



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**EASTERN SHAWNEE TRIBE OF OKLAHOMA
AGRICULTURAL LEASING ACT**

The attached Agricultural Leasing Act, submitted by the Eastern Shawnee Tribe of Oklahoma (listed in the Federal Register, Vol. 86, No. 18 FR 7555 (January 29, 2021) as the Eastern Shawnee Tribe of Oklahoma), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 15 pages and adopted by the Eastern Shawnee Tribe of Oklahoma Business Committee on April 28, 2021, is hereby approved.

Dated: DEC 22 2021

A handwritten signature in blue ink, appearing to read "Bryan Newland", written over a horizontal line.

Bryan Newland
Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Chapter 1

Section 1: Short Title; Authority; Purpose; Intent; Applicability; Controlling Law; Severability; Effective Date; Amendment; and Definitions

Section 1.01 Short Title

This Act shall be known as the "Eastern Shawnee Tribe of Oklahoma Agricultural Leasing Act."

Section 1.02 Authority

The Business Committee enacts this Act pursuant to the legislative duties and powers of the Business Committee enumerated in Article IX of the Constitution. Specifically, the Business Committee enacts this Act pursuant to the following Constitutional provisions:

- (a) Article IX, Section 1(n) grants the Business Committee the power to protect and preserve the property and natural resources of the Tribe.
- (b) Article IX, Section 1(o) grants the Business Committee the power to manage and operate the real property of the Tribe.
- (c) Article IX, Section 1(w) grants the Business Committee the power to enact laws, ordinances, and resolutions necessary or incidental to the exercise of their legislative powers.

Section 1.03 Purpose

This Act shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, P.L. 112-151, 126 Stat. 1150 (2012) ("HEARTH Act"), which amended 25 U.S.C. §415, by establishing a process under which a Lease Agreement with the Tribe will not require the approval of the Secretary if the Lease is executed under this Act approved by the Secretary. Nothing in this Act is intended to expand the authority or responsibility of the Secretary beyond that provided for under applicable federal statutes or regulations.

Section 1.04 Intent

- (a) This Act covers all land held in trust by the United States for the Tribe for agricultural purposes on Trust or Restricted Land.
- (b) Lease Agreements may relate to Agricultural Land on Tribal lands.
- (c) The Tribe will not, under any circumstances, permit the unrestricted use of its property by individuals or groups.
- (d) The Lessee will agree to abide by all applicable laws and will not engage in unlawful conduct or illegal activity on the leased premises.

Section 1.05 Applicability

- (a) Except as excluded under subsection 1.05(b) below, or as contrary to applicable federal statutes or regulations, this Act shall apply:

to all future Leases providing for agricultural use approved under this Act; and

- (b) This Act shall not apply:

- (1) to any residential leases;
- (2) to any commercial or business lease;
- (3) to any mineral leases;
- (4) to any fractionated interests; or
- (5) to any lease of individually owned Indian allotted land or fee lands.

Section 1.06 Controlling Law

- (a) To the extent that this Act conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.
- (b) To the extent that any Lease to which this Act applies conflicts with this Act, this Act shall control.
- (c) To the extent that any Lease to which this Act applies conflicts with applicable Tribal Law, the Tribal Law shall control.

Section 1.07 Severability

If a Court of Competent Jurisdiction shall adjudge any provision of this Act, or the application thereof to any person or entity to be invalid, such judgement shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

Section 1.08 Effective Date

This Act shall become effective as Tribal Law, for all purposes, on the date of enactment by the Business Committee and approval by the Secretary.

Section 1.09 Amendment

This Act may be amended by a majority vote of the Business Committee, provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws or regulations.

Section 1.10 Definitions

For the purpose of this Act, the below terms are defined:

- (a) "Act" means this Eastern Shawnee Tribe of Oklahoma Agricultural Leasing Act.
- (b) "Agricultural Land" means the Tribe's trust land suited or used for the production of crops, livestock, or other Agricultural Products.
- (c) "Agricultural Lease" means the same as "Lease," but limited to leases of the Tribe's Agricultural Land for farming and/or grazing purposes.
- (d) "Agricultural Products" means agricultural, horticultural, viticultural, and dairy products, livestock and poultry and the products thereof, the products of bee raising, and any and all products raised or produced on farms and processed or manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.
- (e) "Agricultural Use" means the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes as well as the raising of domestic animals and wildlife in domestication or a captive environment.
- (f) "Assignment" means an agreement between a Lessee and an Assignee, whereby the Assignee acquires all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Lease.
- (g) "Best Interest of the Tribe" means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of tribal Trust Land, and preserve the sovereignty of the Tribe.
- (h) "BIA" means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior.
- (i) "Bluejacket Building" means the Tribe's Executive Office Building.
- (j) "Business Committee" means the legislative body of the Eastern Shawnee Tribe of Oklahoma established pursuant to Article VIII of the Constitution.
- (k) "Chief" means the Chief, then serving, of the Eastern Shawnee Tribe of Oklahoma.
- (l) "Constitution" means the Constitution of the Eastern Shawnee Tribe of Oklahoma approved by the Secretary of the Interior April 4, 1994 and amended March 2, 1999.
- (m) "Court of Competent Jurisdiction" means a tribal or federal court with jurisdiction.

- (n) "Environmental Review Process" means the process for conducting tribal environmental review to assess whether a proposed development or project, as contemplated and/or subject to a Lease, will have a positive or negative environmental impact.
- (o) "Fair Annual Lease Value" means the amount of rental income that a leased tract of Tribal Land would most probably command in an open and competitive market, or as determined by competitive bidding.
- (p) "Lease" means a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Tribal Land for Agricultural Use and for a specified duration of time.
- (q) "Lessee" means a person who has acquired a legal right to possess Tribal Land by entering into a Lease approved under this Act.
- (r) "Leasehold Interest" means the possessory interest in Tribal Land established pursuant to a Lease between a Lessor and a Lessee.
- (s) "Leasehold Mortgage" means a Mortgage or other instrument that pledges the Leasehold Estate of Lessee as security for a debt or other obligations owed by the Lessee to a lender or other Mortgagee.
- (t) "Lessor" means the Eastern Shawnee Tribe of Oklahoma.
- (u) "LTRO" means the Land Titles and Records Office of the Bureau of Indian Affairs with jurisdiction/responsibility for Tribal trust lands.
- (v) "Material Breach" means a breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as a total loss excusing that party from further performance and affording it the right to sue for damages.
- (w) "Party" means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interest could be directly affected by a decision of the Tribe to lease Tribal Land for Agricultural Use.
- (x) "Permanent Improvements" means buildings, other structures, and associated infrastructure attached to the Premises.
- (y) "Premises" means any portion of Tribal Land, as described in any Lease.
- (z) "Property Management Department" means the department of the Tribe that has the authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include, but are not limited to: lease issuance, bond, lease amendment or modification, subleasing, lease assignment

or transfer, tenant leases, and lease terminations.

- (aa) "Public for Purpose of Environmental Review Process" means any person or entity with the potential to be significantly affected by the Lease or Lease activity.
- (bb) "Real Property" means the Tribe's trust property.
- (cc) "Secretary" means the Secretary of the Interior.
- (dd) "Significant Effect on the Environment" means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas, and objects of historic, cultural, or aesthetic significance.
- (ee) "Sublease" means a written agreement by which the Lessee grants rights to an individual or entity possession no greater than that held by the Lessee under the Lease.
- (ff) "Tribal Land" means any tract in which the surface estate is owned by the Tribe in Trust or Restricted Status, and includes such lands reserved for Bureau of Indian Affairs administrative purposes and the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. §477).
- (gg) "Tribal Law" means any body of non-federal law that governs lands and activities under the jurisdiction of the Tribe, including ordinances, resolutions, or other enactments by the Tribe and any tribal court rulings.
- (hh) "Tribe" means the Eastern Shawnee Tribe of Oklahoma, a federally recognized Indian tribe.
- (ii) "Trust or Restricted Land" means any tract of Tribal Land held in Trust or Restricted Status by the United States for the benefit of the Tribe.
- (jj) "Trust or Restricted Status" means:
 - (1) That the United States holds title to the tract in trust for the benefit of the Tribe; or
 - (2) That the Tribe holds title to the tract, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under federal law or limitations in federal law.

Section 2: Approval of Lease; Requirements; Renewal; Termination; Payment; Recording; and Records

Section 2.01 Required Documents

- (a) Information to obtain a Lease under this Act shall be available at the Tribal Environmental Protection Agency (Tribal EPA) office.
- (b) Any applicant for a Lease under this Act must submit the following documents to the Tribal EPA:
 - (1) Signed bid;
 - (2) Signed bid approval; and
 - (3) Resolution approving the Lease.
- (c) If Bids are submitted by an Operator or Limited Liability Company, the following additional documents must be submitted to the Tribal EPA:
 - (1) Articles of Organization and/or Operating Agreement;
 - (2) Certificate of Good Standing; and
 - (3) List of Officers and/or Members.

Section 2.02 Approval of Lease

- (a) All Leases shall be subject to the approval of the Business Committee in accordance with this Act, Tribal Law, and the Constitution.
- (b) All Leases shall be signed on behalf of the Tribe by the Director of the Property Management Department, or in his or her absence, the Chief.
- (c) Any Lease which is approved and executed under this Section 2.01 shall refer to this Act as authority for its execution on behalf of the Tribe.

Section 2.03 Lease Requirements

- (a) All Leases shall be in writing, and at a minimum, shall:
 - (1) Describe the tract or parcel of Tribal Land being leased, and where it is located with reference to a public or private survey plan, if available, in a legal description

sufficient for LTRO purposes;

- (2) State the purpose of the Lease and authorized uses of the Premises defined in a legal description sufficient for LTRO purposes;
- (3) Identify the parties to the Lease;
- (4) State the effective date and term of the Lease, which shall not exceed ten (10) years;
- (5) Permanent Improvements and/or the subsequent removal thereof during the term of the Lease, require reasonable notice to Lessor of the construction of any Permanent Improvement not described in the Lease, and address the ownership and disposition of each improvement at the expiration or termination of the Lease;
- (6) Specify that all rent and payment requirements, including payment due dates, payee and place of payment, and any interest must be made by cash, check, or money order;
- (7) State that late and special fees will be assessed as follows:
 - (i) In the event that any monthly rental payment is overdue, interest will be assessed at the rate of eighteen (18) percent per annum, calculated on a daily basis on the overdue amount until paid in full; and
 - (ii) Special fees will be assessed to cover administrative costs in the collection of debt:
 1. \$50.00 for dishonored checks;
 2. \$15.00 for processing of each notice or demand letter; and
 3. 18% of balance due for the collection of delinquent debt;
- (8) State, if the leased land is within an irrigation district, the following:
 - (i) If the Premises are within an Indian irrigation project or drainage district, the Lessee must pay all operation and maintenance charges that accrue during the Lease Term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.
- (9) State that performance bonds and insurance requirements are waived per Tribal Law;
 - (i) Acceptable performance bonds include:

1. Cash;
 2. Negotiable Treasury securities accompanied by a statement granting full authority to sell securities in case of a violation of the lease;
 3. Certificates of Deposit that indicate on their face that approval is required prior to redemption by any party;
 4. Irrevocable letters of credit issued by a federally-insured financial institution and contains a clause that grants authority to demand payment and be payable;
 5. Surety bond issues by a company approved by the US Treasury.
- (10) State whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective, and how disputes regarding adjustments will be resolved;
- (11) State the process for amendment, which shall be only in writing and signed by both parties;
- (12) State the governing law, which may include Tribal Law and applicable federal statutes and regulations; and
- (13) Include or attach all other provisions required under any applicable federal statutes or regulations, including the following:
- (i) If the Lessee is a corporation, partnership, or other legal entity, it must provide organizational and financial documents as needed to show that the lease will be enforceable against the Lessee and the Lessee will be able to perform all of its Lease obligations.
 - (ii) The Lessee, when appropriate, must provide environmental and archaeological reports, surveys, and site assessments.
- (14) Include or attach all other provisions required under Tribal Law or any applicable federal statutes or regulations.
- (15) State that Agricultural Land under the jurisdiction of the Tribe must be managed in accordance with the goals and objectives of an agricultural resource management plan and or conservation plan developed by the Tribe, or by the BIA in close consultation with the Tribe, under AIARMA.
- (16) Include an indemnification and hold-harmless provision in favor of the United States and the Tribe, as Lessor.

- (17) Include an indemnification provision in favor of the United States and the Tribe, as Lessor from any liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous materials from the leased premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.
- (18) Include or attach all required plans of development or construction schedules.

Section 2.04 Lease Renewal

If Lease Renewal is not addressed in a Lease, the Property Management Department will review requests for Lease Renewal on a case-by-case basis with additional consideration due upon exercise of option to renew and any other required conditions for renewal.

Section 2.05 Termination of Lease

- (a) The Lease may terminate according to when the purpose of the Lease is complete or as mutually agreed upon by both parties.
- (b) In the event that conditions occur beyond the reasonable control of Lessor, which in Lessor's sole discretion cause Lessor to believe in good faith that the Lease cannot be reasonably performed by either party; Lessor may terminate the Lease at any time without penalty.
- (c) Grounds for termination of the Lease include, but are not limited to:
 - (1) Default of an expressed condition precedent;
 - (2) Manifestation of an expressed condition subsequent;
 - (3) Material breach by Lessee; or
 - (4) Material breach by Lessor.
- (d) Upon expiration or termination of the Lease, the Lessee shall, upon demand, surrender to the Lessor complete and peaceable possession of the property and all improvements thereon shall become the property of the Lessor.
- (e) If a person occupies the Lease Premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under applicable Tribal Law, Trespass Policy, or any applicable federal

statutes or regulations.

(f) The BIA may, upon reasonable notice from the Tribe and at the BIA's discretion, enforce the provisions of, or cancel a Lease granted under this Act.

(g) Negotiated remedies are not allowed for Leases granted under this Act.

Section 2.06 Payment

For any Lease requiring payments to be made to the Tribe, the Tribe shall provide the Secretary with such documentation of the Lease payments to enable the Secretary to discharge the trust responsibility of the United States with respect to the Premises.

Section 2.07 Recording

The Property Management Department will provide the completed Lease for signature by the Lessee. Following signing and the payment of rent, the Property Management Department will record all Leases, amendments, assignments, renewals, and subleases thereto at the LTRO with jurisdiction over the Tribal Land.

Section 2.08 Ownership of Records

Records of activities taken pursuant to this Act are the property of the Tribe; provided that all records recorded in the LTRO become the property of the United States.

Section 3: Purpose of Review; Requirements for Approval; Categorical Exclusions; and Environmental Review

Section 3.01 Purpose of Review

The purpose of this Chapter 3 is to establish an environmental review process.

Section 3.02 Requirements for Approval

The Business Committee shall not approve a Lease under subsection 2.01(a) of this Act unless:

(a) The Property Management Department has reviewed the Lease and such other information as may be necessary to identify and evaluate any Significant Effect on the Environment of the intended use of the Premises, and has:

(1) Determined that the uses authorized by the Lease are included within a categorical exclusion stated in Section 3.03 below and provided that determination in writing to the Business Committee; or

- (2) Issued a final decision after following the procedures set forth in Section 3.04 below; or the Property Management Department has provided the Business Committee with notice that the Tribe has carried out a project or activity funded by a federal agency and that it has relied on the environmental review process of the applicable federal agency rather than following the procedures set forth in Section 3.04 below.

Section 3.03 Categorical Exclusions

- (a) The Business Committee hereby finds that the following actions do not individually or cumulatively have a Significant Effect on the Environment; and therefore, except as otherwise provided in subsection 3.03(b) below, are categorically excluded from the procedures set forth in Section 3.04 below:
 - (1) Operation, maintenance, and replacement of existing facilities;
 - (2) Land conveyances and other transfers
- (b) Notwithstanding subsection 3.03(a) above, the Property Management Department shall follow the procedures set forth in Section 3.04 below if it determines that circumstances exist under which the Agricultural Use of the Premises may, individually or cumulatively, have a Significant Effect on the Environment, including, without limitation, as set forth below:
 - (1) Substantial controversy on environmental grounds; or
 - (2) Presence of cultural resources or historic properties; Provided, that if cultural resources, historic properties, or human remains are encountered during the course of any activity associated with the Lease, the activity will immediately cease, and the Lessee shall contact the Tribe.

Section 3.04 Environmental Review

- (a) Unless a categorical exclusion applies, the Property Management Department shall cause the effects on the environment of the intended uses authorized by the proposed Lease to be identified and evaluated as follows:
 - (1) If the Environmental Services Director determines that the uses authorized by the proposed Lease will not have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:
 - (A) A finding of no significant impact shall be issued and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Bluejacket Building and published in a newspaper of general

circulation in the areas affected by the proposed Lease for a minimum of fifteen (15) calendar days;

- (B) The Public shall have thirty (30) calendar days to submit written comments to the Property Management Department on the finding of no significant impact;
 - (C) Comments shall be reviewed and analyzed and a report shall be issued responding to relevant and substantive comments, if any, regarding the finding of no significant impact, which report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Bluejacket Building; and
 - (D) Unless subsection 3.02(a)(2) above applies, a final decision confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, forwarded to the Business Committee for approval, and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Bluejacket Building and published in the local newspaper or on the Tribe's website.
- (2) If the Environmental Services Director determines that the proposed Lease will have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:
- (A) A draft environmental review which identifies and evaluates any Significant Effect on the Environment of uses authorized by the proposed Lease shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Bluejacket Building and published in the local newspaper or on the Tribe's website;
 - (B) A meeting shall be held on the draft environmental review to provide an opportunity for the Public of Tribal Land to comment (both verbally and written) on any Significant Effect on the Environment of the uses authorized by the proposed Lease;
 - (C) Comments shall be reviewed and analyzed and a report shall be issued responding to relevant and substantive comments, if any, on Significant Effects on the Environment of the uses authorized by the proposed Lease, which report shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Bluejacket Building and published in the local newspaper or on the Tribe's website;
 - (D) A final environmental review describing the conclusions of the Property Management Department on the issues and evidence gathered under this

subsection 3.04(2) shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Bluejacket Building and published in the local newspaper or on the Tribe's website; and

- (E) A final decision assessing the potential for any Significant Effect on the Environment associated with the uses authorized by the Lease shall be issued, forwarded to the Business Committee for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Bluejacket Building and published in the local newspaper or on the Tribe's website. Final decisions are not appealable.

Section 4: Approval of Sublease and Assignment; Requirements; and Recording

Section 4.01 Approval of Sublease and Assignment

- (a) All Subleases and Assignments, other than to a Mortgagee, shall be subject to the approval of the Business Committee in a manner consistent with Tribal Law and the Constitution.
- (b) All Subleases and Assignments which are subject to the approval of the Business Committee shall be signed on behalf of the Tribe by the Director of the Property Management Department, or in his or her absence, the Chief.
- (c) All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgagee or Surety Agreement.

Section 4.02 Requirements

- (a) A Lessee may sublease Tribal Land in accordance with Chapter 4 of this Act.
- (b) A Lessee may assign a Lease in accordance with Chapter 4 of this Act.
- (c) No Sublease shall relieve the Lessee or Sublessor of any liability under the Lease.
- (d) In any Assignment, other than to a Mortgagee of the Leasehold Estate, the Assignee must agree in writing to assume all of the obligations and conditions of the Lease, and that the Lease is subject to all applicable laws.

Section 4.03 Recording

All Subleases and Assignments and amendments thereto shall be recorded at the LTRO with jurisdiction over the Tribal Land.

Section 5: Complaint; Form of Complaint; Informal Resolution; Decision; Appeal; and No Waiver of Sovereign Immunity

Section 5.01 Complaint

A Party who has reasonable grounds to believe that the Tribe has failed to comply with this Act has the right to file a complaint under this Chapter 6.

Section 5.02 Form of Complaint

The complaint shall be in writing, signed by the Party, describe the alleged noncompliance with this Act which is the subject of the complaint, state all relief requested, and be addressed to the Chief.

Section 5.03 Informal Resolution

The Chief shall make reasonable efforts to resolve a complaint informally, including but not limited to, scheduling a meeting with the Interested Party for such purpose. All complaints which are resolved through such informal resolution shall be reduced to writing and signed by the Chief and the Party.

Section 5.04 Decision

If a complaint is not resolved informally, the Chief shall issue a decision on the complaint, which shall be in writing, signed by the Chief. The Chief shall cause the decision to be delivered by certified mail to the Party no later than twenty (20) business days after receipt of the complaint. The decision of the Chief shall constitute a final decision of the Tribe.

Section 5.05 Appeal

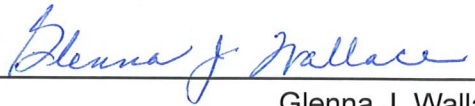
In accordance with 25 U.S.C. §415(h)(8)(A), a Party who has exhausted the Tribal remedies set forth in this Chapter 5 may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the Tribe's compliance with this Act.

Section 5.06 No Waiver of Sovereign Immunity

Nothing in this Act shall be deemed to waive the sovereign immunity of the Tribe or any of its officials, employees, or representatives.

Approval

This Act has been reviewed by the Eastern Shawnee Tribe of Oklahoma Business Committee and approved by Resolution 042821-R-02.



Glenna J. Wallace
Chief, Eastern Shawnee Tribe of Oklahoma