail at 5344 Lakeshore Drive, Nett Lake, MN 55772, or SCAN QR CODE ABOVE to submit electronically, no later than April 17, 2023.**

The RTC will also hold a community meeting during the comment period to discuss the draft Leasing Policy and allow Band members to pose questions and offer feedback on the Policy. More details on the community meeting will be released soon.

Summary of Draft Leasing Policy

The Leasing Policy outlines the Band's policies related to leasing of trust lands. The Policy was developed to:

1. Provide clarity as to what the leasing policies are;
2. Provide transparency so that leasing policies are applied and enforced consistently;
3. Provide structure to leasing processes for the benefit of the Band's Realty Office; and
4. Ensure that the Band's leasing process complies with applicable laws.

The Policy addresses a variety of leasing-related processes, including the lease application process and management of waiting lists, key terms and requirements for residential and recreational leases, processes for obtaining business and agricultural leases and how those leases are defined, obtaining loans for purchase or construction of homes on leased lands, transferring or selling homes on leased lands, enforcement processes in the event of non-compliance with lease terms, and Zoning Ordinance and land use requirements. Addendums A and B also outline terms that are required for leases under federal regulations.

A clear, fair, and comprehensive Leasing Policy will greatly benefit the Band and its members. The RTC welcomes and appreciates your comments and feedback as it finalizes this important document.



BOIS FORTE LAND LEASING POLICY 2023 - DRAFT



BOIS FORTE RESERVATION

TRIBAL HEADQUARTERS 5344 Lakeshore Drive, Nett Lake, MN 55772

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I. INTRODUCTION AND SCOPE

This Land Leasing Policy (“Policy”) outlines the policies of the Bois Forte Band of Chippewa for leasing of Tribal Land. This includes policies that govern applying for, modifying, and transferring residential, recreational, and other types of leases of Tribal Land within the territorial jurisdiction of the Band. It also describes required terms for particular leases and the Band’s process for lease enforcement.

The Bois Forte Realty Office (“Realty Office”) is responsible for administering the terms of this policy in coordination with other officials and the Bois Forte Reservation Tribal Council (“RTC”). The Realty Office and all Lessees must comply with applicable federal statutes and regulations governing leases of Tribal Lands. If the provisions of this Policy conflict with any applicable federal or Tribal statutes or regulations, those statutes or regulations will govern.

II. BOIS FORTE RESERVATION LAND USE DISTRICTS

The Bois Forte Zoning Ordinance (“Zoning Ordinance”) establishes three primary land planning areas over which the Band has jurisdiction: Nett Lake, Vermilion, and Indian Point. Leasing of Tribal Lands must comply in all respects with applicable land use requirements within the Zoning Ordinance. Current or prospective Lessees should review the Zoning Ordinance and the most recently updated Bois Forte Comprehensive Plan to assess specific environmental, cultural, or land use classifications for a particular parcel, and the land use requirements that accompany those classifications, as those requirements may affect how or whether an individual may construct permanent improvements, engage in particular uses, or take certain actions on a parcel.

III. DEFINITIONS

- a. “Agricultural land” means land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.
- b. “Agricultural lease” means a lease of agricultural land for farming and/or grazing purposes.
- c. “Assignment” means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a lease.
- d. “Bois Forte” or “Band” means the Bois Forte Band of Chippewa, a federally recognized Indian tribe.

- e. “Consent” means written authorization of a specified action.
- f. “Housing for public purposes” means multi-family developments, single-family residential developments, and single-family residences:
 - 1. Administered by the Band or Band-designated housing entity (TDHE); or
 - 2. Substantially financed using a tribal, federal, or state housing assistance program or TDHE.
- g. “Lease” means a written contract between the Band and a Lessee, whereby the Lessee is granted a right to possess Tribal Land, for a specified purpose and duration. The Lessee’s right to possess will limit the Band’s right to possess the lease.
- h. “Lease document” means a lease, amendment, assignment, sublease, or leasehold mortgage.
- i. “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a Lessee’s leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- j. “Lessee” means a person or entity who has acquired a legal right to possess Indian land by a lease under this Policy and 25 C.F.R. Part 162.
- k. “Permanent improvements” means buildings, other structures, and associated infrastructure attached to the leased premises.
- l. “Residential lease” means a lease of Tribal Land for housing purposes. A residential lease can authorize the construction or use of (1) a single-family residence or (2) housing for public purposes, which may include office space necessary to administer programs for housing for public purposes.
- m. “Single-family residence” means a building with one to four dwelling units on a tract of land under a single residential lease.
- n. “Single-family residential development” means two or more single-family residences owned, managed, or developed by a single entity.
- o. “Sublease” means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the lease.
- p. “TDHE” means a tribally-designated housing entity under 25 U.S.C. 4103(22), a tribally-sponsored or tribally sanctioned not-for-profit entity, or any limited

partnership or other entity organized for the purpose of developing or improving low-income housing utilizing tax credits.

- q. “Termination” or “terminate” means action by the Band to end a lease.
- r. “Trespass” means any unauthorized occupancy, use of, or action on any Tribal Land.
- s. “Tribal Land” means any tract in which the surface estate is owned by the Band in trust or restricted status, and includes such lands reserved for BIA administrative purposes, as well as any tract within the Bois Forte Reservation in which the surface estate is owned by the Minnesota Chippewa Tribe in trust status. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 2934 (48 Stat. 988; 25 U.S.C. § 5124).
- t. “Trust or Restricted Land” means any tract held in trust or restricted status.
- u. “Trust or Restricted Status” means (1) that the United States holds title to the tract in trust for the benefit of the Band, or (2) that the Band holds title to the tract but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.
- v. “Violation” means a failure to take action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease.

IV. LEASE APPLICATION PROCESS FOR RESIDENTIAL AND RECREATIONAL LEASES

- a. **Scope.** This section outlines the general process individuals must follow when applying for a residential or recreational lease, including requirements of prospective Lessees, the step-by-step application process, how priority lists are developed and maintained, and how the Realty Office manages applicant records and timelines.
- b. **Lease application process.**
 - 1. Individuals seeking to enter into a residential or recreational lease must complete and submit a “Land Lease Application” and pay the required application fee. The Application is available in the Realty Office and can be found online at: https://boisforte.com/wp-content/uploads/2020/09/BF_LAND_LEASE_APP-2018.pdf. The Application can be submitted via U.S. mail or in-person delivery to [address].

2. Once a completed Application and fee are properly submitted and received by the Realty Office, the Office will take two actions:
 - a. The Realty Office will record the Application in a log along with the date of submission. The Application will be active and on file for up to two years from the date of submission.
 - b. The Realty Office will send an email or letter to the applicant confirming receipt of a completed application. At that time, the applicant's name will be placed on the *Order of Application Date* list for the sector where the lease is sought. The Office will maintain an *Order of Application Date* list for each sector (Vermilion, Nett Lake/Palmquist, and Indian Point) in the order of the date the applicant submitted the Application.
3. If an Application is submitted that is incomplete, the Realty Office will, if feasible, contact the applicant and explain why the Application is incomplete. Incomplete Applications will not be placed on the *Order of Application Date* list until they are submitted in complete form.
4. If a lot becomes available in a particular sector, the first person on the *Order of Application Date* list for that sector will be offered the available lot, provided that the applicant's intended land use is consistent with the available lot. The Realty Manager will notify the person of the lot availability and offer along with instructions for how to accept or decline the offer.
 - a. If the property being offered is subject to an existing lease, the Realty Manager will coordinate with the current tenant and the prospective Lessee to schedule a showing of the property if requested.
 - b. If a property is not subject to an existing lease, the Realty Manager will schedule a time to show the property to the prospective Lessee if requested.
5. Unless stated otherwise in the notice, applicants have 30 days from the date of notice to accept or decline a lease offer, which must be done in writing and directed to the Realty Manager. An acceptance or declination must be submitted in person, via mail, or via email. In the event that acceptance or declination is mailed, it shall be effective when received by the Realty Office or, if mailed via U.S. Mail, on the date of mailing, as evidenced by the postmark date on the envelope.
6. If an applicant declines a lease offer, the Realty Manager will notify the next qualified person on the *Order of Application Date* list of the available lot.

7. The Realty Office will make lease offers based on availability of lots and makes no guarantee that applicants will receive an offer within a particular period of time after an application is submitted.
 - a. If an applicant receives and declines two lease offers within the two-year period after submitting an application, the applicant will be moved to the bottom of the *Order of Application Date* list but will remain active on the list for the remainder of the two-year period.
 - b. If an applicant has not been offered a lease within the two-year period after submitting an application, or has been offered one lease but has declined it, the applicant must renew his/her application in order to maintain current placement on the *Order of Application Date* list. In order to renew, the applicant must submit an intent to renew in writing prior to the two-year period ending. **Applicants are responsible for tracking the two-year period themselves.** The Realty Office will not issue reminders to applicants of when their two-year period is ending.
8. When a lease offer is accepted, the Realty Manager will develop draft lease documents, coordinate with the applicant to answer any questions about lease terms, and will follow the applicable Lease Execution & Approval steps outlined below in this Policy.
9. New leases will be processed during the first week of every month and will be presented to the RTC for approval at the next scheduled meeting. Under exigent circumstances, the Realty Office may expedite processing of leases.

V. RESIDENTIAL LEASES

- a. **Scope.** This section outlines the process for drafting, executing, and approving residential lease documents. It also outlines considerations and requirements for obtaining financing to purchase or construct improvements on Tribal Land over which an individual holds a residential lease.

Residential leases are granted for both undeveloped land on which a Lessee will build a home or developed land that already includes improvements. A home can be a single-family residence or housing for public purposes that may include office space necessary to administer programs. A lease for the purpose of a residential housing development that is not for public purposes is not a residential lease.

- b. **Lease execution & approval.**

1. Once a prospective Lessee has accepted a residential lease offer, the Realty Office will draft the required lease documents. If the prospective Lessee is

seeking financing, he or she shall coordinate with the Realty Manager to ensure that the lease documents properly authorize financing.

2. When the lease documents are finalized, the prospective Lessee must sign the lease documents in the presence of a notary. The Lessee must read the lease carefully before signing it, as the lease includes important legal terms and obligations, including compliance with various tribal laws and federal statutes and regulations.
 3. Once the Lessee has signed the lease documents and they have been notarized, the Lessee must return the original lease documents to the Realty Manager. The Realty Manager will place the lease documents on the RTC Agenda for RTC approval and execution.
 4. The original document containing notarized signatures by both parties (Lessee and Lessor) will be mailed to the Land Realty Specialist of the Bureau of Indian Affairs (BIA), Minnesota Agency located in Bemidji, Minnesota for approval and recording. The Realty Manager will coordinate with the BIA to obtain confirmation that the lease has been approved. The Realty Office will also send a copy of the fully executed lease to the Lessee for his or her records.
 5. The lease is effective at the time it is approved by the BIA.
- c. **Required lease terms.** All residential leases must include certain terms required by federal law. Those terms are outlined in Appendix A to this Policy. In addition to the federally mandated terms, residential leases shall also include the following terms:
1. Rent and Duration of Lease. As per Resolution No. 153-2006, the applicable rent and duration of residential leases are as follows:
 - a. Rent waived for Bois Forte Band members with a maximum term not to exceed 50 years, consisting of an initial term not to exceed 25 years and one renewal not to exceed 25 years;
 - b. 2% of fair market value (FMV), as determined either by appraisal or by other means in accordance with Title 25 of the Code of Federal Regulations, for Minnesota Chippewa Tribe enrollees who are not members of the Bois Forte Band for a term of 25 years;
 - c. 7% of fair market value (FMV), as determined either by appraisal or by other means in accordance with Title 25 of the Code of Federal Regulations, for non-members of the Minnesota Chippewa Tribe for a term of 10 years.

2. Mandatory build requirements. The lease shall include a term providing that the Lessee has two years from the date of the executed residential lease to establish a residence on the premises through improvements and permanently reside on the premises.
 3. Termination. The lease shall include a provision authorizing the Band to terminate the lease in the event that the Lessee fails to comply with a lease requirement.
 4. Abandonment. The lease shall include a provision indicating that the Band is authorized to terminate the lease in the event that the Lessee(s) abandons the residence on the property. The residence shall be deemed abandoned if the Lessee(s) fails to occupy it for 180 or more consecutive days.
- d. **One lease limitation.** No one individual can be listed as a Lessee on more than one residential lease.

VI. RECREATIONAL LEASES

- a. **Scope.** This section outlines the process for drafting, executing, and approving recreational lease documents. Recreational leases are leases issued for seasonal lots that are not intended to serve as the Lessee's primary residence. A recreational lease is a type of business lease under the federal leasing regulations found at 25 C.F.R. Part 162.
- b. **Lease execution & approval.** The requirements for lease execution and approval for recreational leases shall be the same as those outlined in Section V(b) above.
- c. **Required lease terms.** All recreational leases must include certain terms required by federal law. Those terms are outlined in Appendix A to this Policy. In addition to the federally mandated terms, recreational leases shall also include the following terms:
 1. Rent and Duration of Lease. As per Resolution No. 153-2006, the applicable rent and duration of recreational leases is as follows:
 - a. Rent waived for Bois Forte Band members with a maximum term not to exceed 50 years, consisting of an initial term not to exceed 25 years and one renewal not to exceed 25 years;
 - b. 7% of fair market value (FMV), as determined either by appraisal or by other means in accordance with Title 25 of the Code of Federal Regulations, for Minnesota Chippewa Tribe enrollees who are not members of the Bois Forte Band for a term of 10 years;

- c. 7% of fair market value (FMV), as determined either by appraisal or by other means in accordance with Title 25 of the Code of Federal Regulations, for non-members of the Minnesota Chippewa Tribe for a term of 10 years.
2. Mandatory maintenance and improvement requirement. The lease shall include a term providing that the Lessee has must maintain the premises and utilize it for recreational purposes, but the lease shall not require the lessee(s) to build permanent improvements.
3. Termination. The lease shall include a provision authorizing the Band to terminate the lease in the event that the Lessee fails to comply with a lease requirement.

VII. BUSINESS LEASES

- a. **Scope.** This section outlines the process for drafting, executing, and approving business lease documents. For purposes of this section, business leases are leases as defined in 25 C.F.R. § 162.401 with the exception of recreational leases covered by Part IV above. Business leases include, but are not limited to, leases for business purposes other than for wind or solar; leases for religious, educational, cultural or other public purposes; and commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.
- b. **Lease execution & approval.**
 1. An applicant seeking to enter into a business lease with the Band must complete a “Land Lease Application” and submit it to the Realty Office.
 2. Upon receipt of a completed application, the Realty Office will identify possible parcels, if any, on which the proposed activity could occur, taking into account applicable land use requirements.
 3. The Realty Office will forward the “Land Lease Application” along with the results of the parcel search to the RTC for review. In order for the application to proceed, the RTC must preliminarily approve the “Land Lease Application” and preliminarily designate Tribal Land on which the proposed business activity can occur.
 4. If an applicant obtains preliminary RTC approval and wants to proceed, the Realty Office will further coordinate with the Land Use Permit team, the Tribal Historic Preservation Officer (THPO), and other necessary officials to ensure that the proposed business activity will be consistent with Band laws and policies. If no concerns are identified regarding the business activity on the proposed parcel, the applicant will further coordinate with the Realty

Manager and the RTC to satisfy the federal leasing requirements pertaining to business leases, and ultimately enter into a lease, if negotiated, and obtain BIA approval.

- c. **Required lease terms.** All business leases must include certain terms required by federal law. Those terms are outlined in Appendix A to this Policy.

VIII. AGRICULTURAL LEASES

- a. **Scope.** This section outlines the process for drafting, executing, and approving agricultural lease documents. An agricultural lease is one issued for farming or grazing.
- b. **Lease execution & approval.**
 1. An applicant seeking to enter into an agricultural lease with the Band must complete a “Land Lease Application” and submit it to the Realty Office.
 2. Upon receipt of a completed application, the Realty Office will identify possible parcels, if any, on which the proposed agricultural activity could occur taking into account applicable land use requirements.
 3. The Realty Office will forward the “Land Lease Application” along with the results of the parcel search to the RTC for review. In order for the application to proceed, the RTC must preliminarily approve the “Land Lease Application” and preliminarily designate Tribal Land on which the proposed agricultural activity can occur.
 4. If an applicant obtains preliminary RTC approval and wants to proceed, the Realty Office will further coordinate with the Land Use Permit team, the Tribal Historic Preservation Officer (THPO), and other necessary officials to ensure that the proposed agricultural activity will be consistent with Band laws and policies. If no concerns are identified regarding the agricultural activity on the proposed parcel, the applicant will further coordinate with the Realty Manager and the RTC to satisfy the federal leasing requirements pertaining to agricultural leases, and ultimately enter into a lease, if negotiated, and obtain BIA approval.
- c. **Required lease terms.** All agricultural leases must include certain terms required by federal law. Those terms are outlined in Appendix B to this Policy.

IX. FINANCING PURCHASE OR CONSTRUCTION

- a. **Scope.** This section outlines the process for Lessees to finance the purchase or construction of permanent improvements on a leased premises by securing a leasehold mortgage.

- b. **Process.** Lessees who wish to obtain financing for the purchase or construction of improvements on the leased premises should follow the steps below.
1. The Lessee should contact a lender to become pre-qualified. Lenders that will provide mortgages for leased land include:
 - a. The Minnesota Chippewa Tribe (MCT) Finance Corporation, which finances tribal members to purchase, construct, and rehabilitate homes. For financing through the MCT Finance Corporation, Lessees can contact Nancy Gullickson at (218) 335-8582 or ngullickson@mnchippewatribe.org.
 - b. Woodlands National Bank, which provides financing under the U.S. Housing and Urban Development (HUD) Section 184 Home Loan Guarantee Program. For more information, Lessees can visit <https://www.woodlandsnationalbank.com/home-mortgages> or apply directly at <https://secure.approvedfast.com/woodlands/application/index>.
 - c. United States Department of Agriculture (USDA), which provides home loans under its Single Family Housing Direct Home Loan Program. For more information, please visit: <https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-direct-home-loans/mn>.
 2. Once the Lessee is pre-qualified for a loan, the lender will typically provide the Lessee with a list of financial documents to gather. The lender will likely require a copy of the unsigned new lease for their underwriting file. The Realty Office will prepare the unsigned lease paperwork and coordinate with the lender as needed to compile necessary lease documents.
 3. Once the lease has been approved by the RTC and properly executed by all parties, the Lessee should send a copy of the executed lease to the lender so that it can continue processing the loan.
 4. The lender will also order a Certified Title Status Report from the BIA to complete their underwriting process.
 5. Once the lender has completed its underwriting process, it will schedule a closing. This process can take 45 days or longer.
 6. For construction loans, the Lessee must also obtain a Land Use Permit as required by the Bois Forte Zoning Ordinance. The Lessee must prioritize obtaining a Land Use Permit as early as possible to ensure that there are not any land use obstacles to planned construction activities.

X. LEASE COMPLIANCE & ENFORCEMENT

- a. **Scope.** This section outlines the Band’s process for monitoring compliance with lease terms and enforcing those terms.
- b. **General enforcement authority & lease compliance monitoring**
 1. The Band shall have all powers necessary to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with this Policy. This includes the power to enter the leased premises at a reasonable time after providing reasonable notice.
 2. The Realty Office is responsible for monitoring lease compliance and for recommending lease enforcement actions consistent with this Policy.
 3. Nothing in this section precludes the Band, a Lessee, or a sublessee from terminating a lease without regard to any default if the terms of the lease so provide.
- c. **Lease cancellation – “10 Day Show Cause” procedure.** Unless a lease provides for negotiated remedies that are not consistent with the procedure below, the Band will adhere to the following procedure for enforcing lease violations:
 1. If the Realty Office has cause to believe that a Lessee is in default of the lease terms, the Realty Manager may provide the Lessee with a “10-Day Show Cause Notice” that states within 10 business days of the receipt of the notice the Lessee must do one of the following:
 - a. Correct the violation and notify the Realty Office of the correction in writing;
 - b. Dispute the determination that a violation has occurred and/or explain in writing why the lease should not be cancelled; or
 - c. Request additional time to respond to the lease violation in writing to the Realty Manager along with an explanation for why additional time is needed.
 2. If the Lessee corrects the violation within the required time and timely notifies the Realty Office of the correction, the Realty Manager, in coordination with the DNR Director, shall investigate the purported correction and confirm whether the actions taken, if any, have corrected the violation. After the investigation, the Realty Manager shall: (a) inform the Lessee in writing that the violation has been corrected to the satisfaction of the Band; or (b) inform the Lessee that the violation has not been corrected to the satisfaction of the Band and whether the Band will authorize additional time for the correction.

3. If the Realty Manager, in coordination with the DNR Director, concludes that the Lessee shall have additional time to cure a violation, the Realty Manager shall inform the Lessee in writing of the additional time granted.
 4. If a lease violation is not cured within the allowable time, the Band, or the BIA in consultation with the Band, may cancel the lease or invoke any other remedies available under the lease (including collecting any bond).
- d. **Lease termination.** In lieu of cancelling a lease under the 10-Day Show Cause Procedure, the Realty Office may terminate the lease with or without the Lessee's ability to cure if consistent with the terms of the lease.
 - e. **Lease enforcement decisions final.** Unless otherwise directed by the RTC, all decisions by the Realty Manager regarding lease compliance and enforcement are final and not subject to further review or appeal.
 - f. **Violations of Bois Forte Zoning Ordinance.** Bois Forte DNR and the RTC may enforce any violations of Bois Forte Zoning Ordinance consistent with Article VII of that Ordinance. This includes violations stemming from actions taken by Lessees without a valid Land Use Permit.
 - g. **Lease enforcement by BIA.** The Realty Office may, at its discretion, notify the BIA of any violations of a lease for federal enforcement action, which may include inspections, trespass actions, lease cancellations, or other enforcement actions.
 - h. **Common lease violations.** Non-compliance with any term of a lease is considered a lease violation. Although violations will depend on the terms of the specific lease at issue, common lease violations include:
 1. Failure to adhere to Band law, including the Bois Forte Zoning Ordinance, Blight Code, Cultural Resources Code, or other applicable law.
 2. Failure to obtain a valid Land Use Permit when constructing structures on leased land, clearing trees, or making other changes to land use.
 3. Assigning or transferring a lease without required approval.
 4. Failure to construct a residence within the required timeframe for residential or recreational leases.
 5. Abandonment of the leased premises.

XI. ASSIGNMENT OR TRANSFER OF LEASE

- a. **Background.** Leases may not be transferred or assigned to another Lessee without the prior written consent of the RTC. Because the leased premises is trust

land, the transfer or assignment of a lease must also be approved by the BIA. Under federal law, the BIA may not approve a transfer or assignment of the lease without the consent of the Lessee and the RTC.

- b. **Purpose.** The purpose of this transfer/assignment policy is to meet the demand for homesites by increasing the opportunity for Band members to obtain lots that are given up by others. In the event a present Lessee chooses to relinquish a lot, the RTC has adopted a transfer mechanism that has two purposes:
 1. To enable the Lessee to obtain the fair market value of all improvements made to the leased premises at the time of the intended sale, but excluding any value of the land or the right to occupy the land; and
 2. To enable Band members to obtain homesite leases without paying for the right to occupy tribal land and paying a fair price for improvements.
- c. **Process for Lessees who wish to transfer their lease and sell improvements.**
 1. Requirement to file a NOITS.
 - i. A Lessee who intends to forego a lease by transferring it to someone else and selling the improvements on the land must file a “Notice of Intent to Sell” (NOITS) with the Realty Office.
 - ii. The NOITS shall include the price the Lessee is asking for improvements made. Improvements must be valued without consideration of either the value of the real estate on which they are located or the value of the leasehold interest. “Value of improvements” may only consider the following characteristics: actual building size; number and size of outbuildings; construction type; physical condition; functional utility, including whether the improvements are hooked up to water and sewer). The property information may be supported by photographs, floor plans, or any relevant information of improvements made by Lessee.
 2. Notice to Potential Buyers.
 - i. Once a complete NOITS is received, the Realty Manager shall first inform all persons on the applicable lease waiting list of the NOITS. Those on the applicable waiting list have 30 days from the date they are informed of the NOITS to make a written offer for the property. Any person on the applicable waiting list may make an offer to purchase the improvements regardless of the person’s placement on the list. The owner of the improvements may accept or reject offers from persons on the applicable lease waiting list during the 30-day period in his or her discretion.
 - ii. If no one on the applicable lease waiting list has made an offer on the property within the 30-day time period or the owner of improvements has

not accepted any offers, the owner may then entertain offers from all eligible Band members. For purposes of this paragraph, “eligible member” means a Band member who is at least 18 years of age.

- iii. If the Lessee confirms that no one has made an offer on the property within 6 months of it being posted publicly for Band members or any such offers have not been accepted, the Realty Office may re-publish the NOITS more broadly and the Lessee may accept offers eligible members *and* adult members of other federally recognized Indian tribes.
3. Sale or Transfer to Immediate Family Members. Notwithstanding the process outlined above for Notice to Potential Buyers, a Lessee may sell or otherwise transfer his or her improvements located on leased property to any immediate family members of the Lessee. For purposes of this policy, an “immediate family member” means a spouse (husband, wife, significant other), a parent (biological, adoptive, step, in-laws, loco parentis), a child (biological, adoptive, foster, step, legal ward), a brother/sister (biological, adoptive, step, half, in-laws), a grandchild or great-grandchild (biological or step), or a grandparent or great-grandparent (biological or step), regardless of whether or not the immediate family member is a Band member. A Lessee should inform the Realty Office of his or her intent to sell or transfer improvements to an immediate family member at the time the NOITS is submitted, or as soon as possible thereafter.
 4. Notification to Realty Office of Accepted Offer & RTC Approval. Once the lessee enters into an agreement for the purchase of improvements consistent with the process outlined in this Section IX(c), the Lessee shall notify the Realty Office and provide a copy of such agreement. The Realty Office will then coordinate with the Lessee to draft documentation for cancellation of the lessee’s existing lease and issuance of new lease to the buyer for RTC approval. If the purchase has not yet occurred, the RTC’s approval of the cancellation and new lease and its submission of such documents to the BIA shall be contingent on the Band’s receipt of documentation of the final purchase, such as a Certificate of Title or Bill of Sale, being issued by the Lessee to the buyer.
- d. **Process for Lessees who wish to transfer their lease for land without improvements.** A Lessee who intends to give up a lease pertaining to land without improvements must file a “Notice of Intent to Transfer” (NOITT) with the Realty Office. The Realty Office will then make lease offers consulting the *Order of Application Date* list consistent with the procedures in Parts V and IV of this Policy. Lessees are not allowed to transfer leases unilaterally.
 - e. **Band’s right to make offer.** When a Lessee submits a NOITS to the Realty Office, the Band retains the right put an offer on the subject property at any time.

XII. LEASE MODIFICATIONS

- a. **Scope.** This section outlines the process Lessees must follow to obtain a lease modification. Lessees may wish to modify a lease if there is a need to make a change to a term in the lease document. For example, a Lessee may wish to make permanent improvements to the property not described in the lease, add a Lessee, or change the duration of the lease.
- b. **Process for requesting a modification.**
 1. Complete and submit a “Lease Modification Request Form” to the Realty Office. This Application will assist the Realty Office in determining if a lease modification is necessary and/or appropriate. Request forms can be obtained from the Realty Office.
 2. Lease modification forms will be reviewed on a monthly basis and will be processed based on the date of the request. The Realty Manager will review the lease modification request to determine if the Lessee’s request warrants a lease modification, and if the lease modification is appropriate.
 3. If the Realty Manager determines that the request necessitates a lease modification, the Realty Manager will present the request for consideration by the RTC after review by the Tribal Attorney. When the Realty Manager presents the request to the RTC, the Realty Manager will also present a recommendation as to whether the modification should be approved or denied.
 4. If the lease modification is approved and executed by the RTC and all existing Lessees, the Realty Manager will prepare the documents and send them to the Land Realty Specialist of BIA for approval and recording.

XIII. BOIS FORTE ZONING ORDINANCE & LAND USE PERMITS

- a. **Scope & background.** It is essential that Lessees ensure that they are in compliance with the Bois Forte Zoning Ordinance when taking certain actions with respect to their leased premises. For example, Lessees must obtain a valid land use permit in order to erect, construct, reconstruct, move, or structurally alter a structure or change use of the land. This includes constructing a residence, adding an out-building, or constructing a deck or garage.

This section outlines the general process for applying for a land use permit when a permit is required. It also outlines certain key land use requirements with which Lessees must comply. When in doubt, Lessees should contact the Realty Manager with questions about compliance with the Zoning Ordinance. If the provisions of the Section are inconsistent with the Zoning Ordinance, the Zoning Ordinance shall apply.

b. Land Use Permit application & decision-making process.

1. When a Land Use Permit is required for a particular action, the Lessee must complete and submit the Band's Land Use Permit (LUP) Application to the Realty Office before the action is taken. As a general rule, LUP applications must be submitted at least 30 days prior to the commencement of any activities for which a permit is needed, such as clearing of land, removal of trees, or surveying a building site.
2. Applications will be reviewed on the third week of every month.
3. When review is required, the Band's Land Use Permit Team will meet the fourth Friday of each month for the initial review to approve or disapprove the permit request.
4. If the Land Use Permit is approved, the Realty Manager will contact the Lessee via email regarding the approval with instructions on when permitted actions may begin.
5. If the Land Use Permit requires RTC action and approval, it will be placed on the RTC agenda for meetings held the first Wednesday of the month.

c. Key Zoning Ordinance rules for Lessees. Lessees should adhere to the following key requirements set forth in the Zoning Ordinance. The requirements below are not exhaustive and Lessees must ensure compliance with all applicable Zoning Ordinance requirements.

1. Recreational vehicles and other camping.

Recreational vehicles and other camping are permitted on parcels without a permit provided:

- a. There is no more than one recreational vehicle per parcel;
- b. The recreational vehicle shall have a current motor vehicle license;
- c. All setbacks, including bluff setbacks, vegetative removal, and shoreland alteration standards are observed. A structural setback from the top of a bluff is 30 feet, meaning structures and other facilities, except stairways and landings, shall not be placed within the "bluff impact zone."
- d. Privies shall be the only sanitary facility; and
- e. No structures including decks shall be placed on the property.

A Lessee may apply for a Conditional Use Permit to deviate from the above standards.

2. Lakeshore setbacks and impact zones.

- a. Lakeshore setbacks require decks, homes, and other approved structures to be at least 75 feet from the shoreline for general development lakes.
- b. All occupied structures, including bunkhouses shall be set back 20 feet from an on-site sewage treatment system drainfield, and all accessory structures shall have a minimum setback of 10 feet from the system drainfield.
- c. Storage buildings shall be set back a minimum of 125 feet from the shoreline, limited in size to 200 square feet of color area, and 12 feet in height.

Appendix A:

Terms Required for Residential, Recreational, and Business Leases

All residential, recreational, and business leases must identify:

1. The tract or parcel of land being leased.¹ 25 C.F.R. § 162.313(a)(1); 25 C.F.R. § 162.413(a)(1).
2. The purpose of the lease and authorized uses of the leased premises. 25 C.F.R. § 162.313(a)(2); 25 C.F.R. § 162.413(a)(2).
3. The parties to the lease. 25 C.F.R. § 162.313(a)(3); 25 C.F.R. § 162.413(a)(3).
4. The term of the lease. 25 C.F.R. § 162.313(a)(4); 25 C.F.R. § 162.413(a)(4).
5. The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements. 25 C.F.R. § 162.313(a)(5); 25 C.F.R. § 162.413(a)(5).
6. Any payment requirements and late payment charges, including interest and to whom payments will be made. 25 C.F.R. § 162.313(a)(6); 25 C.F.R. § 162.413(a)(6).
7. Due diligence requirements under 25 C.F.R. § 162.417, unless the lease is for religious, educational, recreational, cultural, or other public purposes (for business leases). 25 C.F.R. § 162.413(a)(7).
8. Any insurance requirements (for business leases). 25 C.F.R. § 162.413(a)(8).
9. Any bonding requirements (for business leases). If a performance bond is required, the lease must state that the Lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities. 25 C.F.R. § 162.413(a)(9).

All residential, recreational, and business leases must further include the following mandatory provisions:

1. The obligations of the Lessee to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status. 25 C.F.R. § 162.313(c)(1); 25 C.F.R. § 162.413(c)(1).

¹ The leased premises should be described with reference to a public or private survey, if possible. If it cannot be so described, it must include one or more of the following: (1) a legal description; (2) a survey-grade global positioning system description; or (3) another description prepared by a registered land surveyor that is sufficient to identify the leased premises. 25 C.F.R. § 162.317(a).

2. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises. 25 C.F.R. § 162.313(c)(2); 25 C.F.R. § 162.413(c)(2).
3. The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under 25 C.F.R. § 162.014. 25 C.F.R. § 162.313(c)(3); 25 C.F.R. § 162.413(c)(3).
4. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact BIA and the Land Leasing Office to determine how to proceed and the appropriate disposition. 25 C.F.R. § 162.313(c)(4); 25 C.F.R. § 162.413(c)(4).
5. BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice in accordance with 25 C.F.R. § 162.364, to enter the leased premises for inspection and to ensure compliance. 25 C.F.R. § 162.313(c)(5); 25 C.F.R. § 162.413(c)(5).
6. BIA may, at its discretion, treat as a lease violation any failure by the Lessee to cooperate with a BIA request to make appropriate records, reports, or information available for BIA inspection and duplication. 25 C.F.R. § 162.313(c)(6); 25 C.F.R. § 162.413(c)(6).
7. BIA may treat any provision of a lease document that violates federal law as a violation of the lease. 25 C.F.R. § 162.313(e); 25 C.F.R. § 162.413(e).
8. The Lessee holds the United States and the Band harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises. 25 C.F.R. § 162.313(d)(1); 25 C.F.R. § 162.413(d)(1).
9. The Lessee indemnifies the United States and the Band against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the lease terms, regardless of fault, with the exception that the Lessee is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowner's negligence or willful misconduct. 25 C.F.R. § 162.313(d)(2); 25 C.F.R. § 162.413(d)(2).
10. Where a representative executes a lease on behalf of the Bois Forte Band or Lessee, the lease must identify the Bois Forte Band or Lessee being represented and the authority under which the action is taken. 25 C.F.R. § 162.313(b); 25 C.F.R. § 162.413(b).
11. Permanent Improvements.

- a. Where a Lessee will construct permanent improvements, the lease must authorize the construction and generally describe the type and location of the permanent improvements to be constructed during the lease term. 25 C.F.R. § 162.314(a); 25 C.F.R. § 162.414(a).
- b. The lease must specify who will own any permanent improvements the Lessee constructs during the lease term and, for each specific improvement, whether it will:
 - i. Remain on the leased premises upon expiration, termination, or cancellation of the lease, in a condition satisfactory to the Indian landowners and become the property of the Indian landowners;
 - ii. Be removed within a time period specified in the lease, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or
 - iii. Be disposed of by other specified means.

25 C.F.R. §§ 162.315 (a)(1-3); 25 C.F.R. §§ 162.415 (a)(1-3).

- c. If the lease requires the Lessee to remove permanent improvements, it must also provide the Band with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period. 25 C.F.R. § 162.315(b); 25 C.F.R. § 162.415(b).

Appendix B:

Terms Required for Agricultural Leases

All agricultural leases must identify:

1. The Band and its respective interest in the leased premises, and the lease must be granted by or on behalf of each of the Indian landowners;
2. Where a representative executes a lease on behalf of the Band or Lessee, the lease must identify the Band or Lessee being represented and the authority under which the action is taken.
3. The lease must be executed by individuals having the necessary capacity and authority to bind the tenant under applicable law.
4. A provision citing the BIA's authority to approve the lease under 25 C.F.R. 162.242, along with a citation of the formal documents by which such authority has been delegated to the official taking such action.
5. A description of the tract or parcel of land being leased with reference to a public or private survey, if possible. If it cannot be so described, it must include one or more of the following: (1) a legal description that is sufficient to identify the leased premises, subject to BIA approval. 25 C.F.R. § 162.221(a).
6. A definite lease term, including a commencement date which may not be more than one year after the date on which the lease is approved. 25 C.F.R. § 162.229(a).
 - a. The lease term may not exceed ten years unless a substantial investment in the improvement of the land is required, in which case the term may not exceed 25 years.
 - b. Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.
 - c. The term may not be renewed nor may the term be extended by holdover.
7. Payment of fair annual rental.
 - a. The dates on which all rent payments are due. Rent payments are due at the time specified in the lease, regardless of whether the tenant receives an advance billing or other notice that a payment is due. 25 C.F.R. § 162.224.

- b. The rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease and any late payment penalties, if required, if a rent payment is not made by a specified date. 25 C.F.R. § 162.225.
- c. Whether the payments will be made directly to the Indian landowners or to the BIA on behalf of the Indian landowners. 25 C.F.R. § 162.226.
 - i. If the payment is to be made directly to the Indian landowners, the lease must also require that Lessee retain specific documentation evidencing proof of payment, such as cancelled checks, case receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of Sec. 162.112 and 162.113. 25 C.F.R. § 162.226(a).
 - ii. If the payment is to be made directly to the Indian landowner, the lease must also provide for such payments to be suspended and the rent thereafter paid to the BIA, rather than directly to the Indian landowners if:
 - 1. An Indian landowner dies;
 - 2. An Indian landowner requests that payment be made to us;
 - 3. An Indian landowner is found by the BIA to be in need of assistance in managing his/her financial affairs; or
 - 4. The BIA determines, in its discretion and after consultation with the Indian landowners, that direct payment should be discontinued.

25 C.F.R. § 162.226(c).

- iii. If the lease term runs for more than 5 years, the lease must provide for one or more rental adjustments unless certain exceptions apply. 25 C.F.R. § 162.223(a).
- iv. If rental adjustments are required, the lease must specify:
 - 1. How adjustments are made;
 - 2. Who makes the adjustments;
 - 3. When the adjustments are effective; and
 - 4. How disputes about the adjustments are resolved.

25 C.F.R. § 162.223(b).

- 8. The authorized uses of the leased premises. 25 C.F.R. § 162.231(a).

9. The type and location of any improvements to be constructed by the Lessee and whether any specific plans for the construction of those improvements will require the consent of the Indian owners or BIA approval. 25 C.F.R. § 162.232.
10. The lease must further specify (25 C.F.R. § 162.233(a)):
 - a. Who will own any improvements constructed by the tenant during the lease term;
 - b. Whether any improvements will remain on the leased premises upon expiration, termination, or cancellation of the lease, providing for the improvements to either:
 - i. Remain on the leased premises, in a condition satisfactory to the Indian landowners and the BIA; or
 - ii. Be removed within a time period specified in the lease, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements.
 - c. The Indian landowners may waive the removal requirement and take possession of the improvements if they are not removed within the specified time period.

The following additional provisions must be included in all agricultural leases:

1. The obligations of the Lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status. 25 C.F.R. § 162.219(a).
2. Nothing contained in the lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the Lessee and his surety or sureties shall be notified of any such change in the status of the land. 25 C.F.R. § 162.219(b).
3. There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises. 25 C.F.R. § 162.219(c).
4. The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements including tribal laws and leasing policies. 25 C.F.R. § 162.219(d).
5. If the land is within an Indian irrigation project or drainage district, the Lessee must pay all operation and maintenance charges that accrue during the lease term. The Lessee must pay these amounts to the appropriate official in charge of the irrigation project or drainage district. 25 C.F.R. § 162.228(b).

6. Farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable tribal laws, leasing policies, or agricultural resource management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all agricultural leases. 25 C.F.R. § 162.231(b).
7. The Lessee indemnifies and holds the United States and the Band harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises, unless:
 - a. The Lessee would prohibited by law from making such an agreement or
 - b. The interests of the Band are adequately protected by insurance.

25 C.F.R. § 162.238(a).

Unless prohibited by law, the Lessee indemnifies the United States and the Band against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the lease terms, regardless of fault. 25 C.F.R. § 162.238(b).