

NOTICE OF
PUBLIC MEETING

To be held on
Tuesday, October 8, 2024
10:00 a.m.

In the
Little Bear Development Center Conference Room
N7332 Water Circle Place, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Environmental, Health, Safety, Land and Agricultural Division, the General Manager and Oneida Land Commission are hosting this Public Meeting to gather feedback regarding the following new proposed rules:

Real Property Rule #1— Land Assessments for the Nation’s Decisionmaker’s to Build an Autonomous Community (LANDBAC)

- ◆ Replaces the former Land Use Technical Unit (LUTU) process as the Nation’s process for assessing land uses to prioritize greatest and best use by the Nation to provide for the community;
- ◆ The process distinguishes between offerings to the Nation’s internal entities and requests from external parties to use the Nation’s land wherein all possible available uses are governed by separate rules (see various leasing rules, Land Use License Rule, and Easements Rule).

Real Property Rule #2— Land Use Licenses

- ◆ Formalizes a former general practice and SOP into an administrative rule while expanding the scope to apply to large gatherings (75 people or more) on land owned by tribal members.

Real property Rule #3—Easements

- ◆ Formalizes a former SOP into an administrative rule which applies to third party requests to use/access the Nation’s land and individual trust land owners requests for easement processing through the Bureau of Indian Affairs (BIA) on their land.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Wednesday, October
16, 2024

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 Land Management by U.S. mail, interoffice mail, e-mail or fax.

Land Management
PO Box 365, Oneida, WI 54155
Email: nrommel@oneidanation.org
Phone: 920-869-6505

Summary Report for:

Land Management

Original Effective Date: N/A
Amendment Effective Date: 08/12/2024
Name of Rule: Easements
Name Law being Interpreted: Real Property Law
Rule #: 3
Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule:

- ◆ Formalizes a former SOP into an administrative rule which applies to third party requests to use/access the Nation’s land and individual trust landowners requests for easement processing through the Bureau of Indian Affairs (BIA) on their land.

Statement of Effect:

Financial Analysis:

Note: In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity’s response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.

Financial Analysis for:

Easements

<u>Type of Cost</u>	<u>Description/Comment</u>	<u>Dollar Amount</u>
Start Up Costs	N/A	\$0.00
Personnel	N/A	\$0.00
Office	N/A	\$0.00
Documentation Costs	N/A	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		Immediate
Other, please explain	N/A	N/A
Total	Annual Net Revenue	\$0.00



Statement of Effect

Real Property Law Rule No. 3 – Easements

Summary

The Real Property Law Rule No. 3 – Easements provides procedures for granting easements over, under and across tribal lands in order to best protect the interests of the Oneida Nation, and also addresses how Land Management facilitates the processing of easements on individual trust land.

Submitted by: Clorissa N. Leeman, Senior Staff Attorney, Legislative Reference Office

Date: September 20, 2024

Analysis by the Legislative Reference Office

The Administrative Rulemaking law provides authorized agencies the opportunity to promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, a rule may not exceed the rulemaking authority granted under the law for which the rule is being promulgated. [1 O.C. 106.4-1]. Rulemaking authority is defined as the delegation of authority to authorized agencies found in the Nation’s laws, other than the Administrative Rulemaking law, which allows authorized agencies to implement, interpret and/or enforce a law of the Nation. [1 O.C. 106.3-1(i)]. An authorized agency is defined as “any board, committee, commission, department, program or officer of the Nation that has been granted rulemaking authority.” [1 O.C. 106.3-1(a)].

The Real Property law provides regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation’s employees dealing with real property transactions. [6 O.C. 601.1-1]. It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder’s rights and responsibilities. [6 O.C. 601.1-1].

The Real Property law delegates joint administrative rulemaking authority to the Oneida Land Commission and Land Management to jointly develop rules regarding easements and land use licenses. [6 O.C. 601.12-3(a)]. The Real Property law provides that the Oneida Land Commission is responsible for approving or denying all easements or land use licenses. [6 O.C. 601.12-2(b)].

The purpose of the Real Property Law Rule No. 3 – Easements (“the Rule”) is to provide procedures for granting easements over, under and across tribal lands in order to best protect the interests of the Oneida Nation, and also addresses how Land Management facilitates the processing of easements on individual trust land. [Rule 3.1-1]. The Rule addresses:

- Scope and application, including the general applicability of the rule and when the Rule does not apply to requests for easements [Rule 3.4];
- Applications for easements on tribal lands, including what information is included on the application form and how the application is processed [Rule 3.5];
- Oneida Land Commission’s preliminary review, including information on the Oneida Land Commissions easement decision, notice of the easement decision [Rule 3.6];
- Oneida Land Commission final review, including Land Management’s preparation for the Oneida Land Commission, the Oneida Land Commission review of trust land easements, Oneida Land Commission review of fee land easements, and the authority to sign easement documents [Rule 3.7];
- Easement administration, including land data sheet, easement corrections, affidavit of completion, and easement close-out [Rule 3.8];
- Requests for easements on individual trust land, including individual trust land easement requests, BIA easement application, environmental and cultural reviews, and BIA submittal [Rule 3.9]; and
- Recording easements [Rule 3.10].

Conclusion

There are no legal bars to adopting the Real Property Law Rule No. 3 – Easements.



Title 6. Property and Land Real Property – Chapter 601 Rule #3 – Easements

- 3.1 Purpose and Authority
- 3.2 Adoption, Amendment and Repeal
- 3.3 Definitions
- 3.4 Scope and Application
- 3.5 Requests for Easements on Tribal Land
- 3.6 Oneida Land Commission Preliminary Review
- 3.7 Land Commission Final Review
- 3.8 Easement Administration
- 3.9 Requests for Easements on Individual Trust Land
- 3.10 Recording Easements in ONROD

3.1 Purpose and Authority

3.1-1. *Purpose.* To provide procedures for granting easements over, under and across tribal lands in order to best protect the interests of the Oneida Nation. In addition, because the Nation is a self-governance Nation, this rule also addresses how Land Management facilitates the processing of easements on individual trust land.

3.1-2. *Authority.* The Real Property Law delegates rulemaking authority to the Environmental, Health, Safety, Land and Agriculture Division¹ and Land Commission pursuant to the Administrative Rulemaking law.

3.2 Adoption, Amendment and Repeal

3.2-1. This rule was adopted by the Land Commission in accordance with the procedures of the Administrative Rulemaking law.

3.2-2. This rule may be amended or repealed by the Environment, Health, Safety, Land and Agriculture Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

3.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

3.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.

3.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to easements.

3.3 Definitions

3.3-1. This section shall govern the definitions of words and phrases used within this rule provided that the definition section of the Real Property law shall also apply hereto. All words not defined herein shall be used in their ordinary and everyday sense.

¹ The delegation of authority in the law was to Land Management and the Land Commission, however, since the law was adopted, Land Management has been rolled into a larger division, the Environmental, Health, Safety, Land and Agricultural Division, of which Land Management is now a department without separate management from the Division.

- (a) *Affidavit of Completion*. Means a legal document certifying as to the completion of construction as related to the easement that acknowledges any known deviations from stated plans, permits or other approvals.
- (b) *Applicant*. Means the third party requesting use of the Nation's land when requesting an easement on tribal land and means the individual trust land owner when an individual trust land owner is requesting BIA approval of an easement on their individual trust land.
- (c) *AVSO*. Means the Appraisal and Valuation Services Office which is the federal administration within the Department of Interior charged with approving and conducting appraisals on federal land to ensure federal land transactions meet applicable fair market value consideration requirements.
- (d) *Appraisal*. Means an expert assessment of the value of a requested easement based on the terms of a proposed easement.
- (e) *BIA*. Means the Bureau of Indian Affairs, which is the federal administration within the Department of Interior charged with overseeing the government's trust responsibilities to indigenous governments and their citizens.
- (f) *Easement Negotiation Summary Form*. Means the form used to aid the Land Commission in arriving at easement request decisions which, at a minimum, includes the appraised value of the easement, the legal description and map produced as a result of the survey, the offered consideration and the date Land Commission approved the easement use along with an excerpt of said meeting minutes.
- (g) *Engineer's Affidavit*. Means a legal document completed by a licensed engineer that certifies a legal description provided in a survey document is accurate.
- (h) *Grantee*. Means the recipient of an easement on tribal land in accordance with this Rule.
- (i) *Internal Entity*. Means an entity of the Nation operating under the direction of the Oneida Business Committee and within the management structure of the Nation.
- (j) *Organization*. Means an body of people with a particular purpose, especially a business, other local government or association.
- (k) *Servient Property*. Means the parcel of land that is subject to an easement that benefits another parcel of land.
- (l) *Survey*. Means a document that measures and records the boundaries, elevation levels and angles of a parcel of land.
- (m) *Surveyor's Affidavit*. Means a legal document completed by a licensed surveyor that certifies a legal description provided in a survey document is accurate.

3.4 Scope and Application

3.4-1. *General Applicability*. The requirements of this rule shall apply all requests for easements on tribal land and to all individual trust land owners' requests for BIA approval of easements on individual trust land located within the Oneida Nation reservation except that this rule shall not apply to:

- (a) *Service Line Agreements*. The requirements of this rule shall not apply to utility service line agreements to cross or access the Nation's property for the purpose of connecting a landowner's property to the main utility line. Service line agreement templates shall be reviewed and approved by the Oneida Law Office, for legal contract review, and the Oneida Land Commission, for content approval, on an annual basis. Land Management staff are authorized to execute service line agreements using approved

templates without seeking Oneida Law Office or Oneida Land Commission review and approval of individual service line agreements provided that no revisions are made to the template document; if any revisions are made to the template document, the Oneida Law Office and Oneida Land Commission must provide their respective reviews and approvals before Land Management may execute the agreement. Land Management shall submit all service line agreements affecting tribal trust land to the BIA for filing in the Land Title and Records Office.

(b) *Internal Entity Easement Requests.* Internal requests will not be granted official easement documents provided that, if any internal entity easement request is approved by Oneida Land Commission, the granted easement must be platted on a recorded survey and registered in the Geographic Land Information System (GLIS), to the extent capable.

3.5 Applications for Easements on Tribal Land

3.5-1. *Application Form.* Applicants shall submit requests for easements using the Tribal Land Easement Request Form available on Land Management's website, at a minimum the form shall:

- (a) Notice the requestor that there is a twenty dollar (\$20) application fee for all applications;
- (b) Notice the requestor that there is a one hundred dollar (\$100) processing fee for easement applications received from individuals and a five hundred (\$500) for organizations that receive preliminary approval from the Land Commission pursuant to section 3.6;
- (c) Ask what requested use is and which parcels it affects;
- (d) Ask the requested duration of the requested use;
- (e) Ask the requested method of communication with applicant noting a preference for email communication; and
- (f) Ask whether there is a preliminary offer of consideration for the easement or a request for waived consideration.

3.5-2. Upon receipt of an easement application, Land Management shall:

- (a) Send the request to the Land Assessment Team established in the LANDBAC Rule for feedback. The team members shall have five (5) business days to submit feedback.
- (b) Order a title report for the affected parcel.
- (c) Upon the close of the feedback period, prepare a recommendation explaining whether Land Management recommends Land Commission grant the easement for the requested use and duration for the consideration presented, or requested to be waived.
- (d) Submit Land Management's easement recommendation to the next available Oneida Land Commission agenda along with all feedback from the Land Assessment Team.
- (e) Provide the applicant with a copy of Land Management's recommendation and the date the recommendation will be the Land Commission agenda date with notice that Land Management will inform the applicant of the Oneida Land Commission's decision within five (5) business days of the meeting date.

3.6 Land Commission's Preliminary Review

3.6-1. *Land Commission Easement Decision.* When Land Management's easement recommendation is presented to Land Commission, the Land Commission shall:

- (a) Approve or deny the recommendation with regard to the requested use;
- (b) Approve or deny the recommendation with regard to the the requested use duration;

and

(c) Approve or deny the recommendation with regard to the requestor's proposed consideration. Specifically, if Land Commission wishes to waive the requirement for an appraisal and accept the offered consideration, Land Commission must inform Land Management at this meeting. If the use and duration are approved, then Land Management shall proceed with processing the application and collect the processing fee.

3.6-2. *Notice of Easement Decision.* Land Management shall notify the Applicant of the Land Commission's decisions concerning the easement request within five (5) business days of the Land Commission's meeting date.

(a) *Notice of Easement Decision Letter.* Land Management shall draft Notice of Easement Decision Letter for applicants that explains the decisions made by the OLC.

(1) If the land commission approved proceeding, the letter shall also include:

(A) Notice the applicant that the Applicant is responsible for all survey and appraisal costs and that survey and appraisal costs, regardless of whether an easement is ultimately granted or not;

(i) *Survey.* A survey is required to determine the correct legal description for the easement and that there are specific surveying requirements applicable to trust land. The legal description generated shall be confirmed in an Engineer's Affidavit or a Surveyor's Affidavit submitted to Land Management. Land Management shall advise whether a Land Use License is required to allow the applicant to complete the survey.

(ii) *Appraisal.* Land Management shall notice the applicant that Land Commission will not accept consideration offers for less than the full appraised value plus fifteen percent (15%) for any requested use that does not directly benefit the Oneida Nation and/or its citizens. For fee land, the Applicant may use any appraisal company to complete the appraisal, provided that, the Nation may elect to procure a competing appraisal for the purpose of price negotiation. The Nation orders appraisals on trust land. Land Management shall draft a scope of work to be submitted to the Department of Interior AVSO for approval. When the scope of work is approved, Land Management shall order an appraisal from an appraiser qualified to perform appraisals on federal land. When the appraisal is received, Land Management shall forward the appraisal to the applicant and the Department of Interior AVSO for approval and forwarding to BIA.

(B) Land Management shall notice the applicant that Land Commission will not accept consideration offers for less than the full appraised value plus 15% for any requested use that does not directly benefit the Oneida Nation and/or its citizens;

(C) Notice that a Land Use Permit will be required from the Oneida Zoning Department and contact information for said department;

(D) If trust land, the BIA easement application documents;

(E) If the applicant is an organization and not an individual, notice that the applicant must submit:

- (i) Organizational documents and by-laws;
 - (ii) Evidence of Authority of Officers to Execute Papers form;
- (F) Notice that an Affidavit of Completion is required to be submitted when the work is complete.

3.7 Land Commission Final Review

3.7-1. *Land Management Preparation for Land Commission.* When the required documents are returned to Land Management in accordance with the noticed requirements, then Land Management shall:

(a) *Draft Easement.* If the easement is on trust land, send the applicant the BIA template easement and inform the applicant that revisions may not be requested to the template. If the easement is on fee land, then Land Management shall prepare the draft easement using the Oneida Easement Template approved by the Oneida Land Commission.

(b) *Consideration Confirmation.* If Land Commission has not approved a waiver of consideration, then Land Management shall ask the applicant to confirm their offered consideration for the easement after having received the appraisal and shall remind applicants that Land Commission will not accept consideration offers for less than the full appraised value plus 15% for any requested use that does not directly benefit the Oneida Nation and/or its citizens.

(c) *Land Commission Submittal.* When the Applicant returns the required information, submit an Easement Negotiation Summary Form to Land Commission for their consideration, except for easements on trust land where Land Commission has already waived consideration. Easements on trust land where Land Commission has already waived consideration do not need to go back to Land Commission and can be routed to the BIA for their final review and approval with the minutes from the Oneida Land Commission meeting approving the easement use, duration and waiver of consideration.

3.7-2. *Land Commission Review of Trust Land Easements.* If the easement is for use of tribal trust land, then there are not revisions to consider to the easement document, so the only thing for Land Commission to consider is the offered consideration. Land Commission shall decide if it accepts the offered consideration or if it will counter with a different request for consideration.

(a) *Consideration Agreement Not Reached.* If the applicant and Land Commission do not eventually reach an agreement as to consideration, then no easement shall be granted.

(b) *Consideration Agreement Reached.* If the applicant and Land Commission do reach an agreement as to consideration, then Land Management shall forward the minutes from Land Commission's meetings approving the easement use, duration and consideration to the BIA for easement processing. When the BIA processing is complete, so long as there is nothing preventing approval, then consideration will have to be paid to the Nation with the Nation's confirmation of payment sent to the BIA before the BIA will return the approved and executed easement document to the parties.

3.7-3. *Land Commission Review of Fee Land Easements.* If the easement is for use of tribal fee land, then Land Management shall ensure that the easement document is in final draft form and consideration information from the applicant is presented to the Land Commission. Land Commission shall make decisions as to the minimum consideration the Land Commission will accept and whether Land Commission will require any revisions to the easement document.

(a) *Agreement Not Reached.* If the applicant and Land Commission do not eventually reach an agreement as to consideration and easement documents, then no easement shall

be granted.

(b) *Agreement Reached.* If the applicant and Land Commission do reach an agreement as to consideration and easement documents, then Land Management shall complete the easement documents pursuant to Land Commission's direction and circulate for signature. Land Management shall provide the applicant with the signed easement documents only after receiving payment of the agreed upon consideration.

3.7-4. *Authority to Sign Easement Documents.* The Environmental, Health, Safety, Land and Agricultural Division Director and/or his or her designee is hereby authorized to sign easement documents approved in accordance with this Rule on behalf of the Oneida Land Commission.

3.8. Easement Administration

3.8-1. *Land Data Sheet.* All executed easements shall be forwarded to the Land Management Deputy Director and/or his or her designee for the information to be entered into the affected parcel's Land Data Sheet. Any party with an agreement affecting the same parcel shall be noticed of the executed easement affecting the parcel by the Deputy Director, provided that where a parcel has both internal and external end users (i.e. a parcel assigned to Comprehensive Housing Division to be used for residential offerings by the Nation and thereafter assigned to an Oneida citizen in a residential lease) the Deputy Director shall notice the internal user and it will be the internal user's responsibility to notice their users.

3.8-2. *Easement Corrections.* In the event there is any error in an easement the erroneous easement must be extinguished and a new easement entered in accordance with the processes in this Rule, provided that the old easement may be extinguished within the new easement.

3.8-3. *Affidavit of Completion.* Upon receipt of the Affidavit of Completion, Land Management shall schedule an inspection of the affected parcel and shall document the parcel's condition at the time the work is complete.

(a) If there were bonding requirements and Land Management reports the parcel is in acceptable condition, Land Management shall return funds held as bond in accordance with the easement documents.

(b) If there were bonding requirements and Land Management reports the parcel is not in acceptable condition, Land Management shall afford the grantee an opportunity to make the necessary repairs to return the parcel to acceptable condition. If the grantee does not make the repairs within the timeframe allotted, Land Management may deduct the replacement cost of repairs from the funds held for bonding and shall return the remainder of the bonding deposit to the grantee. To the extent the repair cost of the damages exceeds the amount of bond held, the Nation may pursue the remainder of damages using any available means of debt collection wherein the grantee shall pay attorneys fees and other collection costs as incurred.

3.8-4. *Easement Close-Out.* When an easement term is complete, Land Management shall ensure the easement has been removed from title and shall inspect and record the condition of the property at easement expiration. If the property was not left in acceptable condition, Land Management shall consult the Oneida Law Office for potential enforcement of contractual terms that may have survived expiration of the easement.

3.9. Requests for Easements on Individual Trust Land

3.9-1. *Individual Trust Land Easement Requests.* If the Nation receives a request for an easement on individual trust land, the Nation shall provide the third party requestor with the names of the

individual trust land owners and inform the requestor that Land Management only accepts individual trust land easement requests from consenting individual trust land owners. Upon receipt of an individual trust land easement request from an individual trust land owner, Land Management shall provide the applicant with the first steps for seeking approval for an easement from the BIA to include:

(a) *Survey*. A survey is required to determine the correct legal description for the easement. The applicant shall collect consent to survey forms signed by the landowners of the servient property and shall contract to have a survey completed. The legal description generated shall be confirmed in an Engineer's Affidavit or a Surveyor's Affidavit and provided to Land Management.

(b) *Appraisal*. Upon receipt of the survey information, Land Management shall draft a scope of work to be submitted to the Department of Interior AVSO for approval to order the appraisal. When the scope of work is approved, Land Management shall order an appraisal from an appraiser qualified to perform appraisals on federal land. When the appraisal is received, Land Management shall forward the appraisal to the Department of Interior AVSO for approval and forwarding to the BIA. When an approved appraisal is received, Land Management will provide the approved appraisal to the applicant.

3.9-2. *BIA Easement Application*. When Land Management has all survey and appraisal documents, Land Management shall send the BIA Easement Application to the Applicant to be returned with any applicable Consent to Grant Easement forms, which shows the affected land owners have reached agreement as to the purpose of the easement, the amount of consideration, and any bonding requirements that will apply, signed by the property owners of the servient property.

3.9-3. *Environmental and Cultural Reviews*. When Land Management has received the completed application and any signed Consent to Grant Easement forms, Land Management shall route the application to the Nation's environmental and cultural reviewers for completion of the environmental and cultural reviews respectively.

3.9-4. *BIA Submittal*. Once the Nation's environmental and cultural reviewers have submitted their reports to Land Management, Land Management shall forward the complete easement package to the BIA to complete the processing of the easement request. Upon decision from the BIA, the signed easement or easement denial, will be returned to Land Management and the affected property owners by the BIA; Land Management is not responsible for easement processing after the complete easement package is submitted to the BIA.

3.10. Recording Easements

3.10-1. *Recordation*. Land Management shall ensure that all easements executed in accordance with this Rule are recorded in ONROD and, if for tribal trust, that the easement also appears on trust title.

End.

Original effective date: [add effective date established by authorized entity] (Certified by LOC on)