

Oneida Tribe of Indians of Wisconsin



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

BC Resolution 05-15-14-C Public Use of Tribal Land Law Adoption

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America, and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council, and
- WHEREAS,** a request was submitted to the Legislative Operating Committee to develop a law to provide guidelines regarding the access, use and trespass to Oneida Tribal lands, and
- WHEREAS,** a Public Use of Tribal Land law (Law) was developed to protect environmental and cultural resources on Oneida Tribal lands, clarify who can and cannot access and use Tribal lands and define requirements for posting of Tribal land, and
- WHEREAS,** the Law designates the Environmental Resource Board (ERB) as the entity responsible for adopting a Land Access Map that creates four categories of access to Tribal land: Limited Access, Oneida Community Access, Oneida Tribal Member Access, and Open Access, and
- WHEREAS,** on April 10, 2014, after reviewing community survey results, holding community hearings, reviewing maps, and having discussions with Oneida departments and the Land Commission, ERB approved a Land Access Map, and
- WHEREAS,** a financial analysis on the Law was submitted and indicates that the immediate cost to implement the Law is approximately \$14,600; and it will cost another \$15,000 over the next 7 to 10 years to continue to implement the Law, barring theft or vandalism, and
- WHEREAS,** a public hearing on the Law was held on December 6, 2012, in accordance with Tribal law.
- NOW THEREFORE BE IT RESOLVED,** that the attached Public Use of Tribal Land Law is hereby adopted and shall be effective sixty (60) days after adoption.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 5 members were present at a meeting duly called, noticed and held on the 15th day of May, 2014; that the forgoing resolution was duly adopted at such meeting by a vote of 4 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

A handwritten signature in black ink, appearing to read "Patricia Hoelt".

Patricia Hoelt, Tribal Secretary
Oneida Business Committee

CHAPTER 38 PUBLIC USE OF TRIBAL LAND

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38.1. Purpose and Policy

38.1-1. *Purpose.* The purpose of this Law is to prevent improper access, use and trespass to Tribal lands.

38.1-2. *Policy.* It is the policy of the Tribe to limit access to Tribal land to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

38.2. Adoption, Amendment, Repeal

38.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-05-15-14-C and shall be effective sixty (60) days after adoption.

38.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

38.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

38.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

38.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

38.2-6. This Law shall not be construed to preclude the Tribe from pursuing relief for criminal trespass under applicable law.

38.3. Definitions

38.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal lands.

(b) “Lease” means any lease or agreement, including business site leases, entered into by the Tribe and any person to allow the use of Tribal lands.

(c) “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

(d) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(e) “Trespass” means the unauthorized use or entry on Tribal lands, including unauthorized uses under a Tribal law, permit or lease.

(f) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

(g) “Tribal land” means all Tribal trust lands, and any land or interest in land held by the Oneida Tribe in fee or in any other form on the Reservation.

38.4. Environmental Resource Board

38.4-1. The Environmental Resource Board shall have the duty and power to carry out the intent and purposes of this Law and enforce the provisions of this Law. The Environmental Resource Board, or its designated staff, shall:

- (a) Develop, approve and maintain the Land Access Map.
- (b) Hold public hearings on proposed amendments to the Land Access Map.
- (c) Hear and decide, as the original hearing body, contested cases that may arise under this Law.
- (d) Impose hearing costs and restitution against the person for damages caused by a violation of this Law.
- (e) Determine which Tribal land will be posted and ensure the appropriate signs are posted.
- (f) Implement and interpret the provisions of this Law.

38.5. Land Access Map

38.5-1. *Designation of Tribal Lands.* A Land Access Map shall be created which designates Tribal land as one (1) of the following:

- (a) Limited Access: Lands designated as “Limited Access” shall be open to all persons who are granted land access permission by the Tribe through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.
- (b) Oneida Community Access: Lands designated as “Oneida Community Access” shall be open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; persons who are accompanied at all times by a Tribal member, or the spouse or descendent of a Tribal member; or authorized employees of the Tribe.
 - (1) A Conservation Warden or Oneida Police Officer may require a person to demonstrate proof of eligibility to use Oneida Community Access lands.
 - (2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.
- (c) Oneida Tribal Member Access: Land designated as “Oneida Tribal Member Access” shall be open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.
- (d) Open: Lands designated as “Open Access” shall be generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such designation is deemed beneficial to the Tribe and where such designation does not pose significant risk of damage to the policies of the Tribe and/or the land’s cultural or environmental preservation.

38.5-2. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and

other such designated agencies of the Tribe. The Environmental Resource Board shall adopt the initial Land Access Map.

38.5-3. *General Land Designation.* Unless otherwise designated, Tribal Land shall be designated as Limited Access.

38.5-4. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration shall be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, shall be:

(i) published in the Tribal newspaper; and

(ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

(A) Existing uses of the land and buildings within the general area of the land in question.

(B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board shall not amend the Land Access Map unless it finds that adopting such amendment is in the Tribe's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments shall require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

- (1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or
- (2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

38.6. Trespass

38.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

- (a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.
- (b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Tribal website and/or in the Tribal newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:
 - (1) A sign at least eleven (11) inches square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person is the holder of legal title to the land or by the word "occupant" if the person is a lawful occupant of the land, but not the holder of legal title.
 - (2) Markings at least one (1) foot long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.
- (c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:¹
 - (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
 - (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
 - (3) Engages in any act, or attempted act of hunting, trapping or fishing.
 - (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
 - (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
 - (6) Parks or drives any vehicle on the land.

¹ Current Tribal laws that authorize conduct described in 38.6-1(c): Chapter 12, Protection and Management of Archeological and Historical Resources; Chapter 34, Oneida Tribal Regulation of Domestic Animals Ordinance; Chapter 40, Tribal Environmental Response Law; Chapter 42, Wood Cutting Ordinance; Chapter 44, Recycling and Solid Waste Disposal; Chapter 45, Hunting, Fishing and Trapping Law; Chapter 49: All-Terrain Vehicle Law; Chapter 69, Zoning and Shoreland Protection Law.

- (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
- (8) Uses or possesses leased or subleased lands beyond the possessory rights granted by such lease or sublease.
- (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

38.7. Violations and Appeals

38.7-1. *Issuance of a Citation.* Any person who violates any provision of this Law shall be guilty of a civil infraction, and shall be issued a citation, in writing, by a Conservation Warden or Oneida Police Officer. The issuance of a citation or fine under any other law relating to the same or any other matter shall not preclude the issuance of a citation under this Law.

- (a) The Oneida Business Committee, upon recommendation of the Environmental Resource Board, shall adopt a citation schedule.
- (b) The citation shall specify the date, time and place of the hearing to contest the citation. The hearing shall take place at least five (5) business days after the citation is issued.
- (c) The citation shall also state that the Environmental Resource Board may, in addition to the citation, impose hearing costs and restitution against the person for damages caused by a violation of this Law.

38.7-2. *Citation Hearing.* Any person issued a citation under this Law may contest the citation by attending a hearing before the Environmental Resource Board. The person may appear in person, or be represented by an agent, advocate or attorney.

- (a) If the person does not wish to contest the citation, he or she shall pay the citation by the hearing date specified on the citation.
- (b) After the hearing, the Environmental Resource Board shall:
 - (1) determine whether the person is responsible for the citation, as was issued;
 - (2) determine whether to impose hearing costs and/or restitution against the person for the value of any damage caused by a violation of this Law; and
 - (3) set a new date for when the citation, hearing costs and/or restitution shall be paid, if necessary.
- (c) Any restitution funds received shall be used to repair the damages caused by a violation of this Law.

38.7-3. *Appeals from the Environmental Resource Board Decision.* Any party of interest may appeal a decision of the Environmental Resource Board to the Tribe's judicial system.

End.