[redacted]

From: Kenny Wilson [redacted]]
Sent: Monday, January 30, 2012 1:03 PM
To: consultation@bia.gov
Subject: Comments for laws we didn't have time to make comments
Attachments: Comments and Cover Ltr Draft Regulations Part 162.doc; Laws that we as Indians and Alaskan Natives don.docx

Kenny Wilson
Alaskan Native
Dillingham, Alaska

Laws that we as Indians and Alaskan Natives don't need

1. Taxation: **Taxation Prohibition of Improvements by States and Localities.**

   I am against this law. There wasn't enough time to make comments or for or against this law. The congress needs to revisit this and wait until all comments are reviewed by all Indians from the lower 48 states and by all Alaskan Natives. We will see homes be taken away from our Native people.
2. **TAAMS**: TAAMS isn't working. We have to do Realty transactions over because of this system that we are force to follow. It has made a hardship for our clients and BIA staff. We need to go back to the way we were doing transactions, once we client signs a document it should be a done deal like in the real world of business. I totally am against this system in place.
3. **Background Checks**: I am against this law this another way to slow down the process in hiring people to work. What needs to be done that every person that is hired they need to sign a document that they will not pass any information that is confidential after they leave the work place to another job.

TO: INDIAN LAND PROFESSIONALS, TRIBAL COUNCIL, LANDOWNERS

FROM: ICC INDIAN ENTERPRISES

SUBJECT: DRAFT LEASE REGULATIONS – COMMENTS

We have attached our comments regarding the draft regulations. Feel free to copy our comments in whole or in part and email them to ***consultation@bia.gov***. Everyone should make comments. You will probably live with these regulations the rest of your life. Even if you work for a BIA office or a tribal office you have the right to make your personal comments. It may be wise to submit your comments using your personal email. We have three major problem areas that we have addressed in the attached comments. We grew up during termination and see things in the BIA that look today like the 1950's. The deadline to send in these comments is Monday, January 30 so be sure to get these in now.

If you have any questions, please contact us by email or Terry Beckwith at 310 849 2197.

ICC Indian Enterprises

PO Box 217
Berlin, New Hampshire 03570
310 849 2197
Fax 310 765-4992
www.ICCIndianEnterprises.com
indianre@ix.netcom.com

SUBJECT: 1076–AE73

COMMENTS TO DRAFT REGULATIONS – 25 CFR 162

The following are our comments on the Draft Leasing Regulations. We have addressed some key problem areas. You may be of the opinion that these issues should be addressed outside the regulations. These issues are key issues throughout Indian Country. They need to be addressed in these regulations. Some issues we have raised need to be resolved by Statute. We request that Department of Interior address these issues with Congress.

Our comments will focus on three main categories.

1. Taxation Prohibition of Improvements by States and Localities.
   In a Federal Register notice less than a year ago the Department officially took the position that "The Department considers permanent improvements to be non-trust property, and OHA does not probate them." The Federal Register notice goes on to discuss courts of competent jurisdiction probating this newly categorized non-trust asset, i.e. "tribal and state courts."

   Why would the Department take this position on February 10, 2011 and several months later try to take the position that these improvements are not really taxable? One appears to contradict the other. The definition of real property is the land and everything attached to it. The land is held by the United States in Trust or in a restricted status and the house or other fixture becomes a part of the real estate. This appears to be the case everywhere except in Indian Country after last February. **The Department's position in the February 10 Federal Register notice needs to be repealed.**
   a. It gives the appearance that the Department was trying to assist the states with their fiscal problems by making this personal "non-trust" property taxable. Does their recent position that improvements are not taxable change things. We have favorable court rulings regarding taxation of tribal members' interest on the reservations. These rulings do not generally favor a person enrolled in another tribe. So many tribal members have intermarried with someone from another tribe. Would their interest be taxable? What about the "N" numbered Indians, people that are not

enrolled with any tribe? What does this do for Public Domain allotments and Alaska? We can be sure that we will be told all improvements are not taxable. We are not convinced.

b. Perhaps the reason for the Department's position regarding improvements on trust property is to allow the U.S., through the Indian Land Consolidation program, to purchase the small interests in allotments and not be required to pay for the improvements. After all, land consolidation is only for trust property. This would be a huge savings to the taxpayers.

c. Maybe the real reason for the Federal Register notice is to eliminate the liability of the poorly administered housing lease program. The United States administered the program through the Bureau of Indian Affairs and the Department of Housing and Urban Development. In many cases, on probably every reservation with allotments, the leases of homesites were not properly obtained. The Housing Authorities were required by federal statute to obtain the signature of every landowner in order for the Housing Authority to receive a homesite lease. Only a minority of fractionated parcels in many locations received the proper approval. In one case on the San Xavier reservation an allotment has part of four homes encroaching on the allotment. This property is located very close to the City of Tucson and has a high value. This trespass dates back to the 1970's. Some homesite leases were approved without a single signature of any landowner. Homes were built on wrong lands. In 1981 a several page memorandum, identifying these issues, was sent by the Phoenix Area Director to Washington. Perhaps this is Washington's response to the memo. The housing issue is not limited to San Xavier. It is a problem throughout the Nation. This problem was created by the BIA from not having trained staff and is in the tens of millions of dollar range and maybe in the hundreds of millions. The U.S. does not want to have another Cobell. By making the status of these improvements non-trust property, they have wiped away any responsibility. Where is the right to due process and just compensation?

   Will a lease that includes a structure require two leases? There will be one lease for the land, the trust property; and one lease for the building, the non-Trust property? The appraisals only cover trust property so will the landowner also need to have the improvement appraised by an outside appraiser?

2. <u>TAAMS Computer System</u> – This system and its burden on tribes attempting to run a successful realty program is not addressed in the draft regulations but should be addressed because it has a direct interest on the leasing program and its effectiveness. If the Department truly wants to make it so that tribes can run their programs more efficiently, tribes should be authorized to design their own system. The BIA does not need no know everything a tribe is doing. BIA needs information for the annual report, i.e. number of acres, trust income from

various activities. Often realty staff will make a comment that something has to be done because of TAAMS. BIA realty is the only place that requires people to design their work to meet the requirements of the computer. Why is it not the other way around? Will TAAMS make distribution of life estates? The life estate distribution is included in these draft regulations.

3. Background Checks – Is BIA the only agency that requires regular, non-law enforcement staff to have extensive background checks before they are allowed to come to work? How many Federal Indian dollars are spent each year on these background checks? Why are realty staff members subject to such extensive background investigations? Is there a concern that they will steal the land records? Is there a concern they will tell about their clients business? Or is there a concern that Indians will come in and steal the records? The Federal Indian dollars being spent on background checks could be used in some other way that will have a greater impact on the work that needs to be completed for the clients. How many times do people obtain other employment while getting tired of waiting for their background investigation?

   The reason for the extensive background checks is probably to safeguard the records and to protect information leaking out pertaining to personal privacy. Why then are the Alaska Region records being recorded in the Alaska State Recorders Office? Perhaps the landowners in Alaska are not concerned about this and maybe the tribal governments are not concerned about this. If Alaska is truly unique regarding the privacy issue why should employees in the Alaska realty offices be required to submit to the background investigation? You can obtain the Alaska restricted records off the internet from anywhere in the world. For example, you can obtain a Petition for Rehearing from the State Records Office. Here is the information from a document from 2010:

   Document Year: 2010 Number: 000467 Suf: 0 District 307 – Bristol Bay

   This came right off the internet. All you need to do is Search the State of Alaska Recorders Office for Bureau of Indian Affairs or BIA to obtain the restricted land records of the Alaska Natives.

These are major issues that impact leasing in Indian Country. You have placed a timeframe on the time BIA has to process leases. This is needed. Jefferson Keel mentioned in his State of the Indian Nations address that one tribe lost WalMart because it took so long for BIA to process the lease and economic times changed to a point Wal Mart was no longer interested. The issues mentioned above are equal in magnitude.

The draft regulations allow for people to have permission from landowners to use the property without a lease. It is also suggested that this document be recorded in LTRO.

What is the life of this permission? Can it be revoked next month? If not, it would be the conveyance of an interest in real property without BIA approval.

The regulations refer to the term consent throughout the regulations. It is more than consent. The landowners grant the lease. This amounts to a conveyance of an interest in real property, the interest being conveyed is a leasehold interest. The lease is then approved or validated by the Secretary. The Courts have referred to Rights of Way as Congressionally Granted. Is this because the landowners merely consent to a right of way? One BIA Superintendent, in recent years, attempted to grant a right of way over the objection of the Indian Landowners. This looks like termination, like the 1950's all over again. Our concern is that if the language is changed from granting the lease to consenting to it, what does that do to the landowners. It appears to do the same as the right of way regulations do.

162.011 provides for a sliding scale of persons signing the lease. In other words, you may have a veto with a minor interest. In one situation there were three landowners that inherited a small parcel with a home on the property. Two owners wanted to lease but one owner with a 1/3 interest vetoed the lease by not granting the interest in the lease. One of the owners moved into the house to preserve it. The owner with the veto called the tribal police and the man was arrested for trespass. Next the insurance company threatened cancellation of the lease if someone did not occupy the house. This provision is a terrible provision but will probably require legislation.

Alaska requires 100%. This is going to create some major problems for Alaska. It probably already is. Right now a person with one percent can stop the lease of an allotment until they get a new car or whatever they want. A change to this 100% requirement will require legislation. Someone at the Department level should bring these issues to Congress.

In this same section the lessee is not required to obtain the consent of a fractional interest from the tribe if they have majority consent of the other landowners. IBIA has ruled that tribal consent is required no matter how small the consent is.

162.016 does not take into account implied access through the General Allotment Act (*Brendale v. Olney*)

162.017 This section bases the rental of a unitized lease on acreage. A person with the key parcel would be subsidizing rent to all the other landowners in the unit. BIA has been writing leases like this for 50 years and the landowners often do not realize they are subsidizing others until it is too late. Example: Fair Annual Rent is as follows: Landowner A is $50,000; Landowner B and C is $20,000 each; Landowner D is $10,000. The total rent is $100,000 per year. Under the proposed regulations each landowner would receive rent of $25,000. Landowner A would subsidize the other owners $25,000

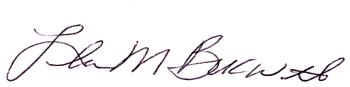
per year for the term of the lease. With cost of living adjustment it would be greater. Without cost of living that amounts to $1,250,000.

162.020 What if individuals do not have a tribal law to pursue remedies? Is there some alternative other than Federal courts. (*Oenga v U. S.*) There are times when the tribal court is unavailable to the landowners. In one recent case the landowners had to take their trespass case into Federal Court. The tribe logistically could not take the case because of the circumstances.

162.315 (a) (2) Improvements should be removed prior to the expiration of the lease. Remove them on your time not on my time.

With the 30 day timeframe for approval, what if the LTRO does not provide the TSR in a timely manner?

162.438 (j) Will an aliquot part description based on the original BLM survey be acceptable without providing an additional survey.



Lela M Beckwith
President