

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 22 PLANNING AND DEVELOPMENT LEASES**

19.2.22.1 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.
[19.2.22.1 NMAC - N, 10-30-2009]

19.2.22.2 SCOPE: Pursuant to Article XIII, Section 2, of the New Mexico 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, 19.2.22 NMAC, governs the granting of planning and development leases, on those lands within the commissioner's constitutional jurisdiction.
[19.2.22.2 NMAC - N, 10-30-2009]

19.2.22.3 STATUTORY AUTHORITY: N.M. Const. Art. XIII; Section 19-1-1 et seq. NMSA 1978; Section 19-7-1 et seq. NMSA 1978.
[19.2.22.3 NMAC - N, 10-30-2009]

19.2.22.4 DURATION: Permanent.
[19.2.22.4 NMAC - N, 10-30-2009]

19.2.22.5 EFFECTIVE DATE: October 30, 2009, unless a later date is cited at the end of a section.
[19.2.22.5 NMAC - N, 10-30-2009]

19.2.22.6 OBJECTIVE: The objectives of 19.2.22 NMAC are to generate value to the trust by planning and development of trust land for future sale, lease, or exchange thru the process of obtaining government approvals and other infrastructure pertinent to the planning and development of the land; to assure protection and maintenance of trust assets and lands; to provide planning and development lease terms and conditions; and to provide an efficient process for such leasing.
[19.2.22.6 NMAC - N, 10-30-2009]

19.2.22.7 DEFINITIONS: As used in 19.2.22 NMAC, the following terms have the meaning set forth in this section. A planning and development lease may add detail to a definition to accommodate lease specific issues.

A. “Approval / approved” 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 all or part of a lessee's interest in a planning and development lease, including, but not limited to, any conditional transfer or transfer by operation of law, but does not include a sublease.

C. “Base appraisal value” means the first round appraisal value (defined in Paragraph (1) of Subsection C of 19.2.22.17 NMAC below) adjusted upward annually from the date of the lease by a percentage, to be negotiated and included in the planning and development lease, reflecting the reasonable inflation in comparable raw land values.

D. “Collateral assignment” means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a planning and development lease, infrastructure, governmental approvals, or planning development credit.

E. “Commissioner” means the New Mexico 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.

F. “Concurrent lease” means a planning or development lease, or any other lease of trust land, granted in addition to an existing lease of state trust land.

G. “Government approvals” means legal rights granted by governments or agencies that run with the leased land including but not limited to planning, zoning, water and sewer service agreements, development agreements, platting, archaeological clearances or mitigation, and such other rights as may be required for the further development, improvement or use of the trust land; any property, rights, approvals, or privileges obtained or developed for the benefit of, or made appurtenant to, trust land and any other rights, permits or privileges obtained or developed in connection with a lessee's use of the leased trust land including, but not limited to, development rights and approvals.

H. **“Infrastructure”** means any item of property or actual benefit developed, placed, created or constructed on trust land including, but not limited to utilities, structures, erosion control structures and flood control structures, roadways, equipment, and other enhancements of whatever kind.

I. **“Lessee”** means the party of record at the state land office, who leases trust land from the commissioner under a planning and development lease.

J. **“Lessor”** means the commissioner acting by and through the state land office.

K. **“Lessee percentage”** means the percentage, to be determined, in the commissioner’s discretion, by negotiation or bidding, which is applied to the gross credit to establish the amount of the planning development credit, as described in Subparagraph (b) of Paragraph (3) of Subsection C of 19.2.22.17 NMAC below.

L. **“Nominator”** means the person or entity first applying to nominate trust land for a planning and development lease.

M. **“Planning and development lease”** means a written lease of trust land issued under this part, 19.2.22 NMAC, designed to improve the value of trust land for future sale, lease, or exchange. The commissioner, in his discretion, shall determine the development potential of trust land.

N. **“Planning development credit”** means a credit granted by the commissioner to a lessee for increased value to trust land as a result of the lessee’s placement of infrastructure or procurement of government approvals. This credit will be granted upon subsequent lease, sale, or exchange of the benefitted trust land.

O. **“Reasonable project costs”** means those sums paid or credited in acquiring the lease at auction less any bonus bid amounts, plus any costs approved by the commissioner incurred in securing government approvals or infrastructure through professional services as well as costs associated with the development of physical infrastructure.

P. **“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 planning and development lease.

Q. **“Rent adjustment”** means a periodic increase of any rent amount.

R. **“Sale appraisal value”** means the second round appraisal value adjusted as defined in Paragraph (2) of Subsection C of 19.2.22.17 NMAC below.

S. **“Schedule of fees”** means a list of administrative fees which is published on the state land office website and revised by the commissioner from time to time.

T. **“State land office”** means the New Mexico state land office.

U. **“Sublease”** means a transaction or arrangement whereby a planning and development lessee transfers to another any interest in the use, possession, management or control of all or part of leased trust land.

V. **“Termination”** means the end of a planning and development lease whether by cancellation, relinquishment or the expiration of the lease term.

W. **“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.

X. **“Trust land”** means all land owned by the trust.

Y. **“Unapproved infrastructure and government approvals”** means infrastructure and governmental approvals that have not received the commissioner’s approval.

[19.2.22.7 NMAC - N, 10-30-2009]

19.2.22.8 LEASING STANDARDS:

A. The surface estate of any trust land may be leased under a planning and development lease at the discretion of the commissioner. A planning and development lease may include more than one use, and may encompass more than one parcel of trust land.

B. After receipt of a nomination as provided in 19.2.22.9 NMAC, or on his own initiative, the commissioner may offer to lease trust land under a planning and development lease.

C. Notwithstanding any other provision of 19.2.22 NMAC, and at any time before the execution of a planning and development lease, the commissioner may, at the commissioner’s discretion, reject any application or bid submitted under 19.2.22 NMAC.

[19.2.22.8 NMAC - N, 10-30-2009]

19.2.22.9 NOMINATION TO LEASE: Any legal resident of New Mexico, any corporation or other legal entity registered with the New Mexico public regulations commission, or any other legal entity authorized to do business in New Mexico, may nominate any trust land for a planning and development lease by submitting an application on forms prescribed by the commissioner.

A. The nomination shall, at a minimum, be made under oath and shall identify the nominator's full name and contact information, shall state the county, general location and acreage of the trust land proposed for leasing, and describe the proposed uses of the trust land, indicating the benefits to the trust.

B. For lands already under any surface lease, the nominator shall additionally comply with the procedures in 19.2.22.18 NMAC.

C. Any nominator may withdraw a nomination for a planning and development lease at any time.

D. Criteria for the evaluation of the nomination by the commissioner will include but not be limited to:

- (1) estimation of present and future value created for the trust;
- (2) anticipated impact on trust land adjacent or near the nominated trust land;
- (3) feasibility of the proposed project; and
- (4) any other factors the commissioner deems relevant.

E. The nomination shall include a nonrefundable nomination fee in the amount established by the commissioner.

F. If, in the commissioner's opinion, the nominated land is found suitable for planning and development lease, the nominator will provide:

(1) an appraisal of the nominated trust land by a licensed appraiser approved by the commissioner at the nominator's expense; once approved, this appraisal shall be the first round appraisal defined in 19.2.22.17 NMAC;

(2) a survey of the nominated land, conducted according to New Mexico minimum survey standards including a legal description in both aliquot parts and survey metes and bounds.

G. If the nominator is not the successful bidder and the lease is awarded to another party, the successful bidder shall reimburse the nominator for the cost of the appraisal, survey and additional costs incurred by the nominator related to the auction required by the commissioner and born by the nominator.

[19.2.22.9 NMAC - N, 10-30-2009]

19.2.22.10 SUPPLEMENTAL INFORMATION: After review of a nomination and before entering into a planning and development lease auction, the commissioner may require additional information or documentation from the nominator.

[19.2.22.10 NMAC - N, 10-30-2009]

19.2.22.11 BID PROCESS: The commissioner may, under the following procedures, offer a planning and development lease to the highest and best bidder at a public auction.

A. Advertisement. A notice of the lease auction 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. 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; and
(3) the name of the person to contact at the state land office for additional information on the auction and the trust land being offered for lease.

B. Bid information packet. Anyone requesting information on the auction shall be provided with a bid information packet which shall include:

(1) a copy of the proposed lease;
(2) any requirements or qualifications for bidders;
(3) the amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any other required deposits;
(4) 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;
(5) the appraised value of the land; and
(6) a statement of the criteria established by the commissioner for determining the highest and best bidder at the auction.

C. 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 auction, the following amounts which shall be listed in the notice:

(1) the costs of the lease auction and the related expense, 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 planning and development lease; and

(3) if the offered trust land includes infrastructure or government approvals;

(a) either a sum equal to the planning development credit; or

(b) a bill of sale; or

(c) a waiver of payment signed by the holder of the planning development credit, or a bond or letter of credit sufficient to cover the value of the infrastructure or government approvals, unless the prospective bidder is the holder of the planning development credit; upon completion of the lease auction, the commissioner shall return any deposits from unsuccessful bidders.

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

E. Due diligence. All bidders must undertake their own due diligence in preparation for the lease auction, 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.

F. Auction. The auction may be conducted by the acceptance of oral or sealed bids. If awarded at all, the planning and development lease shall be awarded to the highest and best bidder.

[19.2.22.11 NMAC - N, 10-30-2009]

19.2.22.12 PLANNING AND DEVELOPMENT LEASE:

A. Leases. All planning and development leases shall contain such provisions as may be prescribed by the commissioner and shall comply with all pertinent statutes and state land office rules in effect at the time of lease execution.

B. Conditions. The commissioner shall establish conditions in a planning and development lease necessary for providing a secure return to the trust, managing the trust land in an economically reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a planning and development lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

C. Uses. A planning and development lease shall designate the allowable uses of the leased trust land. 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.

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

(1) If a planning and development 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) If a planning and development lessee is in default for failure to pay rent due, the commissioner may invoke Section 19-7-34 NMSA 1978, to pay the unpaid rental together with all costs incurred.

(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.

E. Mineral reservation. Each planning and development lease shall reserve the mineral estate, geothermal resources, water, and pore spaces for exploration, development, conservation and production and all related rights of access over, through or across trust land. The commissioner may, in a planning and development lease, agree, upon payment of a negotiated fee, not to exercise the lease the trust's reserved rights during the term of the lease. The fee shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential value of the reserved rights.

F. Easements and rights of way. Each planning and development lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A planning and development lease may provide that any easements or right of way granted across leased trust land shall be located to avoid, to the extent practicable, unreasonable interference with the uses allowed under the lease. A planning and development lease may require that the lessee purchase at full value from the commissioner easements or right of way necessary for the development of the trust land and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity provided the entity has purchased, or made satisfactory commitments for the purchase of the easements or rights of way.

G. Fish and game easement; recreational access permit. Unless specifically stated otherwise, a planning and development lease shall be withdrawn by the commissioner from public use under a fish and game easement or under recreational access permit.

H. Water rights. Water rights developed under a planning and development lease shall be developed and held in the name of the commissioner as follows: "(lessee) for the benefit of the commissioner of public lands". [19.2.22.12 NMAC - N, 10-30-2009]

19.2.22.13 SUBLEASE AND ASSIGNMENT:

A. Any assignment or sublease for use of trust land 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 land under a planning and development 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 planning and development lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's planning and development lease.

D. The termination of a planning and development 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. [19.2.22.13 NMAC - N, 10-30-2009]

19.2.22.14 COLLATERAL ASSIGNMENTS:

A. Unless otherwise provided in a planning and development lease, and subject to the prior approval of the commissioner, a lessee's interest in a planning and development lease or infrastructure may be collaterally assigned by the lessee. An approved collateral assignee shall not have a lien on the commissioner's interest in the trust land, the lease, any infrastructure, or the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign a lessee's interest in a planning and development lease, or in any infrastructure, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee with any right, title, interest, claim or privilege with respect to such lease or infrastructure.

(1) Prior to making any collateral assignment a lessee shall apply to the commissioner, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment subject to such terms and conditions that he deems to be in the best interests of the trust.

B. If the commissioner gives written notice to a planning and development 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 of the development planning lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee in the official lease file of the commissioner and no proof of receipt of such notice by the collateral assignee shall be required.

C. An approved collateral assignee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A planning and development lease may provide that a collateral assignee may succeed to the rights and duties of the lessee of the planning and development lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment of infrastructure does not change the status of any infrastructure as approved, unapproved, removable or permanent infrastructure.

D. A collateral assignee 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 upon making a collateral assignment.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment;

(2) Any successor in interest to a lessee's interest in a planning and development lease, or in any infrastructure, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under 19.2.22.13 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.

[19.2.22.14 NMAC - N, 10-30-2009]

19.2.22.15 APPROVAL OF GOVERNMENT APPROVALS AND INFRASTRUCTURE: No government approvals or infrastructure 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 prior approval. Such approval will not be unreasonably withheld and 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 infrastructure 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 infrastructure or government approvals.

B. A planning and development lease may approve existing and proposed infrastructure or government approvals when the commissioner determines it is in the best interests of the trust.

C. If the lessee fails to obtain the commissioner's prior approval for infrastructure or government approvals, the commissioner may, in the best interests of the trust, approve such items after they have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.22.15 NMAC - N, 10-30-2009]

19.2.22.16 REMOVAL OF PROPERTY:

A. Upon the termination of a planning and development lease, all unapproved infrastructure shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No item of infrastructure 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 unapproved infrastructure be left in place. Such infrastructure shall become the property of the commissioner and no person shall be entitled to any planning development credit for such infrastructure, and the lessee shall be deemed to have waived any claim of government taking or other damages.

(3) Any infrastructure left on trust land 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 take any necessary action to abate such nuisance. All costs and fees incurred during abatement shall constitute additional rent due from the lessee under the lease. Additionally, the commissioner may declare the property abandoned and ownership transferred to the commissioner and the lessee shall be deemed to have waived any claim of government taking or other damages.

B. In all cases where infrastructure is 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 infrastructure. The lessee's obligation to remove infrastructure 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 infrastructure left on trust land without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust land during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust land, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.22.16 NMAC - N, 10-30-2009]

19.2.22.17 SUBSEQUENT AUCTION:

A. **Reasonable project costs; sale price.** When a planning and development lease terminates, the land will be offered, by auction, for sale or lease. Prospective bidders will be required to tender, in cash or its equivalent, the reasonable project costs as one of the requirements to qualify to bid; provided, however, the lessee will be credited with the reasonable project costs. The auction price for sale will be the sale appraisal value

described in Paragraph (2) of Subsection C of 19.2.22.17 NMAC below plus any additional amount determined by the commissioner to be appropriate.

B. Planning development credit; when payable. When trust land are sold or leased to a person other than the holder of any planning development credit, the commissioner shall pay the amount, if any, of the planning development credit from the sale proceeds or the deposit described in Subsection C of 19.2.22.11 NMAC above less any rent, costs, or damages owed to the commissioner. However, no payment of the planning development credit shall be made if a successor in interest files with the commissioner a bill of sale or waiver of payment signed by the holder of the planning development credit.

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

(2) The holder of the planning development credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, when there is a collateral assignment of the planning development credit or infrastructure approved by the commissioner and filed with the state land office, the commissioner shall treat the lessee, not the collateral assignee, as the holder of the planning development credit and the party entitled to payment, if any, of the planning development credit.

C. Calculation of planning development credit. Subject to the conditions and restrictions set forth in this provision, the lessee shall be entitled to planning development credit determined by the following appraisal procedures and calculations.

(1) First round appraisal. Prior to the effective date of the planning and development lease, the nominator, at the nominator's expense, shall cause an appraisal of the trust land to be performed by a New Mexico appraiser holding a general state certification, to be approved by the lessor; or, at lessor's sole discretion, an existing recent appraisal may be substituted. The appraisal shall be conducted in accordance with the uniform standards of professional appraisal practice. This first round appraisal shall be used to establish the first round appraisal value. The first round appraisal value will be adjusted annually, throughout the term of the planning and development lease, as provided in Subsection C of 19.2.22.7 NMAC above, to arrive at the base appraisal value (BAV). Such annual adjustments shall not be pro-rated.

(2) Second round appraisal. On or before 60 days prior to the expiration of this lease or, at lessor's discretion, within 60 days after securing master plan approval or other critical project-related land use approval, lessee, at lessee's expense, shall cause an appraisal of the trust land to be performed by a New Mexico appraiser holding a general state certification in accordance with the standards set forth above; the appraiser shall be approved by the lessor. In the event the lessee or lessor disputes the resulting second round appraisal value of the trust land, the disputing party, at its expense, may have a second appraisal performed by a second New Mexico appraiser with the aforementioned credentials, acceptable to the other party, in accordance with the aforementioned professional standards. If the second appraisal reflects an appraised value within ten percent (10%) of the first appraisal, the second round appraisal value shall be equal to the average of the values reflected by the two appraisals. If the second appraisal does not reflect such values, the appraisers who performed the first and second appraisals shall select a third appraiser to perform a third appraisal. The third appraiser shall possess the credentials set forth above and shall perform an appraisal in accordance with the standards set forth above. The third appraisal shall be made at lessee's expense. The second round appraisal value shall then be the average of the values reflected in the three appraisals. The value established by the second round appraisal shall be used to establish the sale appraisal value (SAV). The second round appraisal value shall be reduced by the amount of reasonable project costs to arrive at the sale appraisal value (SAV).

(3) Calculations. Subject to the conditions and restrictions set forth in this provision, the planning development credit shall be calculated as follows:

(a) The SAV shall be reduced by subtracting the BAV to yield a gross credit. $SAV - BAV =$ gross credit.

(b) The planning development credit is then calculated by multiplying the gross credit by the lessee percentage (LP). $Gross\ credit \times LP =$ planning development credit.

(c) However, and notwithstanding the foregoing calculation if there is no increase in land value during the lease term, there shall be no planning development credit (if gross credit is equal to zero or less, PDC = 0)

(4) A planning and development lease may provide that a planning development credit may be lost or depreciated over a stated time if, after termination of the planning and development lease, there is no successor in interest other than the commissioner.

[19.2.22.17 NMAC - N, 10-30-2009]

19.2.22.18 CONCURRENT LEASES: As provided in this section, the commissioner may allow a concurrent lease pursuant to the requirements and procedures set forth in this part above in addition to the provisions set out below. The person or entity granted a concurrent lease is referred to herein as a “concurrent lessee”. The existing lessee and concurrent lessee may come to any arrangement that proves satisfactory to them to accommodate the use or uses of the concurrent lessee, including but not limited to relinquishment by the existing lessee for consideration. In the event such arrangements cannot be satisfactorily concluded within such time as the commissioner deems practical and necessary, then the following provisions shall apply.

A. The concurrent lessee shall compensate the existing lessee for the reasonable measure of the loss of use of the existing lessee’s approved improvements in the areas occupied or directly impacted by the new lease. The amount of compensation, if any, will be determined by the commissioner pursuant to Sections 19-7-14, 16, and 17 NMSA 1978. As used herein, “approved improvements” means improvements (as defined in Sections 19-7-15 and 51 NMSA 1978) already identified in the existing lessee’s lease as being approved by the commissioner and which add compensable value to the trust land.

B. The existing lessee may also be compensated by the concurrent lessee for any temporary or permanent loss of the use of any acreage that is occupied by the concurrent lessee, provided that the amount of such compensation shall be reasonable, as determined in the commissioner’s discretion, and does not exceed the lease rental paid or due by the existing lessee to the state land office for the acreage lost.

C. The existing lessee may be further compensated by the concurrent lessee for the reasonable measure of the present value of demonstrable, realistic business losses attributable to the loss of acreage or infrastructure to the concurrent lessee. Such losses cannot be speculative, and must be shown to be part of an existing business plan, or established by equivalent documentation, for the remainder of the existing lease term. The amount of such compensation shall be determined in the commissioner’s discretion.

D. The uses and rights being granted to the concurrent lessee shall not, in the commissioner’s discretion, materially interfere with the uses and rights of the existing lessee. The commissioner can determine that any compensation or reasonable accommodations required of the concurrent lessee adequately offset any material interference. “Reasonable accommodations” may include, but will not be limited to, the re-grading or re-establishment of roadways, the installation of shared wells or ponds, the construction of fences or other barriers sufficient to segregate the existing and concurrent lease uses when necessary, or the temporary removal of livestock during construction when necessary.

E. At least sixty (60) days prior to the granting of a concurrent lease, the commissioner will give written notice, sent by certified mail, to the existing lessee of the full name and contact information of the concurrent lessee as well as the compensation or accommodations being required of the concurrent lessee. No proof of receipt shall be required. Thereafter, the existing lessee may, within thirty (30) days of the date of the notice, provide written comment or make written application to the commissioner regarding any additional compensation or accommodations believed to be necessary. Before the expiration of the thirty (30) days, the commissioner will determine in his discretion whether to allow such additional compensation or accommodations. The commissioner’s decision on these matters shall be an “agency determination” for purposes of 19.2.15 NMAC.

F. The commissioner shall, pursuant to applicable laws and rules, grant the concurrent lease if he determines it is in the best interests of the trust to do so, regardless of whether the new lease is granted prior to or during any negotiations, contest, or any other proceedings regarding compensation or accommodations sought by the existing lessee. Prior to the granting of the concurrent lease, proof shall be due from the concurrent lessee that the concurrent lessee has tendered the compensation required by the commissioner, if any, and made satisfactory arrangements for such accommodations as may then be required by the commissioner. If the amount of compensation owed the existing lessee is in dispute, the concurrent lessee shall deposit in the land office suspense fund the amount of compensation stated in the agency determination until the dispute is resolved through negotiations or pursuant to 19.2.15 NMAC.

[19.2.22.18 NMAC - N, 10-30-2009]

HISTORY of 19.2.22 NMAC: [RESERVED]