

NOTICE OF
PUBLIC MEETING

TO BE HELD
Thursday, May 19th at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: LEASING LAW

This is a proposal to amend the Leasing law which was adopted pending BIA approval. The amendments:

- ◆ Delegate rulemaking authority jointly to the Oneida Land Commission and the Division of Land Management based on the Administrative Rulemaking law [see 65.5-1 and 65.10-5];
- ◆ Specify that this law does not apply to leases included in the Nation's home ownership programs administered using federal funding or leases lasting one (1) year or less [see 65.4-2(b)];
- ◆ Include valuation provisions for residential and agricultural leases [see 65.6-4, 65.6-5, and 65.7-5];
- ◆ Include a provision allowing a residential lease be entered into by a parent or legal guardian on behalf of their child or ward [see 65.6-6]; and
- ◆ Add additional information regarding the process required under the National Environmental Policy Act [see 65.9-2(a)-(d)].

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL May 26, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
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Chapter 65
LEASING

<i>Analysis by the Legislative Reference Office</i>					
Title	Leasing law (the Law)				
Requester	Nathan King, Legislative Affairs	Drafter	Krystal John	Analyst	Tani Thurner
Reason for Request	To amend the Law based on comments received from the Department of the Interior, so that the Law can be approved.				
Purpose	This Law sets 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 (DOLM), Land Commission, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary, Oneida Law Office				
Related Legislation	Real Property Law, Public Use of Tribal Land Law, Administrative Rulemaking law and proposed Eviction Law				
Due Process & Enforcement	Denial of lease requests and cancellation of leases; parties can also request that the Secretary of the Interior review the Tribe's leasing law to ensure it is being followed. DOLM "determinations" are appealable to the Judiciary.				

On May 13, 2015, the Oneida Business Committee (OBC) adopted a new Tribal leasing law, which required approval from the US Department of the Interior (DOI) before it could go into effect. Once it is approved and effective, the Oneida Nation will be able to lease Tribal land held in trust without needing approval from the DOI for each individual lease.

The Law has not yet gone into effect. After adoption by the OBC, the law was submitted to the DOI for approval, but the DOI returned the Law with several comments. Additional changes were made, the draft was re-submitted; and the DOI returned it with more comments.

This draft of the Law was prepared after reviewing the second set of comments provided by the Department of the Interior (DOI). Further changes were made, both based on the comments as well as changes not related to the comments.

Changes not related to the DOI comments

- A new provision is added that authorizes a parent or legal guardian to enter into a residential lease on behalf of his/her child or ward. [65.6-6]
 - In response to a later comment received from the DOI, a definition for guardian is also added to the Law: "one who has legal authority and duty, as appointed by a court of competent jurisdiction, to care for another's person or property because of the other's infancy, incapacity or disability." [65.3-1(f)]
 - This is not limited to minor or incompetent children/wards, so it is not clear if this would authorize a parent to enter into a residential lease on behalf of an adult child over whom the parent had no legal authority.
- Currently, the Law treats leases and lease documents (a broad term that includes lease amendments, assignments, subleases and leasehold mortgages) as separate things. Under the amendments, the definition of "lease document" is expanded to include leases, and provisions throughout the Law that referred to "leases and lease documents" are revised to just refer to lease documents. [65.3-1(j)]
- Currently, every lease is required to include several provisions related to improvements, which are listed in the Law. Under the amendments, every lease amendment, lease

assignment, sublease and leasehold mortgage is now also required to list those requirements related to improvements. [65.5-3]

- Currently, the Law does not apply to mineral leases or to any lease of individually-owned Indian allotted land (*i.e.* individual trust land). Two additional exceptions are added – now, this Law will also not apply to:
 1. Leases lasting exactly one year, or less than one year.
 2. Leases included in the Nation’s home ownership programs administered using federal funding.” [65.4-2(b)]

Changes made per the Department of Interior comments

Note: For this analysis, comments preceded by “DOI 1-” refer to the DOI’s September 21, 2015 comments, and “DOI 2-” refers to the January 22, 2016 comments.

- Clarification that this Law only applies to leasing trust land, not Tribally-owned fee land. The definition of Tribal Trust Land is deleted and the term is replaced with “tribal land”; the definition for tribal land only includes trust land. [65.3-1(t), DOI 1-5 to 1-7, 1-10, 2-1, 2-2]
- References to “encumbrances” are changed to “leasehold mortgages” as this is the only type of encumbrance that may be placed on Tribal trust land. [65.3-1(k), DOI 1-1, 1-3, 1-18, 1-19]
- Clarification that the lessor is always the Oneida Nation, and no longer includes any administrator or assign of the Oneida Nation. [65.3-1(m), DOI 1-4]
- All leases, not just business leases, must contain site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems. [65.5-2(a), DOI 1-13]
- All lease descriptions must now meet the requirements of the BIA’s Land Titles and Records Office (LTRO). [65.5-2(a), DOI 1-13, 1-14, 2-4, 2-6, 2-7]
- When DOLM cancels a lease due to default, it must now be done “pursuant to the Eviction law.” (There is not currently an Eviction law in place, but the Tribe is processing a proposal for an “Eviction and Termination law”.) [65.11-4, DOI 1-24]
- Lease documents must be provided to the BIA for encoding, and to *forward* to the LTRO, instead of being provided to the BIA for recording in the LTRO. Residential subleases are still exempt from this requirement, but encumbrances are no longer exempt. [65.10-3, DOI 1-23, 2-11]
- To clarify that the Oneida Nation is taking over the administration, management, and enforcement of leasing Tribal land, the Law no longer specifically authorizes the Secretary of the Interior to enter leased premises for inspection and to ensure compliance with leases. Instead, only the DOLM may do so. [65.5-2(j), 65.5-2(m), DOI 1-15 and 1-16]
- Currently, the Law addresses how the valuation of a business lease is determined [65.8-6] but does not mention anything about valuation of other types of leases. Two provisions are added to address valuation of residential and agricultural leases. [DOI 1-21, 1-29]
 - Residential Leases – the same requirements for valuation of a business lease are added to the section governing residential leases. [65.6-4] The amendments also add that residential leases may not be approved for less than the appraised fair annual lease value unless DOLM determines such action is in the best interest of the Nation, in which case an appraisal is not required. [65.6-5].
 - Agricultural Leases “are valued based on the bidding process required as part of the lease award process included in the rules, which [DOLM] and the Oneida Land Commission shall jointly develop.” [65.7-5]

- Agricultural leases must now also require the lessee to manage land in accordance with a conservation plan that the Nation is required to develop, as well as any other appropriate stipulations developed by the Nation.” [65.7-4, DOI 1-20, 2-8]
- Currently, every lease is required to include several provisions related to improvements. The amendments add that all lease documents must now also include these, and add that they must include “whether development plans and/or construction management schedules must be submitted to [DOLM] for approval prior to beginning construction of any improvements.” [65.5-3(d), DOI 1-17]
- DOLM may enter property to ensure compliance in accordance with this Law and any other Oneida laws, policies and rules; instead of in accordance with federal regulations. [65.5-2(j), DOI 1-15, 1-16, 2-5]
- Section 65.4-3(c) is deleted, it is redundant and already covered under 65.4-3(a). [DOI 1-9]
- Currently, DOLM determinations may be appealed in accordance with the Judiciary law. The DOI requested that “Judiciary law” be defined. Instead, that provision is changed to say that determinations of DOLM can be appealed with the Oneida Judiciary and a definition for the “Oneida Judiciary” is added. [65.12-1, 65.3-1(o), DOI 1-2, 1-25]

Environmental Review Process

Amendments add that the Environmental Health & Safety Division is responsible for conducting environmental reviews on all proposed lease documents and that the Nation is solely responsible for ensuring the environmental review has been completed in accordance with this law. [65.9-2 and DOI 1-22]

Currently, 65.9-2 only states that environmental reviews “shall be conducted in accordance with the process established under [the National Environmental Policy Act (NEPA)] to evaluate environmental effects of federal undertakings.” The DOI included comments in both sets of comments regarding this provision. The first, (DOI comment 1-22) stated:

One of the potential benefits to tribes under the HEARTH Act is the ability to establish streamlined procedures for an environmental review process. While doing so would eliminate the Tribe’s reference to compliance with NEPA, [...] the HEARTH Act does have minimum requirements -- in general:

- Identification and evaluation of any significant effects of the proposed action on the environment;
- A process that provides how the public will be notified of any significant environmental impacts;
- A process that ensures the public has a reasonable opportunity to comment;
- Ensures the Tribe will respond to “relevant and substantive public comments”

Within a streamlined process, we also look for:

- Definitions for related terms used, i.e., public, environmental impacts, significant effects, etc.;
- Recognition of a categorical exclusion option. If desired;
- Specific timeframes associated with the processes and comment period.

No changes were made to the Law based on that comment. Then, when the second set of comments was received, a new comment was added for this issue:

Comment 2-10 DISCUSSION & REQUIRED: [Comment 1-22] was intended to explain that the Tribe’s Leasing Law must state specific, streamlined environmental review requirements as provided within the HEARTH Act. [...] the minimum requirements referenced in [comment 1-22] must be included in the Tribe’s Leasing Law.

To address this, 65.9-2 was expanded to state:

“The Environmental, Health and Safety Division or its designee shall conduct an environmental review on all proposed lease documents in accordance with the process established under the [NEPA] to evaluate environmental effects of federal undertakings and, at a minimum, the process shall:

- (a) Identify and evaluate any significant effects of the proposed action on the environment;
- (b) Establish a process for notifying the public of significant environmental impacts;
- (c) Ensure that the public has a reasonable opportunity to provide comments regarding the action and its environmental impacts;
- (d) Require the Nation to respond to relevant and substantive comments received from the public.”

Following this change, a *third* comment was received from the DOI for this provision, which recognized that the “specific, ‘streamlined’ requirements per the HEARTH Act” were now included, but added:

“...However ... the Leasing Law must clarify that the NEPA process will be completed by the Tribe (as with approval of the Leasing Law, the Environmental Review is no longer completed by the BIA).”

To satisfy this comment, a sentence is added to 65.9-2 which states “The Nation is solely responsible for ensuring that the environmental review has been completed in accordance with this law.”

DOI comments that did not result in changes

- The DOI suggested that an additional provision be added if the Tribe has land within an irrigation project or drainage district. [DOI 1-12] However, it does not appear that the Tribe has land within such a district, so no change was made.
- The Law only applies to residential, agricultural, and business leases. [65.4-2] The DOI comments noted that Wind and Solar leases and Wind Energy Evaluation Leases are not addressed. No changes were made; but this was a “Discussion,” not a “Required” comment. [DOI 1-8]
- Currently, lease applications must be submitted pursuant to rules and Standard Operating Procedures (SOPs) developed by DOLM. The DOI recommended including more detail within the Law as to the steps in the leasing process, because:
“Detailing how an application is obtained, who initiates various steps (i.e., the potential lessee or the Tribal department, etc.) can be helpful to applicants and perhaps lessen the time tribal staff has to spend responding to routine inquiries.”
[DOI comment 1-11]

However, instead of adding more detail to the steps, the Law was instead amended to state that applications are submitted to DOLM “pursuant to the Rules which [DOLM] and the Oneida Land Commission shall jointly develop.”[65.5-1] This does not satisfy the recommendation; but this was not a “Required” change.

Rulemaking Authority

A definition for “Rule” is added – it means “a set of requirements, including fee schedules, enacted jointly by Land Management and the Oneida Land Commission in accordance with the Administrative Rulemaking law based on authority delegated in this law

in order to implement, interpret and/or enforce this law.” [65.3-1(q)] The amendments add that DOLM is also authorized to enforce rules developed pursuant to this Law. [65.11-1]

Clear Rulemaking Authority

The Law clearly delegates rulemaking authority to DOLM and the Land Commission to jointly develop rules:

- Governing how parties submit an application for a lease document. [65.5-1]
- Which must include a lease award process which must include a bidding process which is used to determine the valuation of agricultural leases. [65.7-5]
- Requiring administrative fees for issuing a lease document or conducting any other administrative transaction. [65.10-5]

Possible Rulemaking Authority

This Law delegates authority to DOLM develop or implement the following, but it is not clear if this is a delegation of rulemaking authority – the word “Rule” is not used, so it is not clear if the following would be subject to the newly-established Rulemaking process:

- A **leasing management plan** that ... addresses accounting, collections, monitoring, enforcement, relief, and remedies. [65.10-1(b)]
- An **accounting system** that generates invoices, accounts for payments, and dates of when rate adjustments should be made. [65.10-2]
- A **procedure equivalent to an appraisal** for determining fair annual lease value for business and residential leases. [65.6-4(a) and 65.8-5(a)]
- The **format and requirements** set out in lease document applications. (These must be approved by the Land Commission) [65.5-1(a)]
- **Additional procedures and processes to be followed when offering and awarding lease documents** (these must be approved by the Land Commission). [65.5-1(a)]

Other Entities – Potential Rulemaking Authority

The Law references other rules/plans/processes, but is not clear about who must develop/implement them or whether these are considered rules (in some situations, the Law just states the “Nation” will develop the plan but this is not identifying a responsible party)

- 65.7-4 refers to “the conservation plan that the Nation shall develop and any agricultural resource management plan and/or other appropriate stipulations developed by the Nation.”
- 65.9-2 refers to an **environmental review, which must be conducted in accordance with the process established under [NEPA]** and which must meet requirements listed in the law.
- 65.8-4(c) refers to “any **business leasing management plan** developed by the Nation.”

New Responsibilities for the Land Commission

Currently, the Law only mentions the Land Commission once – it responsible for *approving* the format/requirements for lease applications, and additional processes/procedures for awarding leases/lease documents. [65.5-1(a)] The amended law makes the Land Commission jointly responsible for developing rules, so along with the Department, the Land Commission will be jointly responsible for performing all of the other responsibilities required by the Administrative Rulemaking law, such as preparing each rule, including publishing notice; conducting public meetings, and requesting/obtaining required analyses for the rule(s). [65.5-1 and DOI 2-3]

Other

To reflect the Oneida Constitutional amendments adopted in 2015, various references to the “Tribe” were changed to “Nation.” The definitions for Cultural Heritage Department, Environmental Health and Safety Division, and Land Management (DOLM) no longer state that

they are “Tribal” entities; just that they are entities. [65.3-1]

Additional minor changes were made to ensure the document is consistent with standard drafting practices; and to improve the flow and clarity of the Law; these did not affect the content of the Law.

A public meeting has not been held.

Chapter 65 LEASING

65.1. Purpose and Policy	65.1. Purpose and Policy
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65.3. Definitions	65.3. Definitions
65.4. General Provisions	65.4. General Provisions
65.5. Lease and Lease Document Requirements	65.5. Lease Document Requirements
65.6. Residential Leases	65.6. Residential Leases
65.7. Agricultural Leases	65.7. Agricultural Leases
65.8. Business Leases	65.8. Business Leases
65.9. Environmental and Cultural Reviews	65.9. Environmental and Cultural Reviews
65.10. Lease Management	65.10. Lease Management
65.11. Enforcement	65.11. Enforcement
65.12. Appeals	65.12. Appeals

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65.5. Lease Document Requirements	65.5. Lease Document Requirements
65.6. Residential Leases	65.6. Residential Leases
65.7. Agricultural Leases	65.7. Agricultural Leases
65.8. Business Leases	65.8. Business Leases
65.9. Environmental and Cultural Reviews	65.9. Environmental and Cultural Reviews
65.10. Lease Management	65.10. Lease Management
65.11. Enforcement	65.11. Enforcement
65.12. Appeals	65.12. Appeals

65.1. Purpose and Policy

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

65.1-2. *Policy.* It is the policy of the ~~Tribe~~Nation to set out the expectations and responsibilities of the ~~lessors~~lessor and lessees of ~~Tribal~~tribal land and to ensure the leasing of ~~Tribal~~tribal land results in minimal risk to the ~~Tribe~~Nation.

65.2. Adoption, Amendment, Repeal

65.2-1. This ~~Law~~law was adopted by the Oneida Business Committee by resolution BC-05-13-15-C and ~~shall take effect~~amended by resolution BC-_____ and becomes effective thirty (30) ~~calendar~~calendar days after approval by the Secretary of the Interior.

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

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

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

(a) ~~___~~To the extent that this ~~Law~~law conflicts with any applicable federal statutes or regulations, the federal statute or regulation ~~shall control~~controls.

(b) ~~___~~To the extent that any lease to which this ~~Law~~law applies conflicts with this ~~Law~~law, this ~~Law~~law ~~shall control~~law controls.

65.2-5. This ~~Law~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of~~Indians of WisconsinNation.

65.3. Definitions

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

(a) "Assignment" ~~shall mean~~means an agreement between a lessee and an assignee

38 whereby the assignee acquires all or some of the lessee’s rights and assumes all or some
39 of the lessee’s obligations under a lease.

40 (b) “Cultural Heritage Department” ~~shall mean~~means the ~~Tribal~~ entity responsible for
41 conducting cultural reviews as required under this ~~Law~~law.

42 (c) “Cultural ~~review~~” ~~shall mean~~Review” means a review of the anticipated effects of a
43 proposed lease ~~or lease~~ document on archaeological, cultural and/or historic resources.

44 ~~(d) “Day” or “days” shall mean calendar days, unless otherwise specified.~~

45 ~~(e) “Encumbrance” shall mean a claim or liability that is attached to property.~~

46
47 ~~(f)(d)~~ “Environmental, Health and Safety Division” ~~shall mean~~means the ~~Tribal~~ entity
48 responsible for conducting environmental reviews as required under this ~~Law~~law.

49 ~~(g)(e)~~ “Environmental ~~review~~” ~~shall mean~~Review” means a review of the anticipated
50 environmental effects of a proposed lease ~~or lease~~ document.

51 (f) “Guardian” means one who has legal authority and duty, as appointed by a court of
52 competent jurisdiction, to care for another’s person or property because of the other’s
53 infancy, incapacity or disability.

54 ~~(h)(g)~~ “Improvements” ~~shall mean~~means buildings, other structures, and associated
55 infrastructure attached to the leased premises.

56 (h) “Judiciary” means the judicial system that was established by Oneida General Tribal
57 Council resolution GTC-01-07-13-B to administer the judicial authorities and
58 responsibilities of the Nation.

59 (i) “Land Management” ~~shall mean~~means the Division of Land Management or other
60 ~~Tribal~~ entity responsible for entering into leases of ~~Tribal~~tribal land.

61 (j) “Lease” ~~shall mean~~means a written contract between the ~~Tribe~~Nation and a lessee,
62 whereby the lessee is granted a right to use or occupy ~~Tribal~~tribal land, for a specified
63 purpose and duration.

64 (k) “Lease ~~document~~” ~~shall mean~~Document” means a lease, lease amendment, lease
65 assignment, sublease or ~~encumbrance~~leasehold mortgage.

66 (l) “Leasehold ~~mortgage~~” ~~shall mean~~Mortgage” means a mortgage, deed of trust, or
67 other instrument that pledges a lessee’s leasehold interest as security for a debt or other
68 obligation owed by the lessee to a lender or other mortgagee.

69 (m) “Lessee” ~~shall mean~~means a person or entity who has acquired a legal right to use or
70 occupy ~~Tribal~~tribal land by a lease under this ~~Law~~law, or one who has the right to use or
71 occupy a property under a lease.

72 ~~(n)~~ “Lessor” ~~shall mean~~means the ~~Tribe~~Nation, in its capacity as the legal, beneficial
73 and/or equitable owner of ~~Tribal~~tribal land subject to a lease, ~~and any administrator or~~
74 ~~assign of.~~

75 ~~(n)(o)~~ “Nation” means the ~~Tribe~~Oneida Nation.

76 ~~(o)(p)~~ “Performance ~~bond~~” ~~shall mean~~Bond” means a bond given to ensure the timely
77 performance of a lease.

78 (q) “Rule” means a set of requirements, including fee schedules, enacted jointly by Land
79 Management and the Oneida Land Commission in accordance with the Administrative
80 Rulemaking law based on authority delegated in this law in order to implement, interpret
81 and/or enforce this law.

82 ~~(p)(r)~~ “Secretary” ~~shall mean~~means the Secretary of the Interior, U.S. Department of the
83 Interior, or its authorized representative.

84 ~~(q)(s)~~ “Sublease” ~~shall mean~~means a written agreement by which the lessee grants to a
85 person or entity a right to use or occupy no greater than that held by the lessee under the

86 lease.

87 ~~(r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.~~

88 ~~(s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee~~
89 ~~status.~~

90 (t) ~~“Tribal trust land” shall mean~~ Land” means the surface estate of land or any interest
91 therein held by the United States in trust for the TribeNation; land held by the
92 TribeNation subject to federal restrictions against alienation or encumbrance; land
93 reserved for federal purposes; and/or land held by the United States in trust for ~~a Tribal~~
94 ~~corporation chartered~~the Nation under Section 17 of the Indian Reorganization Act, 25
95 U.S.C §§ ~~461-479~~§477, et. seq.

97 **65.4.– General Provisions**

98 65.4-1.–~~Applicable Land.~~ This Lawlaw applies to all ~~Tribal~~tribal land.

99 65.4-2.–~~Applicable Leases.~~

100 (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and
101 regulations, this ~~Law shall apply~~law applies to all residential, agricultural and business
102 leases executed by the TribeNation and to all actions and decisions taken in connection
103 with those leases. Provided that, nothing herein ~~shall~~may be construed to affect the terms
104 and conditions of leases existing when this Lawlaw goes into effect or amendments,
105 assignments, subleases or encumbrances made to those leases.

106 (b) This ~~Law shall~~law does not apply to mineral leases ~~or to~~, leases included in
107 owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2-), leases included in
108 the Nation’s home ownership programs administered using federal funding or leases
109 lasting one (1) year or less.

110 65.4-3.–~~Applicable Law.~~ In addition to this Lawlaw, leases approved under this Lawlaw are
111 subject to:

112 (a)–~~all Tribal law of the Nation’s laws,~~ except to the extent those ~~Tribal~~ laws are
113 inconsistent with applicable federal law; and

114 (b)–~~applicable federal laws; and.~~

115 ~~(c) any specific federal statutory requirements that are not incorporated in this Law.~~

116 65.4-4.–Pursuant to the authority of the Secretary to fulfill the trust obligation of the United
117 States to the TribeNation under federal law, the Secretary may, upon reasonable notice from the
118 TribeNation and at the discretion of the Secretary, enforce the provisions of, or cancel, any
119 residential, agricultural or business lease on ~~Tribal trust~~tribal land executed by the TribeNation.
120 The United States ~~shall~~may not be liable for losses sustained by any party to a residential,
121 agricultural or business lease executed pursuant to this Lawlaw.

122 65.4-5.–~~All Lease parties shall resolve all~~ disputes over residential, agricultural and business
123 leases ~~shall be resolved~~ under the Nation’s laws ~~of the Tribe~~ and in accordance with federal law.
124 Nothing in this Law ~~shall~~law may be construed to waive the Tribe’sNation’s sovereign
125 immunity.

126 65.4-6.–After the Secretary approves this Lawlaw, all leases of ~~Tribal trust~~tribal land approved
127 and executed under this Law ~~shall be~~law may become effective without federal approval under
128 25 U.S.C. 415(h), unless the Secretary rescinds approval of this Lawlaw and reassumes
129 responsibility for such approval.

131 **65.5.–Lease and Lease Document Requirements**

132 65.5-1.–~~Information and Application.~~ Land Management shall approve and execute all leases.
133 InformationLand Management shall make available information on obtaining residential,

134 agricultural or business ~~leases or~~ lease documents ~~shall be available at Land Management.~~
135 Parties interested in obtaining a residential, agricultural or business lease ~~or lease~~ document shall
136 submit an application to Land Management pursuant to the rules which Land Management and
137 the Oneida Land Commission shall jointly develop.

138 (a) ~~Land Management shall develop, and the Oneida Land Commission shall~~
139 ~~approve, the format and requirements set out in the lease and lease~~ document applications
140 for different types of leases, as well as additional procedures and processes to be
141 followed when offering and awarding ~~leases and~~ lease documents.

142 65.5-2. ~~Terms and Conditions.~~ Leases Land Management shall ~~be ensure leases are~~ in writing
143 and contain, at a minimum, the following:

144 (a) ~~A description of the land or building being leased; business leases shall contain~~
145 ~~adequate site including~~ surveys and legal descriptions based on metes and bounds,
146 rectangular, or lot and block systems which meet the requirements of the Land Titles and
147 Records Office of the Bureau of Indian Affairs;

148 (b) ~~The effective date and term of the lease;~~

149 (c) ~~The purpose of the lease and authorized uses of the leased premises;~~

150 (d) ~~The parties to the lease;~~

151 (e) ~~How much rent is due, when it is due, who receives it, what form(s) of payment is~~
152 ~~acceptable, and whether any late payment charges or special fees apply and the rate of~~
153 ~~interest to be charged if the lessee fails to make payments in a timely manner;~~

154 (f) ~~Whether there will be rental reviews or adjustments, how and when they will be done,~~
155 ~~when any adjustments will be effective and how disputes regarding adjustments will be~~
156 ~~resolved;~~

157 (g) ~~Who will be~~ responsible for any taxes applied to the property and/or
158 improvements;

159 (h) ~~Due diligence requirements that apply, if any;~~

160 (i) ~~Performance bond and insurance requirements that apply, if any;~~

161 (j) ~~Land Management or the Secretary~~ has the right, at any reasonable time during the
162 term of the lease and upon reasonable notice, in accordance with ~~federal regulations~~ this
163 law and any other applicable laws, policies and rules of the Nation, to enter the leased
164 premises for inspection and to ensure compliance with the lease;

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

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

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

176 65.5-3. ~~Improvements.~~ A Land Management shall ensure lease ~~shall documents~~ set out
177 requirements related to improvements, including:

178 (a) ~~whether improvements may be constructed;~~

179 (b) ~~ownership of improvements;~~

180 (c) ~~responsibility for constructing, operating, maintaining and managing~~
181 improvements;

182 | ~~(d)–~~ whether the lessee shall submit development plans and/or construction
183 | management schedules to Land Management for approval prior to beginning construction
184 | of any improvements;

185 | ~~(e)~~ removal of improvements;

186 | ~~(e)–f)~~ whether a lessee may develop equity in improvements and sell its interest in the
187 | lease based on the equity; and

188 | ~~(f)–g)~~ the lessor’s right of first refusal to purchase the lessee’s interest, if any.

189 | 65.5-4. ~~Obtaining a Lease Document.~~ Lease–Land Management shall ensure lease documents
190 | shall be entered into by written consent of the lessor and the lessee, unless otherwise provided
191 | herein and ~~shall~~ that the lease documents contain ~~the effective date of the lease document~~ dates.

192 | (a)– The lease may authorize subleases only upon approval and execution from Land
193 | Management. This in no way relieves the parties from carrying out their duties under the
194 | lease.

195 | (b)– The lease may authorize encumbrances, including leasehold mortgages, on the
196 | leasehold interest for the purpose of financing to develop and improve the premises.
197 | ~~Approval of the encumbrance by Land Management is required~~ shall approve the
198 | leasehold mortgage.

199 | (c)– The lease shall may not authorize mortgages that encumber title to ~~Tribal~~ tribal
200 | land.

201 | 65.5-5. ~~Payments.~~ For any lease requiring payments to be made to the lessor, the lessor shall
202 | provide the Secretary with such documentation of the lease payments as the Secretary may
203 | request to enable the Secretary to discharge the trust responsibility of the United States.

204 | 65.5-6. ~~Environmental and Cultural Reviews.~~ Land Management ~~shall~~ may not approve a lease
205 | ~~or lease document~~ until an environmental review and a cultural review, as required under section
206 | 65.9, have been completed. Leases approved and executed in violation of this section ~~shall be~~ are
207 | null and void.

208 | 65.5-7. ~~Documentation.~~ The following are required for a party to enter into a lease:

209 | (a) – a signed lease; and

210 | (b)– any reports, surveys and site assessments needed to comply with Tribal ~~the~~
211 | Nation’s environmental, cultural resource and land use requirements.

212 | **65.6. ~~Residential Leases~~**

214 | 65.6-1. ~~In addition to the requirements that apply to all leases under section 65.5, the~~
215 | ~~requirements of this section shall~~ also apply to residential leases.

216 | 65.6-2. ~~A residential lease shall be entered into~~ is required for the lease of land suited or used for
217 | the construction, improvement, and/or maintenance of a dwelling and related structures on the
218 | premises, and otherwise to use or occupy said premises for residential purposes.

219 | 65.6-3. ~~Duration.~~ Residential leases ~~shall~~ may not exceed seventy-five (75) years.

220 | 65.6-4. Appraisal, Local Studies.

221 | (a) Land Management shall determine the fair annual lease value using an appraisal or
222 | equivalent procedure performed by Land Management utilizing the following data:
223 | improvement cost, replacement cost, earning capacity, and sales and lease data of
224 | comparable sites. Land Management shall ensure that an appraisal log reporting the
225 | methods of appraisal and value of the tribal land is attached to every residential lease.

226 | (b) Alternatively, Land Management shall determine the fair annual lease value using an
227 | appraisal performed by a licensed appraiser utilizing the Uniform Standards of
228 | Professional Appraisal Practice or another commonly accepted method of appraisal.
229 | Land Management shall ensure that an appraisal log describing the method of appraisal

230 | and value of the tribal land is attached to every residential lease.

231 | 65.6-5. Fair Annual Lease Value. Land Management may offer residential leases at reduced
232 | rates if it determines that doing so is in the best interest of the Nation. Under such circumstances
233 | an appraisal is not required. In all other circumstances, a residential lease may not be approved
234 | for less than the present fair annual lease value as set forth in the appraisal.

235 | 65.6-6. Lease by Guardian. A parent or legal guardian may enter into a residential lease on
236 | behalf of his or her child or ward.

237 |
238 | **65.7. Agricultural Leases**

239 | 65.7-1. ~~In addition to the requirements that apply to all leases under section 65.5, the~~
240 | ~~requirements of this section shall~~ also apply to agricultural leases.

241 | 65.7-2. ~~An agricultural lease shall be entered into~~ is required for the lease of land suited or used
242 | for the production of crops, livestock or other agricultural products, or land suited or used for a
243 | business that supports the surrounding agricultural community.

244 | 65.7-3. ~~Duration and Renewal.~~ Agricultural leases ~~shall~~ may not exceed twenty-five (25) years,
245 | except that any such lease may include an option to renew for up to two (2) additional terms,
246 | which may not exceed twenty-five (25) years each.

247 | 65.7-4. ~~Land Management. Agricultural leases of Land.~~ Land Management shall ensure that
248 | agricultural leases require the lessee to manage land in accordance with the conservation plan
249 | that the Nation shall develop and any agricultural resource management plan and/or other
250 | appropriate stipulations developed by the TribeNation.

251 |
252 | 65.7-5. Lease Valuation. Agricultural leases are valued based on the bidding process required
253 | as part of the lease award process included in the rules, which Land Management and the Oneida
254 | Land Commission shall jointly develop.

255 |
256 | **65.8. ~~65.8.~~ Business Leases**

257 | 65.8-1. ~~In addition to the requirements that apply to all leases under section 65.5, the~~
258 | ~~requirements of this section shall~~ also apply to business leases.

259 | 65.8-2. ~~A business lease shall be entered into~~ is required for the lease of land suited or used for
260 | business purposes including retail, office, manufacturing, storage, or other business purposes;
261 | and public purposes, including religious, educational, recreational, cultural, or other public
262 | purposes.

263 | 65.8-3. ~~Duration and Renewal.~~ Business leases ~~shall~~ may not exceed twenty-five (25) years,
264 | except that any such lease may include an option to renew for up to two (2) additional terms,
265 | which may not exceed twenty-five (25) years each.

266 | 65.8-4. ~~Supporting Documents.~~ All applicants for business ~~site~~ leases shall submit the following
267 | documents to Land Management:

268 | (a) ~~financial statement;~~

269 | (b) ~~site survey and legal description, if applicable;~~

270 | (c) ~~other documents as may be required by any business site-leasing management~~
271 | ~~plan developed by the TribeNation.~~

272 | 65.8-5. ~~Appraisal, Local Studies.~~

273 | (a) ~~The~~ Land Management shall determine the fair annual lease value ~~shall be~~
274 | ~~determined by using~~ an appraisal or equivalent procedure performed by Land
275 | Management utilizing the following data: improvement cost, replacement cost, earning
276 | capacity, and sales and lease data of comparable sites. ~~An~~ Land Management shall ensure
277 | that an appraisal log reporting the methods of appraisal and value of the ~~Tribe~~ tribal land

278 ~~shall be~~ attached to every business site lease.

279 (b) ~~—~~ Alternatively, Land Management shall determine the fair annual lease value ~~shall~~
280 ~~be determined by using~~ an appraisal performed by a licensed appraiser utilizing the
281 Uniform Standards of Professional Appraisal Practice or another commonly accepted
282 method of appraisal. ~~An~~ Land Management shall ensure that an appraisal log describing
283 the method of appraisal and value of the ~~Tribal~~ tribal land ~~shall be~~ attached to every
284 business site lease.

285 65.8-6. ~~Fair Annual Lease Value.~~

286 (a) ~~—~~ No lease ~~shall~~ may be approved for less than the present fair annual lease value as
287 set forth in the appraisal, except as follows:

288 (1) ~~—~~ The lessee is in the development period;

289 (2) ~~—~~ Land Management is providing an incentive for businesses to locate on
290 ~~Tribal~~ tribal land, and ~~must provide~~ is providing lease concessions, lease
291 improvement credits, and lease abatements to attract such business; or

292 (3) ~~—~~ Land Management determines such action is in the best interest of the
293 ~~Tribe~~ Nation.

294 (b) ~~—~~ A lease may:

295 (1) ~~—~~ Be structured at a flat lease rate; and/or

296 (2) ~~—~~ Be structured at a flat lease rate plus a percentage of gross receipts, if the
297 lessee is a business located in a shopping center, or the lessee generates over one
298 million dollars (\$1,000,000.00) annually in gross receipts; and/or

299 (3) ~~—~~ Be structured based on a percentage of gross receipts, or based on a
300 market indicator; and/or

301 (4) ~~—~~ Be structured to allow for lease rate adjustments. ~~The~~ Land Management
302 shall ensure that the lease ~~shall specify~~ specifies how adjustments will be made,
303 who will make such adjustments, when adjustments ~~will~~ go into effect, and how
304 disputes ~~shall~~ may be resolved; and/or

305 (5) ~~—~~ Be amended to allow for lease rate adjustments; and/or

306 (6) ~~—~~ Provide for periodic review. ~~Such review shall give~~ giving consideration
307 to the economic conditions, exclusive of improvement or development required
308 by the contract or the contribution value of such improvements.

309 (c) ~~—~~ Land Management shall keep written records of the basis used in determining the
310 fair annual lease value, as well as the basis for adjustments. ~~These and shall present such~~
311 records ~~shall be presented~~ to the lessee and ~~included~~ include them in any lease file.

312 65.8-7. ~~Performance Bond.~~ If a performance bond is required under a business lease, ~~a the~~
313 ~~lessee shall obtain the~~ performance bond ~~shall be obtained by the lessee~~ in an amount that
314 reasonably assures performance on the lease. ~~Such bond shall be~~ Land Management may require
315 performance bonds for the purpose of guaranteeing any of the following:

316 (a) ~~—~~ The annual lease payment;

317 (b) ~~—~~ The estimated development cost of improvements; and

318 (c) ~~—~~ Any additional amount necessary to ensure compliance with the lease.

319
320 **65.9. ~~Environmental and Cultural Reviews~~**

321 65.9-1. ~~Applicability.~~ Land Management ~~shall~~ may not consider approving a lease ~~or lease~~
322 document until an environmental review and a cultural review have been completed.

323 65.9-2. ~~Environmental Reviews.~~ ~~An~~ The Nation is solely responsible for ensuring that the
324 environmental review ~~shall be conducted by or at the request of the~~ has been completed in
325 accordance with this law. The Environmental, Health and Safety Division or its designee shall

326 | conduct an environmental review on all proposed ~~leases and~~ lease documents. ~~The~~
327 | ~~environmental review shall be conducted~~ in accordance with the process established under the
328 | National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental
329 | effects of federal undertakings. and, at a minimum, the process shall:

330 | (a) Identify and evaluate any significant effects of the proposed action on the
331 | environment;

332 | (b) Establish a process for notifying the public of significant environmental impacts;

333 | (c) Ensure that the public has a reasonable opportunity to provide comments regarding
334 | the action and its environmental impacts;

335 | (d) Require the Nation to respond to relevant and substantive comments received from
336 | the public.

337 | 65.9-3. ~~Cultural Reviews.~~ A cultural review shall be conducted by or at the request of the ~~The~~
338 | Cultural Heritage Department or its designee shall conduct a cultural review on all proposed
339 | ~~leases and~~ lease documents. ~~The cultural review shall be conducted~~ in accordance with the
340 | permit review requirements for undertakings established in the Protection and Management of
341 | Archeological & Historical Resources law.

342 | 65.9-4. ~~Environmental and Cultural Review Completion.~~ The Environmental, Health and Safety
343 | Division shall forward a completed environmental review and the cultural review to Land
344 | Management for consideration in the approval or denial of a lease ~~or lease~~ document.

345 | (a) ~~Before approving a lease or~~ lease document, Land Management may require any
346 | reasonable actions, as recommended within the environmental review or cultural review,
347 | be completed.

348 | (b) ~~The~~ Environmental, Health and Safety Division shall prepare an updated
349 | environmental review and the Cultural Heritage Department shall prepare an updated
350 | cultural review upon completion of any reasonable actions.

351

352 | **65.10. ~~Lease Management~~**

353 | 65.10-1. ~~Management Plan.~~ Land Management shall:

354 | (a) ~~manage~~ existing leases as well as those executed pursuant to this ~~Law~~ law; and

355 | (b) ~~institute~~ a leasing management plan that employs sound real estate management
356 | practices, and addresses accounting, collections, monitoring, enforcement, relief, and
357 | remedies.

358 | 65.10-2. ~~Accounting.~~ Land Management shall implement an accounting system that
359 | generates invoices, accounts for payments, and dates of when rate adjustments should be made.
360 | Nothing in this section ~~shall~~ may be construed to absolve the lessee of its duties under a lease.

361 | 65.10-3. ~~Recording Leases and Lease Documents.~~ Land Management shall provide all
362 | ~~leases and~~ lease documents of ~~Tribal trust~~ tribal land, except residential subleases ~~and~~
363 | ~~encumbrances~~, to the Bureau of Indian Affairs for ~~recording in~~ encoding and to be forwarded to
364 | the Land Titles and Records Office. ~~All leases and~~ Land Management shall record all lease
365 | documents of ~~Tribal~~ tribal land ~~shall also be recorded in with~~ the ~~Tribe's~~ Oncida Nation Register
366 | of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the
367 | lessee.

368 | 65.10-4. ~~Ownership of Records.~~ Records of activities taken pursuant to this ~~Law~~ law with
369 | respect to ~~Tribal trust~~ tribal land are the property of the United States and the ~~Tribe~~ Nation.
370 | Records compiled, developed or received by the lessor in the course of business with the
371 | Secretary are the ~~Nation's~~ Nation's property ~~of the Tribe~~.

372 | 65.10-5. ~~Administrative Fees.~~ Land Management and the Oncida Land Commission may
373 | ~~charge~~ jointly develop rules requiring administrative fees for costs associated with issuing a lease

374 | ~~or lease~~ document, or conducting any other administrative transaction.

375

376 | **65.11.– Enforcement**

377 | 65.11-1.– ~~Land Management shall have~~ is delegated all powers necessary and proper to
378 | enforce ~~this Law and~~ the lease terms; this law and any rules developed pursuant to this law.
379 | This includes, but is not limited to, the power to enter the premises, assess penalties, assess late
380 | payments and cancel leases. Land Management may request the Oneida Law Office assist in
381 | enforcement of this ~~Law~~ law, rules and leases.

382 | 65.11-2.– Harmful or Threatening Activities. If a lessee or other party causes or threatens to
383 | cause immediate and significant harm to the premises, or undertakes criminal activity thereon,
384 | Land Management or another interested party may take appropriate emergency action, which
385 | ~~includes~~ may include cancelling the lease and/or securing judicial relief.

386 | 65.11-3.– Holdovers and Trespass. If a lessee remains in possession of a property after the
387 | expiration or cancellation of a lease, or a person occupies a property without Land
388 | Management’s approval, Land Management shall take action to recover possession of the
389 | property; and/or pursue additional remedies, such as damages, if applicable.

390 | 65.11-4.– Defaults. If Land Management determines a lessee is in default, Land
391 | Management shall take action to have the lessee cure the default or, if the default is not cured,
392 | cancel the lease pursuant to the Eviction and Termination law.

393 | 65.11-5.– Penalties. Unless the lease provides otherwise, interest charges and late payment
394 | penalties ~~shall~~ apply in the absence of any specific notice to the lessee from Land Management,
395 | and Land Management shall treat the failure to pay such amounts ~~shall be treated~~ as a breach of
396 | the lease.

397

398 | **65.12.– Appeals**

399 | 65.12-1.– The lessee or an interested party may appeal a determination of Land
400 | Management with the Judiciary in accordance with ~~the Judiciary law and~~ any applicable rules of
401 | procedure.

402

403 | *End.*

404

405 | Adopted-BC-05-13-15-C, pending BIA approval

Chapter 65 LEASING

65.1. Purpose and Policy
65.2. Adoption, Amendment, Repeal
65.3. Definitions
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65.6. Residential Leases

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65.9. Environmental and Cultural Reviews
65.10. Lease Management
65.11. Enforcement
65.12. Appeals

1
2 **65.1. Purpose and Policy**

3 65.1-1. *Purpose.* The purpose of this law is to set out the Nation’s authority to issue, review,
4 approve and enforce leases. In addition, the purpose of this law is to meet the requirements of
5 the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH
6 Act) by establishing a process under which the Nation will be able to approve leases on tribal
7 land without additional approval of the Secretary of the Interior.

8 65.1-2. *Policy.* It is the policy of the Nation to set out the expectations and responsibilities of
9 the lessor and lessees of tribal land and to ensure the leasing of tribal land results in minimal risk
10 to the Nation.

11
12 **65.2. Adoption, Amendment, Repeal**

13 65.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-13-15-C
14 and amended by resolution BC-_____ and becomes effective thirty (30) calendar days after
15 approval by the Secretary of the Interior.

16 65.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to
17 the procedures set out in the Legislative Procedures Act. Major, substantive changes to this law
18 may not take effect until they have been approved by the Secretary of the Interior. Minor,
19 technical amendments may take effect upon adoption by the Oneida Business Committee.

20 65.2-3. Should a provision of this law or the application thereof to any person or circumstances
21 be held as invalid, such invalidity shall not affect other provisions of this law which are
22 considered to have legal force without the invalid portions.

23 65.2-4. In the event of a conflict between a provision of this law and a provision of another law,
24 the provisions of this law shall control.

25 (a) To the extent that this law conflicts with any applicable federal statutes or regulations,
26 the federal statute or regulation controls.

27 (b) To the extent that any lease to which this law applies conflicts with this law, this law
28 controls.

29 65.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
30

31 **65.3. Definitions**

32 65.3-1. This section shall govern the definitions of words and phrases used within this law. All
33 words not defined herein shall be used in their ordinary and everyday sense.

34 (a) “Assignment” means an agreement between a lessee and an assignee whereby the
35 assignee acquires all or some of the lessee’s rights and assumes all or some of the lessee’s
36 obligations under a lease.

37 (b) “Cultural Heritage Department” means the entity responsible for conducting cultural
38 reviews as required under this law.

39 (c) “Cultural Review” means a review of the anticipated effects of a proposed lease
40 document on archaeological, cultural and/or historic resources.
41

42 (d) “Environmental, Health and Safety Division” means the entity responsible for
43 conducting environmental reviews as required under this law.

44 (e) “Environmental Review” means a review of the anticipated environmental effects of
45 a proposed lease document.

46 (f) “Guardian” means one who has legal authority and duty, as appointed by a court of
47 competent jurisdiction, to care for another’s person or property because of the other’s
48 infancy, incapacity or disability.

49 (g) “Improvements” means buildings, other structures, and associated infrastructure
50 attached to the leased premises.

51 (h) “Judiciary” means the judicial system that was established by Oneida General Tribal
52 Council resolution GTC-01-07-13-B to administer the judicial authorities and
53 responsibilities of the Nation.

54 (i) “Land Management” means the Division of Land Management or other entity
55 responsible for entering into leases of tribal land.

56 (j) “Lease” means a written contract between the Nation and a lessee, whereby the lessee
57 is granted a right to use or occupy tribal land, for a specified purpose and duration.

58 (k) “Lease Document” means a lease, lease amendment, assignment, sublease or
59 leasehold mortgage.

60 (l) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that
61 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the
62 lessee to a lender or other mortgagee.

63 (m) “Lessee” means a person or entity who has acquired a legal right to use or occupy
64 tribal land by a lease under this law, or one who has the right to use or occupy a property
65 under a lease.

66 (n) “Lessor” means the Nation, in its capacity as the legal, beneficial and/or equitable
67 owner of tribal land subject to a lease.

68 (o) “Nation” means the Oneida Nation.

69 (p) “Performance Bond” means a bond given to ensure the timely performance of a lease.

70 (q) “Rule” means a set of requirements, including fee schedules, enacted jointly by Land
71 Management and the Oneida Land Commission in accordance with the Administrative
72 Rulemaking law based on authority delegated in this law in order to implement, interpret
73 and/or enforce this law.

74 (r) “Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or its
75 authorized representative.

76 (s) “Sublease” means a written agreement by which the lessee grants to a person or entity
77 a right to use or occupy no greater than that held by the lessee under the lease.

78 (t) “Tribal Land” means the surface estate of land or any interest therein held by the
79 United States in trust for the Nation; land held by the Nation subject to federal
80 restrictions against alienation or encumbrance; land reserved for federal purposes; and/or
81 land held by the United States in trust for the Nation under Section 17 of the Indian
82 Reorganization Act, 25 U.S.C §477, et. seq.

83
84 **65.4. General Provisions**

85 65.4-1. *Applicable Land.* This law applies to all tribal land.

86 65.4-2. *Applicable Leases.*

87 (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and
88 regulations, this law applies to all residential, agricultural and business leases executed by
89 the Nation and to all actions and decisions taken in connection with those leases.

90 Provided that, nothing herein may be construed to affect the terms and conditions of
91 leases existing when this law goes into effect or amendments, assignments, subleases or
92 encumbrances made to those leases.

93 (b) This law does not apply to mineral leases, any lease of individually owned Indian
94 allotted land in accordance with 25 U.S.C. 415(h)(2), leases included in the Nation's
95 home ownership programs administered using federal funding or leases lasting one (1)
96 year or less.

97 65.4-3. *Applicable Law.* In addition to this law, leases approved under this law are subject to:

98 (a) all of the Nation's laws, except to the extent those laws are inconsistent with
99 applicable federal law; and

100 (b) applicable federal laws.

101 65.4-4. Pursuant to the authority of the Secretary to fulfill the trust obligation of the United
102 States to the Nation under federal law, the Secretary may, upon reasonable notice from the
103 Nation and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential,
104 agricultural or business lease on tribal land executed by the Nation. The United States may not
105 be liable for losses sustained by any party to a residential, agricultural or business lease executed
106 pursuant to this law.

107 65.4-5. Lease parties shall resolve all disputes over residential, agricultural and business leases
108 under the Nation's laws and in accordance with federal law. Nothing in this law may be
109 construed to waive the Nation's sovereign immunity.

110 65.4-6. After the Secretary approves this law, all leases of tribal land approved and executed
111 under this law may become effective without federal approval under 25 U.S.C. 415(h), unless the
112 Secretary rescinds approval of this law and reassumes responsibility for such approval.

113 **65.5. Lease Document Requirements**

114 65.5-1. *Information and Application.* Land Management shall approve and execute all leases.
115 Land Management shall make available information on obtaining residential, agricultural or
116 business lease documents. Parties interested in obtaining a residential, agricultural or business
117 lease document shall submit an application to Land Management pursuant to the rules which
118 Land Management and the Oneida Land Commission shall jointly develop.

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

123 65.5-2. *Terms and Conditions.* Land Management shall ensure leases are in writing and contain,
124 at a minimum, the following:

125 (a) A description of the land or building being leased including surveys and legal
126 descriptions based on metes and bounds, rectangular, or lot and block systems which
127 meet the requirements of the Land Titles and Records Office of the Bureau of Indian
128 Affairs;

129 (b) The effective date and term of the lease;

130 (c) The purpose of the lease and authorized uses of the leased premises;

131 (d) The parties to the lease;

132 (e) How much rent is due, when it is due, who receives it, what form(s) of payment is
133 acceptable, and whether any late payment charges or special fees apply and the rate of
134 interest to be charged if the lessee fails to make payments in a timely manner;

135 (f) Whether there will be rental reviews or adjustments, how and when they will be done,
136 when any adjustments will be effective and how disputes regarding adjustments will be
137

- 138 resolved;
- 139 (g) Who is responsible for any taxes applied to the property and/or improvements;
- 140 (h) Due diligence requirements that apply, if any;
- 141 (i) Performance bond and insurance requirements that apply, if any;
- 142 (j) Land Management has the right, at any reasonable time during the term of the lease
143 and upon reasonable notice, in accordance with this law and any other applicable laws,
144 policies and rules of the Nation, to enter the leased premises for inspection and to ensure
145 compliance with the lease;
- 146 (k) The lessee holds the United States and the Nation harmless from any loss, liability or
147 damages resulting from the lessee's use or occupation of the leased premises;
- 148 (l) The lessee indemnifies the United States and the Nation against all liabilities or costs
149 relating to the use, handling, treatment, removal, storage, transportation, or disposal of
150 hazardous materials, or the release or discharge of any hazardous material from the leased
151 premises that occurs during the lease term, regardless of fault, with the exception that the
152 lessee is not required to indemnify the Nation for liability or cost arising from the
153 Nation's negligence or willful misconduct; and
- 154 (m) Land Management may, at its discretion, treat as a lease violation any failure by the
155 lessee to cooperate with a request to make appropriate records, reports or information
156 available for inspection and duplication.

157 65.5-3. *Improvements.* Land Management shall ensure lease documents set out requirements
158 related to improvements, including:

- 159 (a) whether improvements may be constructed;
- 160 (b) ownership of improvements;
- 161 (c) responsibility for constructing, operating, maintaining and managing improvements;
- 162 (d) whether the lessee shall submit development plans and/or construction management
163 schedules to Land Management for approval prior to beginning construction of any
164 improvements;
- 165 (e) removal of improvements;
- 166 (f) whether a lessee may develop equity in improvements and sell its interest in the lease
167 based on the equity; and
- 168 (g) the lessor's right of first refusal to purchase the lessee's interest, if any.

169 65.5-4. *Obtaining a Lease Document.* Land Management shall ensure lease documents are
170 entered into by written consent of the lessor and the lessee unless otherwise provided herein and
171 that the lease documents contain effective dates.

- 172 (a) The lease may authorize subleases only upon approval and execution from Land
173 Management. This in no way relieves the parties from carrying out their duties under the
174 lease.
- 175 (b) The lease may authorize leasehold mortgages on the leasehold interest for the purpose
176 of financing to develop and improve the premises. Land Management shall approve the
177 leasehold mortgage.
- 178 (c) The lease may not authorize mortgages that encumber title to tribal land.

179 65.5-5. *Payments.* For any lease requiring payments to be made to the lessor, the lessor shall
180 provide the Secretary with such documentation of the lease payments as the Secretary may
181 request to enable the Secretary to discharge the trust responsibility of the United States.

182 65.5-6. *Environmental and Cultural Reviews.* Land Management may not approve a lease until
183 an environmental review and a cultural review, as required under section 65.9, have been
184 completed. Leases approved and executed in violation of this section are null and void.

185 65.5-7. *Documentation.* The following are required for a party to enter into a lease:

- 186 (a) a signed lease; and
187 (b) any reports, surveys and site assessments needed to comply with the Nation's
188 environmental, cultural resource and land use requirements.
189

190 **65.6. Residential Leases**

191 65.6-1. In addition to the requirements that apply to all leases under section 65.5, the
192 requirements of this section also apply to residential leases.

193 65.6-2. A residential lease is required for the lease of land suited or used for the construction,
194 improvement, and/or maintenance of a dwelling and related structures on the premises, and
195 otherwise to use or occupy said premises for residential purposes.

196 65.6-3. *Duration.* Residential leases may not exceed seventy-five (75) years.

197 65.6-4. *Appraisal, Local Studies.*

198 (a) Land Management shall determine the fair annual lease value using an appraisal or
199 equivalent procedure performed by Land Management utilizing the following data:
200 improvement cost, replacement cost, earning capacity, and sales and lease data of
201 comparable sites. Land Management shall ensure that an appraisal log reporting the
202 methods of appraisal and value of the tribal land is attached to every residential lease.

203 (b) Alternatively, Land Management shall determine the fair annual lease value using an
204 appraisal performed by a licensed appraiser utilizing the Uniform Standards of
205 Professional Appraisal Practice or another commonly accepted method of appraisal.
206 Land Management shall ensure that an appraisal log describing the method of appraisal
207 and value of the tribal land is attached to every residential lease.

208 65.6-5. *Fair Annual Lease Value.* Land Management may offer residential leases at reduced
209 rates if it determines that doing so is in the best interest of the Nation. Under such circumstances
210 an appraisal is not required. In all other circumstances, a residential lease may not be approved
211 for less than the present fair annual lease value as set forth in the appraisal.

212 65.6-6. *Lease by Guardian.* A parent or legal guardian may enter into a residential lease on
213 behalf of his or her child or ward.
214

215 **65.7. Agricultural Leases**

216 65.7-1. In addition to the requirements that apply to all leases under section 65.5, the
217 requirements of this section also apply to agricultural leases.

218 65.7-2. An agricultural lease is required for the lease of land suited or used for the production of
219 crops, livestock or other agricultural products, or land suited or used for a business that supports
220 the surrounding agricultural community.

221 65.7-3. *Duration and Renewal.* Agricultural leases may not exceed twenty-five (25) years,
222 except that any such lease may include an option to renew for up to two (2) additional terms,
223 which may not exceed twenty-five (25) years each.

224 65.7-4. *Management of Land.* Land Management shall ensure that agricultural leases require
225 the lessee to manage land in accordance with the conservation plan that the Nation shall develop
226 and any agricultural resource management plan and/or other appropriate stipulations developed
227 by the Nation.

228 65.7-5. *Lease Valuation.* Agricultural leases are valued based on the bidding process required
229 as part of the lease award process included in the rules, which Land Management and the Oneida
230 Land Commission shall jointly develop.
231

232 **65.8. Business Leases**

233 65.8-1. In addition to the requirements that apply to all leases under section 65.5, the
234 requirements of this section also apply to business leases.

235 65.8-2. A business lease is required for the lease of land suited or used for business purposes
236 including retail, office, manufacturing, storage, or other business purposes; and public purposes,
237 including religious, educational, recreational, cultural, or other public purposes.

238 65.8-3. *Duration and Renewal.* Business leases may not exceed twenty-five (25) years, except
239 that any such lease may include an option to renew for up to two (2) additional terms, which may
240 not exceed twenty-five (25) years each.

241 65.8-4. *Supporting Documents.* All applicants for business leases shall submit the following
242 documents to Land Management:

- 243 (a) financial statement;
- 244 (b) site survey and legal description, if applicable;
- 245 (c) other documents as may be required by any business leasing management plan
246 developed by the Nation.

247 65.8-5. *Appraisal, Local Studies.*

248 (a) Land Management shall determine the fair annual lease value using an appraisal or
249 equivalent procedure performed by Land Management utilizing the following data:
250 improvement cost, replacement cost, earning capacity, and sales and lease data of
251 comparable sites. Land Management shall ensure that an appraisal log reporting the
252 methods of appraisal and value of the tribal land is attached to every business site lease.

253 (b) Alternatively, Land Management shall determine the fair annual lease value using an
254 appraisal performed by a licensed appraiser utilizing the Uniform Standards of
255 Professional Appraisal Practice or another commonly accepted method of appraisal.
256 Land Management shall ensure that an appraisal log describing the method of appraisal
257 and value of the tribal land is attached to every business site lease.

258 65.8-6. *Fair Annual Lease Value.*

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

- 261 (1) The lessee is in the development period;
- 262 (2) Land Management is providing an incentive for businesses to locate on tribal
263 land, and is providing lease concessions, lease improvement credits, and lease
264 abatements to attract such business; or
- 265 (3) Land Management determines such action is in the best interest of the Nation.

266 (b) A lease may:

- 267 (1) Be structured at a flat lease rate; and/or
- 268 (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the
269 lessee is a business located in a shopping center, or the lessee generates over one
270 million dollars (\$1,000,000.00) annually in gross receipts; and/or
- 271 (3) Be structured based on a percentage of gross receipts, or based on a market
272 indicator; and/or
- 273 (4) Be structured to allow for lease rate adjustments; Land Management shall
274 ensure that the lease specifies how adjustments will be made, who will make such
275 adjustments, when adjustments go into effect, and how disputes may be resolved;
276 and/or
- 277 (5) Be amended to allow for lease rate adjustments; and/or
- 278 (6) Provide for periodic review giving consideration to the economic conditions,
279 exclusive of improvement or development required by the contract or the

280 contribution value of such improvements.

281 (c) Land Management shall keep written records of the basis used in determining the fair
282 annual lease value, as well as the basis for adjustments and shall present such records to
283 the lessee and include them in any lease file.

284 65.8-7. *Performance Bond*. If a performance bond is required under a business lease, the lessee
285 shall obtain the performance bond in an amount that reasonably assures performance on the
286 lease. Land Management may require performance bonds for the purpose of guaranteeing any of
287 the following:

- 288 (a) The annual lease payment;
289 (b) The estimated development cost of improvements; and
290 (c) Any additional amount necessary to ensure compliance with the lease.

291

292 **65.9. Environmental and Cultural Reviews**

293 65.9-1. *Applicability*. Land Management may not consider approving a lease document until an
294 environmental review and a cultural review have been completed.

295 65.9-2. *Environmental Reviews*. The Nation is solely responsible for ensuring that the
296 environmental review has been completed in accordance with this law. The Environmental,
297 Health and Safety Division or its designee shall conduct an environmental review on all
298 proposed lease documents in accordance with the process established under the National
299 Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of
300 federal undertakings and, at a minimum, the process shall:

- 301 (a) Identify and evaluate any significant effects of the proposed action on the
302 environment;
303 (b) Establish a process for notifying the public of significant environmental impacts;
304 (c) Ensure that the public has a reasonable opportunity to provide comments regarding
305 the action and its environmental impacts;
306 (d) Require the Nation to respond to relevant and substantive comments received from
307 the public.

308 65.9-3. *Cultural Reviews*. The Cultural Heritage Department or its designee shall conduct a
309 cultural review on all proposed lease documents in accordance with the permit review
310 requirements for undertakings established in the Protection and Management of Archeological &
311 Historical Resources law.

312 65.9-4. *Environmental and Cultural Review Completion*. The Environmental, Health and Safety
313 Division shall forward a completed environmental review and the cultural review to Land
314 Management for consideration in the approval or denial of a lease document.

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

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

321

322 **65.10. Lease Management**

323 65.10-1. *Management Plan*. Land Management shall:

- 324 (a) manage existing leases as well as those executed pursuant to this law; and
325 (b) institute a leasing management plan that employs sound real estate management
326 practices, and addresses accounting, collections, monitoring, enforcement, relief, and
327 remedies.

328 65.10-2. *Accounting*. Land Management shall implement an accounting system that generates
329 invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in
330 this section may be construed to absolve the lessee of its duties under a lease.

331 65.10-3. *Recording Lease Documents*. Land Management shall provide all lease documents of
332 tribal land, except residential subleases, to the Bureau of Indian Affairs for encoding and to be
333 forwarded to the Land Titles and Records Office. Land Management shall record all lease
334 documents of tribal land with the Oneida Nation Register of Deeds. Land Management shall
335 also distribute a copy of the recorded lease documents to the lessee.

336 65.10-4. *Ownership of Records*. Records of activities taken pursuant to this law with respect to
337 tribal land are the property of the United States and the Nation. Records compiled, developed or
338 received by the lessor in the course of business with the Secretary are the Nation's property.

339 65.10-5. *Administrative Fees*. Land Management and the Oneida Land Commission may jointly
340 develop rules requiring administrative fees for costs associated with issuing a lease document, or
341 conducting any other administrative transaction.

342

343 **65.11. Enforcement**

344 65.11-1. Land Management is delegated all powers necessary and proper to enforce the lease
345 terms, this law and any rules developed pursuant to this law. This includes, but is not limited to,
346 the power to enter the premises, assess penalties, assess late payments and cancel leases. Land
347 Management may request the Oneida Law Office assist in enforcement of this law, rules and
348 leases.

349 65.11-2. *Harmful or Threatening Activities*. If a lessee or other party causes or threatens to
350 cause immediate and significant harm to the premises, or undertakes criminal activity thereon,
351 Land Management or another interested party may take appropriate emergency action, which
352 may include cancelling the lease and/or securing judicial relief.

353 65.11-3. *Holdovers and Trespass*. If a lessee remains in possession of a property after the
354 expiration or cancellation of a lease, or a person occupies a property without Land
355 Management's approval, Land Management shall take action to recover possession of the
356 property; and/or pursue additional remedies, such as damages, if applicable.

357 65.11-4. *Defaults*. If Land Management determines a lessee is in default, Land Management
358 shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease
359 pursuant to the Eviction and Termination law.

360 65.11-5. *Penalties*. Unless the lease provides otherwise, interest charges and late payment
361 penalties apply in the absence of any specific notice to the lessee from Land Management, and
362 Land Management shall treat the failure to pay such amounts as a breach of the lease.

363

364 **65.12. Appeals**

365 65.12-1. The lessee or an interested party may appeal a determination of Land Management with
366 the Judiciary in accordance with any applicable rules of procedure.

367

368 *End.*

369

370 Adopted-BC-05-13-15-C, pending BIA approval