



Notice of
Public Meeting
to be held
April 2, 2015 at 12:15 p.m.
OBC Conference Room - 2nd Floor,
Norbert Hill Center



***Topic: Leasing Law Adoption &
 Real Property Law Amendments***

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt a Leasing Law and remove the leasing provisions from the current Real Property Law. This proposal would:

- ◆ Establish a process for approving leases on Tribal trust and fee land that complies with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) which would result in the Tribe no longer needing approval from the Secretary of Interior for leases of Tribal trust land. This process includes:
 - ◇ The terms and conditions that must be contained within a lease, including separate requirements for residential, agricultural and business leases.
 - ◇ How lease amendments and assignments, subleases, and encumbrances are approved.
 - ◇ A requirement that environmental and cultural reviews be completed before a lease or lease document is approved and what those reviews entail.
- ◆ Land Management is responsible for developing, with Land Commission approval, procedures and processes for offering and awarding leases and lease documents; managing leases; recording leases and lease documents with the appropriate entities; and enforcing leases.
- ◆ The main amendment to the Real Property Law removes a provision that governs leasing of Tribal land and replaces it with a provision that defers to the Leasing Law for the leasing of Tribal land.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until April 9, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
 E-Mail: **LOC@oneidanation.org**
 Fax: **(920) 869-4040**

Chapter 65 LEASING

65.1. Purpose and Policy
 65.2. Adoption, Amendment, Repeal
 65.3. Definitions
 65.4. General Provisions
 65.5. Lease and Lease Document Requirements
 65.6. Residential Leases

65.7. Agricultural Leases
 65.8. Business Leases
 65.9. Environmental and Cultural Reviews
 65.10. Lease Management
 65.11. Enforcement
 65.12. Appeals

<i>Analysis by the Legislative Reference Office</i>					
Title	Leasing law (the Law)				
Requester	Nathan King, Legislative Affairs	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	This is a proposal for a new Law that meets the requirements of the Federal HEARTH Act ¹ , establishing a Tribal leasing law that, if approved by the Secretary of the Interior, would enable the Tribe to authorize leases for Tribal trust land without needing to have the Secretary of the Interior approve of each individual lease.				
Purpose	To set out the Tribe's authority to issue, review, approve and enforce leases of Tribal fee land and trust land.				
Authorized/ Affected Entities	Department of Land Management (DLM), Land Commission, Oneida Law Office, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary.				
Due Process	DLM decisions are appealable to the Judiciary.				
Related Legislation	Public Use of Tribal Land Law; correlating amendments are being made to the Real Property Law				
Policy Mechanism	Issuing leases to occupy/use Tribal trust and fee land.				
Enforcement	Denial of lease requests and cancellation of leases; interested parties can also request that the Secretary of the Interior review the Tribe's leasing law to ensure it is being followed.				

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Overview

This request for a leasing law was originally submitted to the Legislative Operating Committee (LOC) on January 23, 2013, but was not completed by the LOC during the prior term; and was carried over into the current term by the current LOC.

This is a proposal for a new Law to meet the requirements of the Federal HEARTH Act. This Law will be submitted to the Secretary of the US Department of Interior (*hereinafter: Secretary*) for approval, and, if approved, the Tribe will be able to execute leases for Tribal trust land without needing to obtain Secretarial Approval for each individual lease.

Note: This proposal is unrelated to the proposed Constitutional amendments – the requirement of Secretarial approval for tribal trust land leases is a federal requirement; not an Oneida Constitutional requirement, and is unaffected by the upcoming Secretarial Election.

HEARTH Act – Background

Until recently, federal law² required Indian tribes to obtain approval from the Secretary before a tribe could enter into any agreement to lease out their trust land (i.e. land held in trust

¹ Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, this Act amended the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415.

² 25 USC 415

3 for the Tribe by the US government). This changed in 2012, with the enactment of the HEARTH
4 Act, which allows tribes to create their own tribal leasing regulations (such as this leasing law)
5 which could be submitted to the Secretary for approval³; and once approved, that tribe may
6 negotiate and execute leases for their trust land without having to seek Secretarial approval first
7 – instead, the tribe only has to submit the leases to the Bureau of Indian Affairs (BIA) for
8 recording in the Land Titles and Records Office.

9 Since the HEARTH Act was enacted, at least 15 other tribes have had such regulations
10 approved.

11 The HEARTH Act requires the Secretary to approve a tribe’s leasing regulations if they are
12 consistent with the requirements used by the Secretary to determine whether to approve a tribal
13 land lease. Those requirements are set out in the Code of Federal Regulations⁴.

14 **The Proposed Oneida Leasing Law**

15 This proposed Law would govern all Tribal land. Federal law and the HEARTH Act only
16 apply to leases for Tribal trust land, but this Law would also apply to any leases for Tribal fee
17 land. [65.4-1]

18 This Law would take effect 30 days after being approved by the Secretary. [65.2-1] Once
19 effective, the Tribe may approve and execute leases without Secretarial approval, unless the
20 Secretary rescinds approval and reassumes responsibility for approving Oneida trust land leases.
21 [65.4-6]

22 This Law may be amended or repealed by the OBC in accordance with the Legislative
23 Procedures Act, but any major, substantive changes would not be effective until approved by the
24 Secretary. Minor, technical amendments may take effect once approved by the OBC. [65.2-2]

25 The HEARTH Act authorizes tribes to create regulations to execute three main types of
26 leases on their trust land: agricultural leases, business leases, and leases for residential,
27 recreational, religious or educational purposes. This Law governs residential, agricultural and
28 business leases executed by the Tribe, as well as actions and decisions taken in connection with
29 those leases. For the purposes of this Law; business leases include leases for business purposes;
30 as well as leases for public purposes; including religious, educational, recreational, cultural or
31 other public purposes. [65.4-1, 65.4-2 and 65.8-2]

32 This Law does not apply to mineral leases or to leases of individually-owned Indian allotted
33 land, and does not affect the terms and conditions of existing leases. This Law also does not
34 affect the terms and conditions of amendments, assignments, subleases or encumbrances made to
35 leases that are already in effect when the law goes into effect. [65.4-2]

36 Nothing in this Law shall be construed to waive the Tribe’s sovereign immunity. [65.4-5]

37 **Authorities and Responsibilities**

38 This Law establishes responsibilities and authorities for various Tribal entities, including:

- 39 • **Division of Land Management (DLM):** DLM will manage all already-existing leases as
40 well as any leases executed under this law [65.10-1(a)]; including lease amendments,
41 assignments, subleases and encumbrances (collectively: “lease documents”). DLM is given
42 all powers necessary and proper to enforce this Law and lease terms [65.11-1]. Various
43 related responsibilities/authorities for DLM are set out in the Law, including:
 - 44 ○ Making information available about leases; and accepting lease and lease document
45 applications. [65.5-1]

³ The Secretary must either approve or disapprove of those regulations within 120 days, unless this time period is extended after consultation with the Tribe. See 25 USC 415 (h)(4)(A)

⁴ 25 C.F.R. 16

- 48 ○ Instituting a leasing management plan, implementing an accounting system, and
49 developing requirements for lease applications and additional procedures/processes
50 for offering/awarding leases and lease documents. [65.10-1(b), 65.5-1(a) and 65.10-2]
51 ○ Approving and executing all leases [65.5-1] and subleases; and approving mortgages
52 and other encumbrances. [65.5-1 and 65.5-4]
53 ○ Submitting leases and lease documents for trust land to the BIA for recording when
54 required; [65.10-3]; recording all leases and lease documents in the Tribe's Register
55 of Deeds and distributing copies to the lessee. [65.10-3]
56 ○ Charging administrative fees (DLM is authorized, not required, to do so). [65.10-5]
57 ○ Entering a leased premises, assessing penalties and late payments, cancelling leases;
58 taking action to recover possession of a property and/or to pursue additional remedies
59 in holdover and trespass situations; taking emergency action to prevent or respond to
60 criminal activity and/or immediate and significant harm to a leased premises; and
61 taking action to have lessees cure a default. [65.11]
62 • **Oneida Land Commission.** This entity has approval authority over the requirements DLM
63 creates for lease/lease document applications, and over any additional procedures and
64 processes DLM creates that are related to offering and awarding leases and lease documents.
65 [65.5-1(a)]
66 • **Environmental Health and Safety Division.** This entity is responsible for preparing
67 environmental reviews (including any recommendations) for each lease and for forwarding
68 the completed environmental review and the cultural review to the DLM. [65.9-2 and 65.9-4]
69 • **Cultural Heritage Department.** This entity is responsible for conducting or requesting
70 cultural reviews for all proposed leases and documents. [65.9-3]
71 • **Oneida Law Office.** DLM may request that the Oneida Law Office assist with enforcing this
72 Law and leases. [65.11-1]
73 • **Judiciary.** The lessee or interested party may appeal a determination of DLM to the Judiciary
74 in accordance with the Judiciary law and any applicable rules of procedure. [65.12-1]
75

Environmental and Cultural Reviews

76 In order for a tribe's leasing regulations to be approved by the Secretary, they must
77 include an environmental review process. The process must identify and evaluate any significant
78 effects of the proposed lease on the environment, include a process for notifying the public and
79 soliciting public comment on any environmental impacts, and include a process for responding to
80 public comment before approving the lease. [25 USC 415(h)(3)(B)]
81

82 This Law satisfies that requirement, requiring not only an environmental review, but also
83 a cultural review, before any lease can be approved. After receiving both reviews, DLM may
84 require that any reasonable actions, as recommended within the reviews, be completed, and then
85 updated reviews must be prepared.[65.9-4] Leases approved/executed in violation of this
86 requirement, are null and void. [65.5-6 and 65.9-1]
87

Environmental Review

88 To comply with the federal requirements, the Law requires environmental reviews to be
89 conducted in accordance with the process established under the National Environmental Policy
90 Act (NEPA) to evaluate environmental effects of federal undertakings. [65.9-2]
91

Cultural Review

92 Although not a federal requirement, this Law requires cultural reviews for all leases, which
93 must be done in accordance with the permit review requirements for undertakings established in
94 the Tribe's Protection and Management of Archeological & Historical Resources law (PMAHR).
95 [65.9-3] Essentially, this means that a Preservation Officer must review the application and

96 determine if the proposal constitutes an “undertaking” and if so, must conduct a literature and
97 oral history search, and a field survey when necessary; to determine whether the undertaking will
98 affect any archaeological, historic or cultural resources; and whether the effect will be harmful.
99 Within six weeks, the Officer must submit the cultural review and any recommendations.

100 Unlike an environmental review, this Law does not provide for any sort of public comment
101 for a cultural review.

102 103 **Lease Requirements**

104 In order to enter into a lease, this Law requires that there be a signed lease and any reports,
105 surveys and site assessments needed to comply with Tribal environmental, cultural resource, and
106 land use requirements. [65.5-7] Lease documents must be by written consent of the lessor (i.e.
107 the Tribe) and lessee (the party leasing the land from the Tribe). Both leases and lease documents
108 must identify an effective date. [65.5-4] Leases must contain various provisions which track
109 federal requirements – identifying the parties; the property; the lease term; the purpose of the
110 lease and authorized uses; and various provisions governing rent - including whether, when and
111 how to do rental reviews or adjustments, and how disputes will be resolved - and various
112 requirements related to due diligence, performance bonds and insurance, minimum insurance,
113 and improvements. [65.5-2 to 65.5-3] Lessees must indemnify the US and Tribe against all
114 liabilities or costs related to the use or release of hazardous materials, except for that arising from
115 the Tribe’s negligence or willful misconduct. [65.5-2(l)]

116 The Law also identifies some specific rules for all leases, including:

- 117 • Both DLM and the Secretary are authorized to enter a leased premises for inspection and
118 to ensure compliance with a lease – at any reasonable time and upon reasonable notice, in
119 accordance with federal regulations. [65.5-2(j)]
- 120 • If a lessee fails to cooperate with a request to make appropriate records, reports or
121 information available for inspection and duplication, DLM or the Secretary has discretion
122 to treat this as a lease violation. [65.5-2(m)]
- 123 • Mortgages that encumber title to Tribal land are prohibited, but leasehold interests (i.e.
124 the lessee’s interest in the land) can be encumbered. [65.5-4(b) and (c)]
- 125 • Even without any specific notice from DLM, interest charges and late payment penalties
126 apply, and failure to pay these must be treated as a breach of the lease. [65.11-5]

127 This Law also includes provisions that track federal law - 65.4-4 and 25 USC 415(h)(7) both state:

- 128 • Pursuant to the Secretary’s authority to fulfill the US trust obligation to the Tribe, the
129 Secretary has discretion to enforce the provisions of, or cancel, any lease on Tribal trust
130 land executed by the Tribe; upon reasonable notice from the Tribe.
- 131 • The US is not liable for losses sustained by any party to a lease executed under this Law.

132 133 **Specific Requirements for Types of Leases**

134 This Law permits leases of up to a maximum of 75 years. Business and Agricultural
135 leases may be for terms of up to 25 years, with options to renew for up to two additional terms of
136 up to 25 years each. Residential leases may be for up to 75 years. [65.6-3, 65.7-3 and 65.8-3]

137 *Residential Leases*

138 The Law defines a residential lease as the lease of land suited or used for the
139 construction, improvement and/or maintenance of a dwelling and related structures on the
140 premises; and otherwise to use or occupy said premises for residential purposes. [65.6-2]

141 *Agricultural Leases*

142 The Law defines an agricultural lease as the lease of land suited or used for the
143 production of crops, livestock or other agricultural products, or land suited or used for a business

144 that supports the surrounding agricultural community. [65.7-2] Agricultural leases must require
145 the lessee to manage land in accordance with any agricultural resource management plan
146 developed by the Tribe. [65.7-4]

147 *Business Leases*

148 This Law contains several additional provisions exclusively for business leases (which
149 includes business leases and leases for public purposes, such as religious, educational,
150 recreational, cultural or other public purposes [65.8-2]:

- 151 • Applicants for leases must submit a financial statement, a site survey and legal
152 description if applicable, and any other documents as may be required by any business
153 site leasing management plan developed by the Tribe. [65.8-4]
- 154 • Any required performance bonds must be obtained by the lessee in an amount that
155 reasonably assures performance. The bond is for guaranteeing the annual lease payment,
156 the estimated development cost of improvements, and any additional amount necessary to
157 ensure compliance. [65.8-7]
- 158 • The Law identifies appropriate methods for establishing and recording Fair Annual Lease
159 Value. [65.8-5]. DLM is required to present written records of the basis used for
160 determining fair annual lease value to the lessee and include them in any lease file. [65.8-
161 6(c) and 65.8-5]
- 162 • The Law identifies four ways a business lease may be structured and one reason a
163 business lease may be amended; and states that a business lease may provide for periodic
164 review. [65.8-6(b)]
- 165 • Business leases cannot be approved for less than the appraised fair annual lease value,
166 except in three situations: 1) the lessee is in the development period; 2) DLM needs to
167 provide an incentive to attract business to locate on Tribal land; or 3) DLM determines
168 that approving a lease for less than fair annual lease value is in the best interest of the
169 Tribe. [65.8-6(a)] It is not clear whether residential or agricultural leases can be approved
170 for less than a fair annual lease value.

171 172 **Federal Enforcement**

173 Although not addressed in this Law, federal law also provides for additional enforcement:
174 after exhausting any applicable tribal remedies, an interested party may submit a petition to the
175 Secretary to review a tribe's compliance with their own leasing regulations. If the Secretary
176 determines that a tribe violated their own law, the Secretary may take any necessary action to
177 remedy the violation – this includes rescinding approval of the Tribal regulations and reassuming
178 responsibility for approving leases of tribal trust lands. However, before implementing any
179 remedy, the Secretary must first provide the Tribe with written notice of the allegation, a hearing
180 on the record and a reasonable opportunity to cure the alleged violation. [25 USC 415(h)(8)]

181 182 **Miscellaneous**

183 A recordkeeping provision is included in the Law: Records of activities taken pursuant to this
184 Law with respect to Tribal trust land are the property of the US and the Tribe. Records compiled,
185 developed or received by the lessor in the course of business with the Secretary are the property
186 of the Tribe. [65.10-4]

187 A public meeting has not been held.
188

189 **Considerations**

- 190 • 65.11-2 states that “Land Management or other party may take appropriate emergency action,
191 which includes cancelling the lease and/or securing judicial relief.” However, this does not

192 say “including but not limited to”, and using general rules of statutory interpretation, this
193 means that these are the only two appropriate emergency actions DLM is authorized to take
194 under this Law.
195

196
197 **Chapter 65**
198 **LEASING**
199

200
201 **65.1. Purpose and Policy**

202 65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe’s authority to issue, review,
203 approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of
204 the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH
205 Act) by establishing a process under which the Tribe will be able to approve leases on Tribal
206 trust land without additional approval of the Secretary of the Interior.

207 65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the
208 lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk
209 to the Tribe.
210

211 **65.2. Adoption, Amendment, Repeal**

212 65.2-1. This Law was adopted by the Oneida Business Committee by resolution _____
213 and shall take effect thirty (30) days after approval by the Secretary of the Interior.

214 65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
215 the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law
216 shall not take effect until they have been approved by the Secretary of the Interior. Minor,
217 technical amendments may take effect upon approval by the Oneida Business Committee.

218 65.2-3. Should a provision of this Law or the application thereof to any person or circumstances
219 be held as invalid, such invalidity shall not affect other provisions of this Law which are
220 considered to have legal force without the invalid portions.

221 65.2-4. In the event of a conflict between a provision of this Law and a provision of another
222 Tribal law, the provisions of this Law shall control.

223 (a) To the extent that this Law conflicts with any applicable federal statutes or
224 regulations, the federal statute or regulation shall control.

225 (b) To the extent that any lease to which this Law applies conflicts with this Law, this
226 Law shall control.

227 65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
228 of Wisconsin.
229

230 **65.3. Definitions**

231 65.3-1. This section shall govern the definitions of words and phrases used within this Law. All
232 words not defined herein shall be used in their ordinary and everyday sense.

233 (a) “Assignment” shall mean an agreement between a lessee and an assignee whereby the
234 assignee acquires all or some of the lessee’s rights and assumes all or some of the lessee’s
235 obligations under a lease.

236 (b) “Cultural Heritage Department” shall mean the Tribal entity responsible for
237 conducting cultural reviews as required under this Law.

238 (c) “Cultural review” shall mean a review of the anticipated effects of a proposed lease or
239 lease document on archaeological, cultural and/or historic resources.

- 240 (d) “Day” or “days” shall mean calendar days, unless otherwise specified.
241 (e) “Encumbrance” shall mean a claim or liability that is attached to property.
242 (f) “Environmental, Health and Safety Division” shall mean the Tribal entity responsible
243 for conducting environmental reviews as required under this Law.
244 (g) “Environmental review” shall mean a review of the anticipated environmental effects
245 of a proposed lease or lease document.
246 (h) “Improvements” shall mean buildings, other structures, and associated infrastructure
247 attached to the leased premises.
248 (i) “Land Management” shall mean the Division of Land Management or other Tribal
249 entity responsible for entering into leases of Tribal land.
250 (j) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the
251 lessee is granted a right to use or occupy Tribal land, for a specified purpose and
252 duration.
253 (k) “Lease document” shall mean a lease amendment, lease assignment, sublease or
254 encumbrance.
255 (l) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument that
256 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the
257 lessee to a lender or other mortgagee.
258 (m) “Lessee” shall mean a person or entity who has acquired a legal right to use or occupy
259 Tribal land by a lease under this Law, or one who has the right to use or occupy a
260 property under a lease.
261 (n) “Lessor” shall mean the Tribe as the legal, beneficial and/or equitable owner of Tribal
262 land subject to a lease, and any administrator or assign of the Tribe.
263 (o) “Performance bond” shall mean a bond given to ensure the timely performance of a
264 lease.
265 (p) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the Interior,
266 or its authorized representative.
267 (q) “Sublease” shall mean a written agreement by which the lessee grants to a person or
268 entity a right to use or occupy no greater than that held by the lessee under the lease.
269 (r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
270 (s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee
271 status.
272 (t) “Tribal trust land” shall mean the surface estate of land or any interest therein held by
273 the United States in trust for the Tribe; land held by the Tribe subject to federal
274 restrictions against alienation or encumbrance; land reserved for federal purposes; and/or
275 land held by the United States in trust for a Tribal corporation chartered under Section 17
276 of the Indian Reorganization Act, 25 U.S.C §§ 461-479, et. seq.
277

278 **65.4. General Provisions**

279 65.4-1. *Applicable Land.* This Law applies to all Tribal land.

280 65.4-2. *Applicable Leases.*

- 281 (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and
282 regulations, this Law shall apply to all residential, agricultural and business leases
283 executed by the Tribe and to all actions and decisions taken in connection with those
284 leases. Provided that, nothing herein shall be construed to affect the terms and conditions
285 of leases existing when this Law goes into effect or amendments, assignments, subleases
286 or encumbrances made to those leases.
287 (b) This Law shall not apply to mineral leases or to any lease of individually owned

288 Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

289 65.4-3. *Applicable Law.* In addition to this Law, leases approved under this Law are subject to:

- 290 (a) all Tribal law, except to the extent those Tribal laws are inconsistent with applicable
291 federal law;
292 (b) applicable federal laws; and
293 (c) any specific federal statutory requirements that are not incorporated in this Law.

294 65.4-4 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United
295 States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe
296 and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential,
297 agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall
298 not be liable for losses sustained by any party to a residential, agricultural or business lease
299 executed pursuant to this Law.

300 65.4-5. All disputes over residential, agricultural and business leases shall be resolved under the
301 laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to
302 waive the Tribe's sovereign immunity.

303 65.4-6. After the Secretary approves this Law, all leases of Tribal trust land approved and
304 executed under this Law shall be effective without federal approval under 25 U.S.C. 415(h),
305 unless the Secretary rescinds approval of this Law and reassumes responsibility for such
306 approval.

307

308 **65.5. Lease and Lease Document Requirements**

309 65.5-1. *Information and Application.* Land Management shall approve and execute all leases.
310 Information on obtaining residential, agricultural or business leases or lease documents shall be
311 available at Land Management. Parties interested in obtaining a residential, agricultural or
312 business lease or lease document shall submit an application to Land Management.

- 313 (a) Land Management shall develop, and the Oneida Land Commission shall approve,
314 the format and requirements set out in the lease and lease document applications for
315 different types of leases, as well as additional procedures and processes to be followed
316 when offering and awarding leases and lease documents.

317 65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the
318 following:

- 319 (a) A description of the land or building being leased; business leases shall contain
320 adequate site surveys and legal descriptions based on metes and bounds, rectangular, or
321 lot and block systems;
322 (b) The effective date and term of the lease;
323 (c) The purpose of the lease and authorized uses of the leased premises;
324 (d) The parties to the lease;
325 (e) How much rent is due, when it is due, who receives it, what form(s) of payment is
326 acceptable, and whether any late payment charges or special fees apply and the rate of
327 interest to be charged if the lessee fails to make payments in a timely manner;
328 (f) Whether there will be rental reviews or adjustments, how and when they will be
329 done, when any adjustments will be effective and how disputes regarding adjustments
330 will be resolved;
331 (g) Who will be responsible for any taxes applied to the property and/or
332 improvements;
333 (h) Due diligence requirements that apply, if any;
334 (i) Performance bond and insurance requirements that apply, if any;
335 (j) Land Management or the Secretary has the right, at any reasonable time during the

336 term of the lease and upon reasonable notice, in accordance with federal regulations, to
337 enter the leased premises for inspection and to ensure compliance with the lease;

338 (k) The lessee holds the United States and the Tribe harmless from any loss, liability or
339 damages resulting from the lessee's use or occupation of the leased premises;

340 (l) The lessee indemnifies the United States and the Tribe against all liabilities or costs
341 relating to the use, handling, treatment, removal, storage, transportation, or disposal of
342 hazardous materials, or the release or discharge of any hazardous material from the leased
343 premises that occurs during the lease term, regardless of fault, with the exception that the
344 lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's
345 negligence or willful misconduct; and

346 (m) Land Management or the Secretary may, at its discretion, treat as a lease violation
347 any failure by the lessee to cooperate with a request to make appropriate records, reports
348 or information available for inspection and duplication.

349 **65.5-3. Improvements.** A lease shall set out requirements related to improvements, including:

350 (a) whether improvements may be constructed;

351 (b) ownership of improvements;

352 (c) responsibility for constructing, operating, maintaining and managing improvements;

353 (d) removal of improvements;

354 (e) whether a lessee may develop equity in improvements and sell its interest in the lease
355 based on the equity; and

356 (f) the lessor's right of first refusal to purchase the lessee's interest, if any.

357 **65.5-4. Obtaining a Lease Document.** Lease documents shall be by written consent of the lessor
358 and the lessee, unless otherwise provided herein and shall contain the effective date of the lease
359 document.

360 (a) The lease may authorize subleases only upon approval and execution from Land
361 Management. This in no way relieves the parties from carrying out their duties under the
362 lease.

363 (b) The lease may authorize encumbrances, including leasehold mortgages, on the
364 leasehold interest for the purpose of financing to develop and improve the premises.
365 Approval of the encumbrance by Land Management is required.

366 (c) The lease shall not authorize mortgages that encumber title to Tribal land.

367 **65.5-5. Payments.** For any lease requiring payments to be made to the lessor, the lessor shall
368 provide the Secretary with such documentation of the lease payments as the Secretary may
369 request to enable the Secretary to discharge the trust responsibility of the United States.

370 **65.5-6. Environmental and Cultural Reviews.** Land Management shall not approve a lease or
371 lease document until an environmental review and a cultural review, as required under section
372 65.9, have been completed. Leases approved and executed in violation of this section shall be
373 null and void.

374 **65.5-7. Documentation.** The following are required for a party to enter into a lease:

375 (a) a signed lease; and

376 (b) any reports, surveys and site assessments needed to comply with Tribal
377 environmental, cultural resource and land use requirements.

378

379 **65.6. Residential Leases**

380 **65.6-1.** In addition to the requirements that apply to all leases under section 65.5, the
381 requirements of this section shall also apply to residential leases.

382 **65.6-2.** A residential lease shall be entered into for the lease of land suited or used for the
383 construction, improvement, and/or maintenance of a dwelling and related structures on the

384 premises, and otherwise to use or occupy said premises for residential purposes.

385 65.6-3. *Duration*. Residential leases shall not exceed seventy-five (75) years.

386

387 **65.7. Agricultural Leases**

388 65.7-1. In addition to the requirements that apply to all leases under section 65.5, the
389 requirements of this section shall also apply to agricultural leases.

390 65.7-2. An agricultural lease shall be entered into for the lease of land suited or used for the
391 production of crops, livestock or other agricultural products, or land suited or used for a business
392 that supports the surrounding agricultural community.

393 65.7-3. *Duration and Renewal*. Agricultural leases shall not exceed twenty-five (25) years,
394 except that any such lease may include an option to renew for up to two (2) additional terms,
395 which may not exceed twenty-five (25) years each.

396 65.7-4. *Land Management*. Agricultural leases shall require the lessee to manage land in
397 accordance with any agricultural resource management plan developed by the Tribe.

398

399 **65.8. Business Leases**

400 65.8-1. In addition to the requirements that apply to all leases under section 65.5, the
401 requirements of this section shall also apply to business leases.

402 65.8-2. A business lease shall be entered into for the lease of land suited or used for business
403 purposes including retail, office, manufacturing, storage, or other business purposes; and public
404 purposes, including religious, educational, recreational, cultural, or other public purposes.

405 65.8-3. *Duration and Renewal*. Business leases shall not exceed twenty-five (25) years, except
406 that any such lease may include an option to renew for up to two (2) additional terms, which may
407 not exceed twenty-five (25) years each.

408 65.8-4. *Supporting Documents*. All applicants for business site leases shall submit the following
409 documents to Land Management:

410 (a) financial statement;

411 (b) site survey and legal description, if applicable;

412 (c) other documents as may be required by any business site leasing management plan
413 developed by the Tribe.

414 65.8-5. *Appraisal, Local Studies*.

415 (a) The fair annual lease value shall be determined by an appraisal or equivalent
416 procedure performed by Land Management utilizing the following data: improvement
417 cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An
418 appraisal log reporting the methods of appraisal and value of the Tribal land shall be
419 attached to every business site lease.

420 (b) Alternatively, the fair annual lease value shall be determined by an appraisal
421 performed by a licensed appraiser utilizing the Uniform Standards of Professional
422 Appraisal Practice or another commonly accepted method of appraisal. An appraisal log
423 describing the method of appraisal and value of the Tribal land shall be attached to every
424 business site lease.

425 65.8-6. *Fair Annual Lease Value*.

426 (a) No lease shall be approved for less than the present fair annual lease value as set forth
427 in the appraisal, except as follows:

428 (1) The lessee is in the development period;

429 (2) Land Management is providing an incentive for businesses to locate on Tribal
430 land, and must provide lease concessions, lease improvement credits, and lease
431 abatements to attract such business; or

- 432 (3) Land Management determines such action is in the best interest of the Tribe.
433 (b) A lease may:
434 (1) Be structured at a flat lease rate; and/or
435 (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the
436 lessee is a business located in a shopping center, or the lessee generates over one
437 million dollars (\$1,000,000.00) annually in gross receipts; and/or
438 (3) Be structured based on a percentage of gross receipts, or based on a market
439 indicator; and/or
440 (4) Be structured to allow for lease rate adjustments. The lease shall specify how
441 adjustments will be made, who will make such adjustments, when adjustments
442 will go into effect, and how disputes shall be resolved; and/or
443 (5) Be amended to allow for lease rate adjustments; and/or
444 (6) Provide for periodic review. Such review shall give consideration to the
445 economic conditions, exclusive of improvement or development required by the
446 contract or the contribution value of such improvements.
447 (c) Land Management shall keep written records of the basis used in determining the fair
448 annual lease value, as well as the basis for adjustments. These records shall be presented
449 to the lessee and included in any lease file.

450 65.8-7. *Performance Bond.* If a performance bond is required under a business lease, a
451 performance bond shall be obtained by the lessee in an amount that reasonably assures
452 performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

- 453 (a) The annual lease payment;
454 (b) The estimated development cost of improvements; and
455 (c) Any additional amount necessary to ensure compliance with the lease.
456

457 **65.9. Environmental and Cultural Reviews**

458 65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document
459 until an environmental review and a cultural review have been completed.

460 65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the
461 request of the Environmental, Health and Safety Division on all proposed leases and lease
462 documents. The environmental review shall be conducted in accordance with the process
463 established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to
464 evaluate environmental effects of federal undertakings.

465 65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the
466 Cultural Heritage Department on all proposed leases and lease documents. The cultural review
467 shall be conducted in accordance with the permit review requirements for undertakings
468 established in the Protection and Management of Archeological & Historical Resources law.

469 65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety
470 Division shall forward a completed environmental review and the cultural review to Land
471 Management for consideration in the approval or denial of a lease or lease document.

472 (a) Before approving a lease or lease document, Land Management may require any
473 reasonable actions, as recommended within the environmental review or cultural review,
474 be completed.

475 (b) The Environmental, Health and Safety Division shall prepare an updated
476 environmental review and the Cultural Heritage Department shall prepare an updated
477 cultural review upon completion of any reasonable actions.
478

479 **65.10. Lease Management**

480 65.10-1. *Management Plan.* Land Management shall:

- 481 (a) manage existing leases as well as those executed pursuant to this Law; and
482 (b) institute a leasing management plan that employs sound real estate management
483 practices, and addresses accounting, collections, monitoring, enforcement, relief, and
484 remedies.

485 65.10-2. *Accounting.* Land Management shall implement an accounting system that generates
486 invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in
487 this section shall be construed to absolve the lessee of its duties under a lease.

488 65.10-3. *Recording Leases and Lease Documents.* Land Management shall provide all leases
489 and lease documents of Tribal trust land, except residential subleases and encumbrances, to the
490 Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and
491 lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land
492 Management shall also distribute a copy of the recorded lease documents to the lessee.

493 65.10-4. *Ownership of Records.* Records of activities taken pursuant to this Law with respect to
494 Tribal trust land are the property of the United States and the Tribe. Records compiled,
495 developed or received by the lessor in the course of business with the Secretary are the property
496 of the Tribe.

497 65.10-5. *Administrative Fees.* Land Management may charge administrative fees for costs
498 associated with issuing a lease or lease document, or conducting any other administrative
499 transaction.

500

501 **65.11. Enforcement**

502 65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and
503 the lease terms. This includes the power to enter the premises, assess penalties, assess late
504 payments and cancel leases. Land Management may request the Oneida Law Office assist in
505 enforcement of this Law and leases.

506 65.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to
507 cause immediate and significant harm to the premises, or undertakes criminal activity thereon,
508 Land Management or another interested party may take appropriate emergency action, which
509 includes cancelling the lease and/or securing judicial relief.

510 65.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the
511 expiration or cancellation of a lease, or a person occupies a property without Land
512 Management's approval, Land Management shall take action to recover possession of the
513 property; and/or pursue additional remedies, such as damages, if applicable.

514 65.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management
515 shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.

516 65.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment
517 penalties shall apply in the absence of any specific notice to the lessee from Land Management,
518 and the failure to pay such amounts shall be treated as a breach of the lease.

519

520 **65.12. Appeals**

521 65.12-1. The lessee or an interested party may appeal a determination of Land Management in
522 accordance with the Judiciary law and any applicable rules of procedure.

523

524 *End.*

525

526