



## Title 6. LEASING – Chapter 602 Rule #2 – Agriculture LEASES

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### 2.1 Purpose and Authority

2.1-1. *Purpose.* The purpose of this rule is to codify the existing standard operating procedure concerning agriculture leases and granting the Oneida Nation's agriculture leases in a manner that is in the best interest of the Nation. This rule does not apply to agriculture leases granted pursuant to a condition of sale and land acquisition. The Land Commission may, at any time, decide to set aside land not subject to a lease for a special tribal project, including, but not limited to, conservation/park area or housing/commercial development.

2.1-2. *Authority.* The Leasing law delegates joint rulemaking authority to the Environmental Health, Safety, and Land Division and the Land Commission pursuant to the Administrative Rulemaking law.

### 2.2. Adoption, Amendment and Repeal

2.2-1. This rule was a standard operating procedure that existed prior to the Administrative Rulemaking law. This rule is exempt from the administrative rulemaking requirements because it is a current and continued use of the existing standard operating procedure.

2.2-2. This rule may be amended or repealed by the Environmental Health, Safety, and Land Division and the Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to agriculture leases issued pursuant to the Leasing law.

### 2.3. Definitions

2.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Agriculture Lease" is lease issued by the Environmental Health, Safety, and Land Division on behalf of the Nation for agriculture purposes on tillable and/ or grazing land. The Nation will not approve leases for land subject to a state or federal program, including but not limited to CRP, EQIP and WHIP unless: 1) Planting and harvesting certain crops are acceptable under the terms of the program; and 2) The lessee is a tribal department.
- (b) "Approved Plans" are plans approved by NRCS and OSRAC. Approved plans are required to maintain a lease.

- (c) “Blind Bidding” (also known as “sealed bid”) is a system where parties interested in leasing tribal fee or trust land submit a written sealed bid along with an application, without knowing the bids of other interested parties.
- (d) “Business Day” means office hours of the Oneida Nation, being Monday through Friday 8:00 a.m. to 4:30 p.m. not including holidays identified by the Human Resources Department.
- (e) “Conservation Plan” is a plan developed by party or lessee which includes crop rotation, crop residue rotations and cover crop practices, conservation buffers, grassed waterways, etc. This may require working with NCRS and OSRAC.
- (f) “Conservation Reserve Program” (“CRP”) is a voluntary program administered by the Farm Services Agency that provides cost-share for specific conservation practices and annual rental payments to landowners that remove environmentally sensitive land from production.
- (g) “Cropping Methods” are farm cropping practices and, except for sub-leasing, are acceptable forms of cropping methods. Various cropping methods include:
  - i. “Cash Cropping” means growing and harvesting crops for direct sale rather than growing and harvesting crops for livestock feed or as food for the lessee’s family;
  - ii. “Custom Cropping” means a method of farming where the lessee grows and harvests only one type of crop;
  - iii. “Seasonal Assistance” is hiring people (farm hands) to assist with growing and harvesting crops on the leased premises;
  - iv. “Sub-leasing” means a method of farming utilizing a written or oral agreement between the lessee and a third party whereby the lessee directly passes the use of the leased premises to a third party and collects a fee from the third party. The agreement transfers all the risk to the third party from the lessee.
- (h) “Eco-Services” is a department within the Environmental Health, Safety, and Land Division that provides technical assistance and coordinates the planning and development of ecological restoration.
- (i) “Environmental Health, Safety, and Land Division” (Division) is the approved administrative subsidiary of the Oneida Nation to execute all agriculture leases on behalf of the Oneida Nation as Lessor.
- (j) “Environmental Quality Incentives Program” (EQIP) is a voluntary program administered by the Natural Resources Conservation Service (NRCS) that provides financial and technical assistance to agricultural producers for structural and agronomic conservation practices that address threats to the natural resources (soil, water, animals, plants, air) on their land.
- (k) “Fair Market Value” means an estimate of the market value of a property, based on what a knowledgeable, willing, and unpressured buyer would probably pay to a knowledgeable, willing, and unpressured seller in the real estate market, also, a number that is intended to reflect the value in an arm's-length transaction, consistent with the general value in the market for rentals and leases, that means the value of rental property for general agriculture purposes.
- (l) “Land Commission” is the authorized commission to approve all agriculture leases on behalf of the Oneida Nation.

- (m) “Natural Resources Conservation Services” (NCRS) is a program under the United States Department of Agriculture (USDA) that implements farm management programs and provides monetary and technical assistance. NRCS refers to the Tribal NRCS.
- (n) “Nutrient Management Plan” is a plan developed by a party or lessee, based on realistic crop yield goals, soil tests to determine the available nutrients in the field, and takes into consideration credits for nutrients from legumes and manure applications. If the land to be leased is in a flood plain or has steep slopes, the nutrient management plan addresses these concerns. This may require working with NCRS and OSRAC.
- (o) “Oneida Nation Entities” (also referred to as “tribal entity”) includes the Nation’s divisions, departments, programs, services, approved boards and commissions, and enterprises.
- (p) “Oneida Nation Register of Deeds” (ONROD) is the authorized tribal department to record all tribal fee and trust land transactions for the Oneida Nation.
- (q) “Oneida Sustainable Resources Advisory Council” (OSRAC) is a tribal entity designed to prioritize and assist in delivery of USDA programs and services.
- (r) “Oneida Nation” is a federally recognized Indian Tribe in the State of Wisconsin.
- (s) “Pest Management Plan” is a plan developed by a party or lessee identifying specific treatments for specific pests on specific areas of a field that economically protect the crop and minimize environmental damage.
- (t) “Preliminary Plans” means plan(s) approved by NRCS. Preliminary plans are required prior to entering into a lease.
- (u) “Tribal Fee Land” means land owned by the Oneida Nation that is taxable status land.
- (v) “Tribal Member” is a member enrolled with the Oneida Nation and/or businesses owned 51% or more by Tribal Members.
- (w) “Tribal Trust Land” means land owned by the Oneida Nation that is held in trust to the United States of America.
- (x) “Wildlife Habitat Incentive Program” (WHIP) is a voluntary program administered by the NRCS that provides financial and technical assistance to establish and improve fish and wildlife habitat.

## **2.4. Procedures**

2.4-1. Determination to Advertise Land. For new leases or when a current lessee does not exercise any option to renew/ or enter into a new agriculture lease, the Commercial Leasing Specialist will:

- (a) Offer the lease, subject to the applicant lease requirements, to the Oneida Nation Farms or Tsyunhehkwa;
- (b) When the Oneida Farms or Tsyunhehkwa are not interested in leasing the land, the Commercial Leasing Specialist shall request the Land Commission provide a recommendation regarding the land and seek permission to advertise the opportunity to lease the land.

2.4-2. Establishing Fair Market Value. Fair Market Value is determined by the Land Commission in response to changing market prices and recent bids received.

2.4-3. Assembling the Application. When the Land Commission determines the land will be leased pursuant to this rule, the Commercial Leasing Specialist shall assemble the application packet, including:

- (a) The application, as developed by Commercial Leasing Specialist;
- (b) Information regarding qualifications pursuant to this rule;
- (c) The tribal enrollment verification form, if applicable;
- (d) Land survey with legal description, if applicable;
- (e) A deadline date and contact person;
- (e) Date, time and place of bid opening.
- (f) Instructions concerning marking and sealing of the bid.

2.4-4. Verification of Compliance. The Commercial Leasing Specialist will receive written verification the requirements of sec. 2.4-3 and other applicable sections of this rule and Oneida laws are complied with.

2.4-5. Public Notice and Posting. The Commercial Leasing Specialist shall draft the public notice and publically post the notice to include:

- (a) Acreage, length of lease and location of parcel available for leasing;
- (b) Location of application pick-up and drop-off;
- (c) Application (also referred to as “bid”) deadline;
- (d) Method of determining who will be awarded the lease.
- (e) Posting shall occur at the following:
  - i. Kalihwisaks (minimum of one issue);
  - ii. Environmental Health, Safety, and Land Division website for at least fifteen (15) calendar days;
  - iii. At Environmental Health, Safety, and Land Division for at least fifteen (15) calendar days.

2.4-6. Receipt of Applications. Environmental Health, Safety, and Land Division administrative staff will date and time stamp applications when received and forward to the Financial Accounts Area Manager or designee, ensuring the bid remains sealed.

2.4-7. Opening the sealed bids. Only the Financial Accounts Area Manager or the designated representative are authorized to open the sealed bids. The Financial Accounts Area Manager or the designated representative shall record the bid(s) in the presence of two witnesses (preferably the Division Director and the Commercial Leasing Specialist), announce the highest and lowest bid amounts to those in attendance, and forward a copy of the bids to the Division Director and the original to the Commercial Leasing Specialist. During the bid opening, the bids remain confidential, only the dollar amount of the highest and lowest bids are disclosed.

2.4-8. Ranking the Applications.

- (a) Commercial Leasing Specialist ranks the applicants based on their bid amount from the highest bid to the lowest bid. For tribal members and tribal departments, the amount bid is increased by 10% to determine the bid rank in comparison to the other bids. For example, if a tribal member bids \$110 per acre for a lease and a non-member bids \$120 per acre for a lease, when ranking the applicants, the tribal member will be ranked as though the bid is \$121 per acre ( $\$110 + 10\% = \$121$ ). In this example, the tribal member would be awarded the lease. Note: the base bid for tribal members and tribal departments must, at a minimum, meet the Fair Market Value in order to be qualified.
- (b) If the Division receives no qualified applicants, the Director may:

- i. Re-advertise at no more than 20% below the Fair Market Value or the minimum bid; or
    - ii. Re-advertise the option to lease in other newspapers at the established Fair Market Value.
  - (c) In the event of a tie for the highest bid, the Commercial Leasing Specialist shall contact the parties with the tie to offer them the opportunity to submit an additional bid within 5 business days of being notified of the tie. The new bids are ranked pursuant to the ranking procedures. If no one submits a new bid, the process repeats.
- 2.4-9. Applicant Qualifications. Parties not meeting these minimum qualifications will be removed from the ranking list.
- (a) Must have submitted application prior to the application deadline;
  - (b) Bid must meet the Fair Market Value or other established rate;
  - (c) Unless otherwise stated, must have minimum credit score of 600 if an individual, or 650 if a business;
  - (d) Must have maximum debt to income ratio of 36% if an individual or 34% if a business;
  - (e) Must be current with all tribal leases and/or loans for the one calendar year;
  - (f) Must be at least 21 years of age;
  - (g) Must not have filed for bankruptcy within the past three calendar years;
  - (h) Tribal member enrollment verification must be attached, if applicable;
  - (i) Any tribal debt must be paid within 10 business days of being notified of the opportunity to lease. This does not include debt being paid in installments.
  - (j) Businesses and tribal departments must have a current business plan in place incorporating present and projected use of tribal land for agriculture, conservation and/ or any federal program purpose(s).
- 2.4-10. Ranking of Applications. The Commercial Leasing Specialist will rank the qualified applicants. Ranking occurs as follows:
- (a) The highest bidder is designated as “Applicant A”, the second highest bidder as “Applicant B”, etc.
  - (b) If no qualified applicants are received, the Land Commission may consider:
    - i. Re-advertising;
    - ii. Advertising the option to lease in other newspapers;
    - iii. Leasing below the reserve when applicants timely submitted an application;
    - iv. Offering the lease to a tribal department for the reserve lease payment;
    - v. The Commercial Leasing Specialist will send all inquiries for agricultural property received from the Oneida Nation and Tribal Corporations, including the calculation of land lease fees, to the Land Commission for approval.
  - (c) The highest ranked eligible applicant will receive the opportunity to lease. If the highest ranked eligible applicant rejects the opportunity to lease, then the next highest ranked applicant receives the opportunity to lease, and so on.
  - (d) After the bidding occurs, the Commercial Leasing Specialist will prepare a report for each property advertised containing the following information:
    - i. Total number of bids;
    - ii. Amount of each bid;
    - iii. Reasons for disqualification of a bidder. The report shall not include the identity of any bidder.

2.4-11. Preliminary Plans.

(a) Prior to entering into an agriculture lease, the applicant is required to work with NRCS to develop a preliminary conservation plan, nutrient management plan, and pest management plan. If NRCS is unavailable, the applicant is required to work with Eco Services to develop said plans.

(b) Applicant must submit said plans to the NRCS within 10 business days of being notified of the opportunity to lease.

(c) The NRCS is responsible for determining if such plans are acceptable and generally notifies Land Management of such acceptability within 10 business days. If no response is received from NRCS, the Commercial Leasing Specialist shall contact NRCS to obtain approval or rejection of the submitted plan(s).

(d) If the applicant fails to submit the plan(s) to NRCS and/ or Eco Services within 10 business days, as determined in this sub-section, or the applicant does not obtain an approved plan from NRCS, the next ranked applicant is awarded the opportunity to lease or if there is no second qualified applicant, reposting will occur.

2.4-12. Drafting the Lease. After preliminary plans are approved, the Commercial Leasing Specialist shall draft the agriculture lease and obtain approval pursuant to the Division's internal policies and procedures and applicable laws. In addition to standard terms, the lease shall include the following:

(a) Prohibition on sub-leasing, unless approved in accordance with the lease;

(b) Participation in any federal or state crop programs requires Land Commission approval; and

(c) Must obtain approved conservation plan, nutrient management plan, and pest management plan within 30 business days of entering into the lease.

2.4-13. Renewing Leases.

(a) Initial lease term and renewal. All new leases shall be for a term of five (5) years with an option for the lessee to renew the lease for an additional five (5) years.

(b) Tribal department or member. When a lease with a tribal department or tribal member will expire within one (1) year the Commercial Leasing Specialist may offer the lessee a new lease at Fair Market Value and request the current lessee to provide a soil analysis.

(c) Non-tribal member or entity. When a lease with a non-tribal member or entity will expire within one (1) year, the lessee must submit their interest to enter into a new lease, in writing, at least six (6) months but no more than one (1) year prior to the expiration of the current lease. Unless the lease has a renewal clause, lease renewal is discretionary. The Commercial Leasing Specialist may offer the lessee a new lease at Fair Market Value and request the lessee to provide a soil analysis.

2.4-14. Consolidating existing leases. Where a tribal member lessee wishes to consolidate two or more leases into a single lease, the Commercial Leasing Specialist will offer the lessee a single lease subject to the following:

(a) The lease term will be an overage number of years of the existing leases, averaged down to the lowest whole year;

(b) The lease fees for each leased property shall remain the same.

2.4-15. Record Retention.

(a) Unless otherwise required, all applications are retained in the file room for a period of eighteen (18) months. After eighteen months, only those applications resulting in a lease will be retained. All other applications are destroyed after eighteen months.

(b) Unless otherwise required, all bid documents are retained and shall be filed in the file room for a period of eighteen months. After eighteen months, the records are destroyed.

*End.*

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