

Ordinance 05-21

An Ordinance enacting the Helping Expedite and Advance Responsible Tribal Home Ownership Act, to be known as Leasing of Trust Lands, and numbered in the Mille Lacs Band Statutes as Chapter 7 of Title 21. The Leasing of Trust Lands Code will grant the Band the authority to negotiate and enter into leases without further approvals by the U.S. Secretary of the Interior. Specifically, the Act authorizes the Band to execute agricultural and business leases of Band trust lands for a primary term of 25 years and up to two renewal terms of 25 years each. Leases of Band trust lands for residential, recreational, religious, or educational purposes may be executed for a primary term of up to 75 years.

The District I Representative introduced the following Bill on the 4th day of November, 2020.

Preamble

It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of enacting the Helping Expedite and Advance Responsible Tribal Home Ownership Act, to be known as Leasing of Trust Lands. The Leasing of Trust Lands Code will grant the Band the authority to negotiate and enter into leases without further approvals by the U.S. Secretary of the Interior.

This Bill is intended to supersede and replace Bill 19-02-61-20.

CHAPTER 7

LEASING OF TRUST LANDS

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SUBCHAPTER 1

GENERAL

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§ 601. Findings.

The Band Assembly and Chief Executive of the Mille Lacs Band of Ojibwe, a constituent Band of the Minnesota Chippewa Tribe, finds that implementing the Helping Expedite and Advance Responsible Tribal Homeownership (“HEARTH”) Act, Pub. L. 112–151, will promote self-determination of the Band and enhance economic and housing development on Band lands.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 602. Purpose.

The purposes of this chapter are to:

- (a) Strengthen Band sovereignty and increase Band control over Band lands and resources;
- (b) Provide an orderly process for the leasing of Band lands;
- (c) Protect and preserve the Band’s assets from loss, damage, unlawful alienation, waste and depletion; and
- (d) Provide for enforcement of all leases or other agreements that provide for the use of Band lands.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 603. Authority.

The Band Assembly of the Mille Lacs Band of Ojibwe, a constituent Band of the Minnesota Chippewa Tribe, enacts this chapter pursuant to its authority reserved under the 1837 Treaty of

St. Peters, 1855 Treaty of Washington, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under 2 MLBS § 4 and 3 MLBS § 2; and under §§ 102 and 302(a), (b) of the Minnesota Chippewa Tribe Land Ordinance #3.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 604. Amendment.

The Band Assembly and Chief Executive may amend this chapter, excluding substantive amendments that require approval by the Secretary of the Interior.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 605. Sovereign Immunity.

By adopting this chapter, the Band Assembly and Chief Executive do not waive the sovereign immunity of the Band or of any of its elected officials, appointees, or agents.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 606. Taxes.

Subject only to applicable federal law, no fee, tax, assessment, levy, or charge, including, but not limited to, business use, privilege, public utility, excise, or gross revenue taxes, imposed by a state or political subdivision shall apply to permanent improvements, regardless of ownership, activities under any lease, or the leasehold or possessory interest on Band lands. The Band may impose its own taxes or other charges on the same pursuant to Band and federal law.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 607. Effective Date.

This chapter shall take effect upon the approval by the U.S. Secretary of the Interior.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 608. Scope.

(a) **This chapter governs:**

- (1) If made for any lawful purposes, including, but not limited to, business, agricultural, residential, religious, educational, recreational, and community and utility-level wind and solar energy purposes:
 - (i) Leases, subleases, and assignments of Band lands, and amendments thereof; and
 - (ii) Mortgages of leasehold interests involving Band lands, and amendments thereof.

(b) **The chapter does not govern:**

- (1) Leases of any tract, or interest therein, in which the United States holds title to the tract or interest for the benefit of the Minnesota Chippewa Tribe;
- (2) Leases of lands held in trust or restricted status for an individual Indian;
- (3) Mortgages of Band lands;
- (4) Mineral leases; or
- (5) Existing leases which were processed with and approved by the BIA prior to the effective date of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 609. Applicable Law.

This chapter and other Band laws shall govern all lease documents and other matters arising under this chapter unless preempted by federal law. In the absence of applicable Band or federal law, the Court of Central Jurisdiction may apply common law principles in interpreting any lease document or other matter arising under this chapter. This chapter supersedes any inconsistent Commissioner Orders or other Band law regarding the leasing of Band lands enacted prior to this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 610. Definitions.

For this chapter, the terms below are defined, unless a different meaning clearly appears from the context:

- (a) **“Agricultural Land”** means Band lands or Government land suited or used for the production of crops, livestock or other agricultural products, or Band lands suited or used for a business that supports the surrounding agricultural community.
- (b) **“Agricultural Lease”** means a lease for either farming, grazing, or both.
- (c) **“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.
- (d) **“Band”** means the Mille Lacs Band of Ojibwe, a constituent Band of the Minnesota Chippewa Tribe, also known as the Non-Removable Mille Lacs Band of Ojibwe Indians.
- (e) **“Band Assembly”** means the Legislative Branch of the Mille Lacs Band of Ojibwe, established pursuant to 3 MLBS § 1, and comprised of the duly elected Speaker of the Assembly and three District Representatives.
- (f) **“Band Entity”** means (i) the Band’s designated housing entity for purposes of the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. §§ 4101-4243, (ii) a for-profit entity directly or indirectly owned and controlled by the Band, (iii) a nonprofit entity directly or indirectly controlled by the Band, or (iv) an entity formed for the purpose of developing, financing, and/or operating housing for public purposes. For purposes of this definition, “control” means appointment of board members, “directly” means by the Band government, and “indirectly” means by an entity that is ultimately owned and controlled by the Band government.

- (g) **“Band Environmental Laws”** means Band laws, regulations, and procedures relating to the environment, including air, water, land, drainage, significant and rare animal and plant species, and historic, traditional, or cultural properties.
- (h) **“Band Lands”** means any tract, or interest therein, in which the surface estate is owned by the Band in trust or restricted status, including lands reserved for BIA administrative purposes and the surface estate of lands held by the United States in trust for a corporation chartered by the Band under Section 17 of the Indian Reorganization Act, 48 Stat. 988; 25 U.S.C. § 5124.
- (i) **“BIA”** means the Bureau of Indian Affairs, U.S. Department of the Interior.
- (j) **“Beneficiary Designation”** means a document signed by a residential lessee, acknowledged by a notary and filed with the Real Estate Office that designates one individual to inherit the lessee’s leasehold upon the lessee’s death. A beneficiary designation is valid only if the designee is a Band member.
- (k) **“Business Lease”** means a lease within the scope of 25 C.F.R. §§ 162.401-162.402 or a successor BIA regulation addressing business leases.
- (l) **“Chief Executive”** means the elected official who leads the Executive Branch of the Mille Lacs Band of Ojibwe pursuant to 4 MLBS § 6.
- (m) **“Commissioner”** means the Band’s Commissioner of Natural Resources who leads the Department of Natural Resources pursuant to 4 MLBS § 4. The Commissioner may delegate duties prescribed by this chapter to designated Department of Natural Resources personnel.
- (n) **“Court”** means the Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe established pursuant to 5 MLBS § 1.
- (o) **“Department of Natural Resources”** means the Band’s Department of Natural Resources.
- (p) **“Eligible Residential Lessee”** means the Band, a Band member, a Band entity, or other entity authorized by Band Assembly resolution.
- (q) **“Effect”** means a material and demonstrable impact on the environment on or near Band lands. Effects include (a) direct effects, which are caused by the action and occur at the same time and place and (b) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects includes ecological (such as the effects on natural resources and

on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the Department believes that the effect will be beneficial.

- (r) **“Environment”** means the air, water, land, including drainage, significant and rare animal and plant species, and historic, traditional, or cultural properties and interests on or near the site of the proposed lease.
- (s) **“Housing Department”** means the entity established pursuant to 12 MLBS to manage the Band’s rental housing stock.
- (t) **“Housing for Public Purposes”** means multi-family developments, single-family residential developments, and single-family residences that are administered by the Band or substantially financed using a Band, federal, or state housing assistance program.
- (u) **“Improvements”** refer to permanent structures affixed to the land. Improvements do not include mobile homes and other movable personal property.
- (v) **“Lease”** means a written contract between the Band and a lessee, whereby the lessee is granted a right to possess Band lands, for a specified purpose and duration. The lessee’s right to possess will limit the Indian landowners’ right to possess the leased premises only to the extent provided in the lease.
- (w) **“Lease Document”** means a lease or an amendment, assignment, sublease, or leasehold mortgage arising under a lease that does not require BIA approval under this chapter but needs to be filed with BIA and recorded with the LTRO, if recording would otherwise be required under 25 C.F.R. § 162.
- (x) **“Leasehold”** means the property interest conveyed by a residential or non-residential lease, as applicable, and includes all of the improvements authorized under this chapter.
- (y) **“Leasehold Mortgage”** means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other leasehold mortgagee.
- (z) **“Leasehold Mortgagee”** means any lender approved by the Band Assembly in writing, by memorandum of understanding, resolution, or express reference in a lease document, to make and hold a leasehold mortgage, and its successor and assigns.

- (aa) **“Lessee”** means an individual or entity that has acquired a legal right to occupy Band lands by lease under this chapter. Except in cases where this chapter specifically addresses sublessees, the rights and obligations of lessees extend to sublessees.
- (bb) **“Lessor,”** except as otherwise indicated, means the Band or any sublessor of an interest in Band lands.
- (cc) **“Life Estate”** means an interest held only for the duration of a designated individual’s life.
- (dd) **“Lineal Descendant”** means an individual’s descendants in a straight line including children, grandchildren, great-grandchildren, great-great-grandchildren, and so forth, in more remote degrees. Lineal descendant includes adopted and non-marital individuals and their lineal descendants. Lineal descendancy determination for purposes of this chapter shall not affect any individual’s eligibility for Band membership.
- (ee) **“LTRO”** means the BIA Land Titles and Records Office.
- (ff) **“Member”** means an enrolled member of the Mille Lacs Band of Ojibwe, a constituent Band of the Minnesota Chippewa Tribe, also known as the Non-Removable Mille Lacs Band of Ojibwe Indians.
- (gg) **“Mitigate”** or **“Mitigation”** means action or non-action to diminish the environmental impact of a lease-related activity and may include (a) avoiding the impact altogether by not taking a certain action or parts of an action, (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and (e) compensating for the impact by replacing or providing substitute resources or environments.
- (hh) **“MLBS”** means the Mille Lacs Band Statutes.
- (ii) **“Non-Residential Lease”** means any lease within the scope of 25 C.F.R. §§ 162.001-162.599 that is not a residential lease, including, but not limited to, a lease for business, agricultural, religious, charitable, educational, recreational, wind energy, solar energy, or other purpose.
- (jj) **“Occupancy Right”** means the right to occupy Band lands pursuant to this chapter.
- (kk) **“Office of the Solicitor General”** means the attorney appointed pursuant to 4 MLBS § 17 and any deputy attorneys, attorneys contracted pursuant to Band law to assist in fulfilling the duties of the Office of the Solicitor General, or other personnel working under the Solicitor General’s supervision.

- (ll) **“Parent”** means an individual’s biological or legally adoptive mother or father, but does not include a stepparent, foster parent, grandparent, or biological parent whose parental rights have legally been terminated.
- (mm) **“Principal Residence”** means the home that a lessee occupies and maintains as a permanent place of abode. An individual may have only one principal residence at a time. An individual’s principal residence must not be affected by the lessee’s temporary absence because of military service, education, temporary relocation for employment or health reasons, incarceration or other similar reasons but must not include residences used primarily as a second home or vacation home.
- (nn) **“Public Interest”** means the interests of the Band’s current and future members, including strengthening Band self-determination and sovereignty, preserving and promoting Band culture and traditions, safeguarding Band air, water, and other natural resources and developing the Band’s public and private sector economy, as determined by the Band Assembly.
- (oo) **“Public”** means Band members and other individuals or entities upon whom a lease-related activity may reasonably be expected to have a particular and material impact.
- (pp) **“Rental Lease”** means (i) a written agreement, on such terms as the Band or its Housing Department may approve, for the occupancy of a dwelling for a period of not more than one year, (ii) a lease-to-own agreement including, but not limited to, a U.S. Department of Housing and Urban Development (HUD) form of “Mutual Help and Occupancy Agreement,” or (iii) a Sublease.
- (qq) **“Real Estate Office”** means the office within the Department of Natural Resources designated by the Commissioner to carry out the duties prescribed by this chapter, under the direction of the Real Estate Director.
- (rr) **“Real Estate Director”** means the individual selected by the Commissioner of Natural Resources to carry out the Real Estate Director duties prescribed by this chapter. The Real Estate Director may delegate duties prescribed by this chapter to Real Estate Office personnel.
- (ss) **“Residential Lease”** means a lease for single-family or multi-family housing purposes, including leases of undeveloped and developed lands and the permanent improvements thereon. A residential lease may include related administrative and recreational areas that serve housing for public purposes.
- (tt) **“Secretary”** or **“Secretary of the Interior”** means the U.S. Secretary of the Interior, or an authorized representative.
- (uu) **“Sibling”** means a full or half sibling by blood or adoption, but does not include foster sibling.

- (vv) **“Speaker of the Assembly”** means the elected official who leads the Legislative Branch of the Mille Lacs Band pursuant to 3 MLBS § 6.
- (ww) **“Spouse”** means an individual to whom one is legally married under Band or state law, including a traditional ceremony, as attested in writing by the Band spiritual leader who conducted the ceremony or, if the spiritual leader is unavailable, by other credible evidence.
- (xx) **“Sublease”** means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.
- (yy) **“Trespass”** means unauthorized entry pursuant to 21 MLBS and 24 MLBS.
- (zz) **“Trust land”** means any tract, or interest therein, held in trust status. Trust status means the United States holds title to the tract or interest in trust for the benefit of the Band or an individual Indian.
- (aaa) **“Will”** means a document that satisfies the requirements of Band law for a valid expression of an individual’s wishes for property disposition after death.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

SUBCHAPTER 2

ADMINISTRATION

Section

- 621. Band Assembly.**
- 622. Chief Executive.**
- 623. Compromise Hearing.**
- 624. Commissioner of Natural Resources.**
- 625. Real Estate Director.**
- 626. Office of the Solicitor General.**

§ 621. Band Assembly.

The Band Assembly shall:

- (a) Ratify or reject lease documents within thirty (30) calendar days of receipt; and

- (b) Forward ratified lease documents, signed by the Speaker of the Assembly and District Representatives, to the Chief Executive for approval.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 622. Chief Executive.

The Chief Executive shall approve or veto all lease documents and return to the Band Assembly.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 623. Compromise Hearing.

- (a) If the Chief Executive vetoes a lease document, the Band Assembly and Chief Executive shall hold a compromise hearing within ten (10) business days of the return date. The return date will be the date that the Band Assembly physically receives a vetoed lease document.
- (b) If an agreement is not made concerning a lease document following the compromise hearing negotiation, further action on the proposed lease document is precluded for thirty (30) calendar days from the date of the compromise hearing.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 624. Commissioner of Natural Resources.

The Commissioner shall:

- (a) Adopt policies and procedures to administer the Band lands leasing process;
- (b) Perform the environmental reviews and other environmental functions according to § 654; and
- (c) Select the Real Estate Director.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 625. Real Estate Director.

The Real Estate Director shall:

- (a) Maintain an inventory of Band lands and develop and maintain a land records system for the filing and recording of documents that affect Band land interests;
- (b) Provide leasing process information, lease forms, and other lease documents to individuals and entities seeking to lease Band lands;
- (c) Process lease and other Band lands interest applications;
- (d) Provide the BIA with copies of all lease documents, excluding approved residential subleases, according to § 657; and
- (e) Receive BIA authorization for access to the Trust Asset and Accounting Management System (TAAMS), or any successor BIA land title maintenance and tracking system.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 626. Office of the Solicitor General.

The Office of the Solicitor General shall perform the legal review of submitted lease documents and other legal functions required by this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

SUBCHAPTER 3

LEASE REQUIREMENTS

Section

- 631. Compliance
- 632. Legal Description.
- 633. Purpose.
- 634. Parties.
- 635. Term.
- 636. Improvements.
- 637. Compensation.
- 638. Due Diligence.
- 639. Bonding and Insurance.
- 640. Mandatory Lease Terms.
- 641. Lease Eligibility.
- 642. Assignment of Leases.
- 643. Mortgages of Leasehold Interests.
- 644. Subleases.
- 645. Abandoned Property.

§ 631. Compliance.

All leases must be in writing and comply with §§ 632-641.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 632. Legal Description.

A lease must describe the leased premises by any of the following:

- (a) A public or private survey;
- (b) A legal description;
- (c) A survey-grade global positioning system description; or
- (d) Other description prepared by a registered land surveyor that is sufficient to identify the leased premises.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 633. Purpose.

A lease must state the purpose for which the land is to be leased and the authorized uses of the land.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 634. Parties.

- (a) Every lease must state the legal names, Band member enrollment numbers, if applicable, addresses, and email addresses, if any, of all parties to the lease and the addresses, if different, to which notices must be directed. If the lessee is a corporate entity, then the name and address of the agent for service of process must also be included.
- (b) A residential lease entered into in a representative capacity on behalf of a Band member must contain the legal names and addresses of both the representative and the member, as well as the member's enrollment number.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 635. Term.

- (a) The Band Assembly and Chief Executive must determine the term for a residential, public, educational or recreational lease by considering the Band's best interests, the purposes for which the lease is issued, and the Band's land use policies.
 - (1) The term must not exceed seventy-five (75) years.
- (b) The Band Assembly and Chief Executive must determine the term for a business, agricultural, wind energy, or solar energy lease by considering the Band's best interests, the purposes for which the lease is issued, and the Band's land use policies.

- (1) The term must not exceed twenty-five (25) years, provided that such lease may include an option to renew for up to two additional terms, each of which may not exceed twenty-five (25) years.
- (c) An option to renew must state:
- (1) The time and manner in which the option must be exercised, or that the renewal is automatic;
 - (2) Whether Band Assembly and Chief Executive approval is required;
 - (3) The requirement that notice of renewal be provided to the Band, BIA, any sureties, and leasehold mortgagees; and
 - (4) The consideration, if any, for the exercise of the option.
- (d) Every lease must state its effective date. No lease shall be enforceable unless approved by the Band Assembly and Chief Executive.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 636. Improvements.

- (a) Each lease must state:
- (1) Whether the lessee shall be permitted to make permanent improvements on the leased premises;
 - (2) Any limitations with respect to the nature and location of permissible improvements;
 - (3) Who shall own improvements during the lease term;
 - (4) Who shall own the improvements upon lease term expiration; and
 - (5) The lessee's obligations, which may include, but are not limited to, maintaining improvements, removing improvements, and restoring the leased premises to its pre-lease condition.
- (b) In the absence of express lease terms or other written agreement between the parties to the contrary, the following shall apply:

- (1) Any structure or other improvements capable of being removed from a leasehold must be considered the property of the lessee upon lease expiration. If the lessee does not remove the structure or other improvements within thirty (30) calendar days after the lease expiration, the structure or other improvements will become the property of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 637. Compensation.

- (a) Each lease must state:
 - (1) The rent amount or other compensation due;
 - (2) When rent is due;
 - (3) Who receives rent;
 - (4) What payment type is acceptable;
 - (5) Whether, and by what percentage or amount, rent shall increase over the course of the lease term; and
 - (6) The interest payments, special fees, late charges, if any, that will be due if rent is late.
- (b) The rent amount under a non-residential lease, if any, must be based on fair market value determined by competitive bidding, appraisal, or any other appropriate valuation method consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). The Band Assembly and Chief Executive may determine that the public interest justifies a lesser amount.
- (c) If leased premises are subject to fees, assessments, or taxes, the lease must state which party is responsible for payment.
- (d) If rental reviews or adjustments are permitted, the lease must state:
 - (1) How and when rental reviews or adjustments will be executed;
 - (2) When adjustments will become effective; and
 - (3) How disputes regarding adjustments will be resolved.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 638. Due Diligence.

- (a) **Residential Leases.** The Band may impose such due diligence requirements as may be necessary to protect the Band's interests.
- (b) **Non-Residential Leases.** If permanent improvements are to be constructed, the lease may:
 - (1) Require that the lessee start and complete the construction of improvements within a schedule approved by the Band, subject to such modifications as may be mutually agreed upon in writing; or
 - (2) Require penalties for non-compliance with the construction schedule, unless such penalties are addressed in a separate agreement.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 639. Bonding and Insurance.

- (a) Except as provided in § 639(e), lessees must provide the Band with a performance bond or other form of security to secure:
 - (1) At minimum, one year's lease payment;
 - (2) The construction of improvements required under the lease, if applicable; and
 - (3) The restoration of the leased premises, if applicable.
- (b) A lessee must obtain property insurance necessary to protect the interests of the Band and in amounts sufficient to protect all insurable improvements on the premises.
- (c) The insurance may include, but is not limited to, homeowners, property, hazard, liability, casualty, crop, or other insurance as specified in the lease.
- (d) The insurance must identify the Band and United States as additional insured parties.

- (e) The Band may waive the bonding and insurance requirement of this section upon a finding by the Band Assembly and Chief Executive that such waiver serves the public interest.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 640. Mandatory Lease Terms.

- (a) All leases must include the following provisions:
 - (1) The obligations of the lessee and its sureties to the Band are also enforceable by the United States, so long as the land remains in trust or restricted status;
 - (2) Timber may not be cut on the leased land except upon the issuance of a timber cutting permit pursuant to 11 MLBS § 112, which must be approved by the Band Assembly;
 - (3) The lessee may not engage in, or permit or suffer others to engage in, any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
 - (4) The lessee must maintain the leasehold in good condition and in compliance with all applicable laws;
 - (5) The lessee must not interfere with adjoining owners' or lessees' use of their property;
 - (6) The lessee must comply with all applicable laws, ordinances, rules, Band regulations, including, but not limited to, environmental and construction laws, and other legal requirements pursuant to 25 C.F.R. § 162.014;
 - (7) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee must provide notice to the Tribal Historical Preservation Office to determine how to proceed and appropriate disposition;
 - (8) The Band and BIA have the right, at any reasonable time during the term of the lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance;

- (9) The Band and BIA may, at their discretion, treat as a lease violation any failure by the lessee to cooperate with a Band or BIA request to make appropriate records, reports, or information available to the Band or BIA for inspection and duplication;
 - (10) The lessee holds the Band and the United States harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;
 - (11) The lessee indemnifies the Band and the United States against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault. The lessee is not required to indemnify the Band for liability or cost arising from the Band's negligence or willful misconduct;
 - (12) The lessee must maintain liability insurance and casualty insurance to cover full replacement value of improvements and must name the Band as an additional insured, as its interest may appear;
 - (13) For any improvements constructed on the premises, the lessee must require appropriate bonds, or substitutes, from contractors, as approved by the Real Estate Director;
 - (14) The lease is subject to the right of the Band to grant easements and rights of way for public purposes.
- (b) If the lease is for residential purposes and the lessee is an individual and not a Band entity, then the lessee must occupy the leasehold as a principal residence, except that:
- (1) In the event the leasehold is unimproved, construction of a residence must commence within twelve (12) months and be completed within twenty-four (24) months after lease issuance. The lessee must occupy the leasehold within thirty (30) calendar days after substantial completion of the residence, provided that the Band may, in its discretion, extend the relevant deadlines;
 - (2) If an eligible Band member acquires the leasehold through gift, purchase, or inheritance, the member must, within one (1) year, either (i) occupy the inherited leasehold as a principal residence and apply for a new lease, subject to Band approval, or (ii) transfer title to another eligible residential lessee, subject to Band approval;
 - (3) An eligible Band member may use the leasehold seasonally if the member's principal residence is outside of Band lands.

- (c) If the lease is for non-residential purposes and requires construction of improvements, the lease is subject to cancellation if such construction does not commence within twelve (12) months or is not completed within twenty-four (24) months after lease issuance, provided that the Band may, in its discretion, extend the relevant deadlines.
- (d) If the leased premises are within an irrigation or drainage project, except as provided by 25 C.F.R. § 171, the lease must provide that the lessee must pay all operation and maintenance charges that accrue during the lease term to the appropriate office in charge of the irrigation project or drainage district.
- (e) An agricultural lease must provide that the lessee is required to manage the leased premises pursuant to any Band agricultural resource management plan and must incorporate appropriate stipulations or conservation plans into the lease.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 641. Lease Eligibility.

- (a) **Residential Leases.**
 - (1) Only a Band member, Band entity, or other entity authorized by resolution of the Band Assembly may hold a residential lease. A custodial parent, trustee, legal guardian, or receiver may hold a residential lease for the benefit of a Band member.
 - (2) A residential lease may be held by one or more individuals. Leases held by spouses or by parents and their children must be deemed to be held in joint tenancy with right of survivorship. Title held between anyone else must be deemed to be held as tenants in common unless the residential lease states that it is as a joint tenancy with right of survivorship.
 - (3) Any Band member occupying Band lands with Band Assembly approval prior to the enactment of this chapter may continue to occupy under the individual's existing occupancy right. The Band member, however, must not have the rights of a lessee under this chapter unless the individual obtains a new lease under this chapter.
- (b) **Non-residential Leases.** Any individual or entity may apply for a non-residential lease.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 642. Assignment of Leases.

(a) Residential Leases.

- (1) Except as otherwise expressly authorized in the lease, a lease may be assigned only as provided in this section.
- (2) A residential lease assignment must:
 - (i) Be in writing;
 - (ii) State the effective date;
 - (iii) Include the assignee's agreement to assume all of the lessee's obligations under the lease;
 - (iv) Include the assignee's agreement to assume all of the lessee's obligations under the note and mortgage, if any; and
 - (v) Be executed by the assignor and assignee.
- (3) A lessee may assign the leasehold interest as follows:
 - (i) By gift, sale, or beneficiary designation to one eligible residential lessee;
 - (ii) By gift, sale, or beneficiary designation, to a non-Band member spouse or lineal descendant, as provided by § 644; or
 - (iii) In lieu of foreclosure, upon default, if permitted under Band laws governing mortgages, or to facilitate a mortgage assumption.
- (4) An eligible residential lessee who takes an assignment under this section is presumptively entitled to a new lease in the lessee's name.
- (5) An individual or entity that is not an eligible residential lessee may not acquire a residential leasehold.

(b) **Non-Residential Leases.**

- (1) Unless otherwise expressly provided in the lease, a non-residential lease may only be assigned with Band approval pursuant to Subchapter 4.
- (2) A lease assignment must:
 - (i) Be in writing;
 - (ii) State its effective date;
 - (iii) Include the assignee's agreement to assume all of the lessee's obligations under the lease; and
 - (iv) Be executed by the assignor and assignee.
- (c) Assignments must be submitted to the Real Estate Director for recording and, in the absence of a lease provision permitting assignments without approval, for approval by the Band pursuant to Subchapter 4.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 643. Mortgages of Leasehold Interests.

- (a) A mortgage of a leasehold interest must:
 - (1) Be in writing;
 - (2) State its effective date; and
 - (3) Be approved by the Band Assembly and Chief Executive, unless the lease expressly authorizes a mortgage without Band approval.
- (b) Upon default, a leasehold mortgagee shall have rights established under Chapter 5 of this Title. Rights of redemption provided under Chapter 5 of this Title shall not apply to a non-residential mortgage.
- (c) All mortgages must be submitted to the Real Estate Director for recording and, if required, for approval by the Band pursuant to Subchapter 4.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 644. Subleases.

- (a) A sublease must:
 - (1) Be in writing;
 - (2) State its effective date;
 - (3) Include the sublessee's agreement to assume all of the lessee's obligations under the lease;
 - (4) Be executed by the sublessor and the sublessee; and
 - (5) Be approved by the Band Assembly and Chief Executive unless the lease expressly authorizes subleasing without Band approval.
- (b) All subleases must be submitted to the Real Estate Director for recording and, if required, Band approval pursuant to Subchapter 4.
- (c) The Band's Housing Department may issue year-to-year rental subleases to Band members without the Band Assembly's approval and may apply rent in accordance with policies ratified by the Band Assembly pursuant to 12 MLBS § 5.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 645. Abandoned Property.

If personal property remains on a leasehold after lease termination or expiration and the owner cannot be located after thirty (30) calendar days' notice, the Band may sell or otherwise dispose of abandoned property upon obtaining appropriate judgment in the Court of Central Jurisdiction. The Band shall be entitled to reimbursement for any amounts expended in connection with its efforts to return the property to its owner, including, but not limited to, amounts spent on attorney fees and court costs. The Band shall also be entitled to recover costs for returning the real estate to its original condition in connection with improvements made by a former lessee to Band lands.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

SUBCHAPTER 4

PROCESS FOR LEASE APPROVAL

Section

651. Application.

652. Initial Real Estate Director Review.

653. Legal Review.

654. Environmental Review.

655. Final Real Estate Director Review.

656. Band Assembly and Chief Executive Decision.

657. Real Estate Director's Post-Execution Duties.

658. Lease Amendments.

§ 651. Application.

(a) Residential.

- (1) A residential lease applicant must submit to the Real Estate Director a complete application, including the applicant's name, address, phone number, email address, date of birth, Band enrollment number if applicable, the names of individuals or entities that would occupy the leasehold premises, and other information as the Real Estate Director may require.
- (2) When a residential lease expires, a residential lessee who has made and maintained leasehold improvements, complied with all lease terms and conditions, and all applicable Band laws must be presumptively entitled to receive a new lease on the same property, subject to the Band's right to determine that the property should be put to a different use in the public interest.

(b) Non-Residential. A non-residential lease applicant must submit to the Real Estate Director a complete application, including:

- (1) The applicant's name, address, phone number, email address, date of birth, Band enrollment number if applicable;
- (2) The purpose for which the lease is sought; and

- (3) Documents necessary to complete the environmental review, including surveys, previous environmental assessments, development plans, construction plans, or other relevant documents or reports as requested by the Real Estate Director.
- (c) If an application is incomplete, the Real Estate Director must advise the applicant of either or both the information and materials required to complete the application.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 652. Initial Real Estate Director Review.

The Real Estate Director must:

- (a) Obtain a title report from the BIA;
- (b) Determine whether to require a survey or, alternatively, to identify the leased premises with a legal description, survey-grade positioning system, or other description prepared by a registered land surveyor sufficient to describe the premises;
- (c) Unless a categorical exclusion applies, deliver an application packet copy to the Commissioner for review;
- (d) Draft a form of lease or, in the case of a non-residential lease proposed by the lessee, review the form of lease; and
- (e) Deliver an application packet copy to the Office of the Solicitor General for legal review pursuant to § 653.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 653. Legal Review.

The Office of the Solicitor General must review the lease and provide the Real Estate Director with a written report within thirty (30) calendar days including an attorney's statement determining whether the lease complies with this chapter and any recommendations or concerns or both.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 654. Environmental Review.

- (a) All leases are subject to environmental review.
- (b) The Commissioner, by and through the Department of Natural Resources, must complete an environmental review within sixty (60) calendar days of receipt of a lease application. If a categorical exclusion applies, the Commissioner must complete an environmental review within thirty (30) calendar days of receipt of a lease application.
- (c) **Environmental Assessment Worksheet.** Unless a categorical exclusion applies, the Commissioner must prepare an environmental assessment worksheet for each proposed lease or proposed project that may impact the environment on Band lands, including all construction and excavation.
- (d) **Draft Environmental Review.**
 - (1) An environmental assessment worksheet may be adopted as the environmental review if it contains, or is supplemented to contain, all required information.
 - (2) A draft environmental review requires:
 - (i) A statement of purpose of the lease or proposed project;
 - (ii) A description of the physical environment conditions in the vicinity of the lease property;
 - (iii) A description of all significant short and long-term effects of the proposed project or lease, including any unavoidable or irreversible significant effects if the lease were approved;
 - (iv) Recommendations, if applicable, to mitigate adverse environmental effects or impose conditions on the proposed activities to mitigate environmental impacts;
 - (v) A determination on whether the proposed activity poses a significant impact;
 - (vi) If applicable, the reasons for a no significant impact finding; and

- (vii) Any mitigation measures or restoration and reclamation plan proposed, recommended, or required.
- (3) To determine whether an impact or effect is significant, the Commissioner must consider both local and broad impacts of the proposed activity and the intensity of that activity, including:
- (i) The potential impact on either or both public health and safety;
 - (ii) The potential impact on sacred or culturally significant sites;
 - (iii) The potential impact on sites used by Band members for religious activities, hunting, fishing, gathering, or recreation;
 - (iv) The unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;
 - (v) Whether the proposed activities are related to other actions with individually insignificant but cumulatively significant impacts;
 - (vi) The potential impact on sites, structures, or objects listed in or eligible for listing in the National Register of Historic Places;
 - (vii) The potential loss or destruction of significant scientific, archeological, cultural, or historical resources;
 - (viii) The potential impact on endangered or threatened species or its habitat that has been determined to be critical under Band law or the Endangered Species Act;
 - (ix) Whether any action may violate Band or federal environmental laws;
 - (x) The potential impact on air quality;
 - (xi) The potential impact on water resources, including, but not limited to, surface and ground water, water quality, water quantity, water uses and rights, floodplains, and wetlands;
 - (xii) The potential impact on biological resources, including, but not limited to, wildlife, vegetation, ecosystems, and biological communities;
 - (xiii) The potential impact on visual resources, scenic views, and wilderness values;

- (xiv) Potential generation of excessive noise, vibrations, light, glare, or other nuisances; and
 - (xv) Potential impact on transportation networks.
- (4) The Commissioner may adopt as a Band environmental review an environmental review prepared by another agency, entity, or individual pursuant to the National Environmental Policy Act (NEPA) provided that:
- (i) The Commissioner supplements such environmental review with an evaluation of impacts under Band environmental laws; and
 - (ii) The public comment and response requirements of this Section are complied with.
- (e) **Categorical Exclusions.**
- (1) The Commissioner is authorized to exclude categories of projects from the environmental review requirement for lease approval. If the Commissioner authorizes an exclusion, the Commissioner must subsequently propagate a Commissioner's Order pursuant to 4 MLBS § 7.
 - (2) Exceptions to Exclusions.
 - (i) Notwithstanding the categorical exclusions described in subsection (a), the Commissioner must perform an environmental review if there is a reason to believe that approval of the proposed lease or project would adversely impact the interests addressed under § 654(d)(3).
 - (ii) Notwithstanding the categorical exclusions described in subsection (a), the Band Assembly and Chief Executive may, in their discretion, direct the Commissioner to prepare an environmental review.
- (f) **Public Notice and Comment.**
- (1) Leases on Band lands held in trust are subject to public notice and comment.
 - (2) A notice of availability of the environmental review draft must be published and may include, but is not limited to:
 - (i) Posting the notice on the Band's website for fifteen (15) calendar days; and
 - (ii) Posting a hard copy at the Band's government offices and at other public locations for fifteen (15) calendar days.

- (3) The notice of availability must state that:
 - (i) A lease is under consideration for approval;
 - (ii) A draft environmental review copy is available to any member of the public requesting it without charge; and
 - (iii) Any member of the public may, within fifteen (15) calendar days after publication notice, make comments, by email or letter, to the Commissioner regarding significant effects that a proposed lease may have on the environment.

(g) **Final Environmental Review.**

- (1) After the expiration of the comment period, the Commissioner must:
 - (i) Prepare a written response to all relevant and substantive public comments, and may address similar comments jointly;
 - (ii) Revise the draft environmental review as necessary based on public comment;
 - (iii) Prepare a final environmental review, which must include the response to comments;
 - (iv) Post the final environmental review on the Band's public website; and
 - (v) Forward final environmental review copies to the Real Estate Director and Office of the Solicitor General.
- (2) The Commissioner may, but is not obligated to, make a recommendation on whether the potential adverse environmental impacts of the proposed lease or project activities justify ratification or rejection of the application.
- (3) If no environmental review is required, the Commissioner must issue a report stating the reason that no environmental review statement is required and provide a recommendation on the lease or project application.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 655. Final Real Estate Director Review.

- (a) After receipt of the final environmental review, the Real Estate Director must determine whether the applicant has satisfied all application requirements. If the Real Estate Director identifies application deficiencies, the Real Estate Director must advise the applicant and provide a reasonable period of time for the applicant to cure the deficiencies.
- (b) If the Real Estate Director determines that the application meets the requirements, the Real Estate Director must submit the application packet and the environmental review to the Band Assembly and Chief Executive for a final decision on whether to ratify or reject the lease. The Real Estate Director may provide a recommendation to the Band Assembly and Chief Executive based on an evaluation of the lease terms or the impact of the lease on the Band's long-term land use policies and needs.
- (c) The application packet submitted to the Band Assembly and Chief Executive must include:
 - (1) The proposed lease documents and the Real Estate Director's recommendation on whether to approve the lease, if any;
 - (2) The final environmental review, including any Commissioner recommendations;
 - (3) The legal review from the Office of the Solicitor General;
 - (4) Any documents requested by the Band Assembly and Chief Executive; and
 - (5) Any other relevant documents.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 656. Band Assembly and Chief Executive Decision.

- (a) The Band Assembly and Chief Executive shall have the sole authority to ratify or reject the lease application by resolution.
- (b) Duplicate originals of an approved lease must be executed by the Chief Executive, on behalf of the Band, and by the lessee. The approval of the Band Assembly must be evidenced by the signature of the Speaker of the Assembly.

- (c) If the Band Assembly and Chief Executive reject a lease application by resolution, a rejected party may request that the Band Assembly and Chief Executive reconsider the lease application. Within fifteen (15) calendar days of the request, the Band Assembly and Chief Executive must approve or reject the lease application, provided that the Band Assembly and Chief Executive may, in their discretion, extend the relevant deadlines.
- (d) Band Assembly and Chief Executive lease decisions are final and not subject to judicial review by the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 657. Real Estate Director's Post-Execution Duties.

Following the execution of an approved lease by the Chief Executive and Speaker of the Assembly, the Real Estate Director must:

- (a) Directly record, or provide to the BIA, approved lease documents, excluding approved residential subleases, for BIA recording in the Trust Asset and Accounting Management System (TAAMS) or any successor BIA land title maintenance and tracking system;
- (b) Provide duplicate original or certified copies of approved lease documents to the lessee; and
- (c) Preserve original and digital copies of executed lease documents.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 658. Lease Amendments.

- (a) The Band Assembly and Chief Executive may approve or reject a proposed amendment to an approved lease.
- (b) All amendments must be executed by each party to the lease.

- (c) If there is a leasehold mortgage that provides that the mortgagee's consent or notification is required for an amendment, the lessee must provide the Band with proof of such consent or notification prior to the amendment becoming effective.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

SUBCHAPTER 5

ENFORCEMENT

Section

661. Jurisdiction.

662. Remedies.

663. Termination of Occupancy Right.

664. Trespass.

665. Band's Rights When Leasehold or Assignment is Subject to a Mortgage.

666. BIA Enforcement.

667. Trust Responsibility.

§ 661. Jurisdiction.

The Mille Lacs Band of Ojibwe Court of Central Jurisdiction shall have exclusive jurisdiction over actions to enforce this chapter and actions involving interests created pursuant to this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 662. Remedies.

If a lessee fails to cure a default within a prescribed time period under a lease, the Real Estate Director may recommend that the Band Assembly and Chief Executive:

- (a) Cancel or terminate the lease pursuant to this chapter;
- (b) Grant an extension of time to cure the default;

- (c) Assess any damages resulting from the default, including interest and late payment penalties;
- (d) Pursue or negotiate other remedies, including, but not limited to, execution on bonds or collection of insurance proceeds; or
- (e) Order any combination of the remedies listed above.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 663. Termination of Occupancy Right.

- (a) The Band, or other lessor, may initiate court proceedings under this Title or 12 MLBS when a lease violation occurs to terminate the occupancy right of the lessee.
- (b) If the leasehold is subject to a mortgage, the plaintiff must provide notice of the violation to the leasehold mortgagee, which must have such rights to cure as may be provided in the mortgage and under the Band's mortgage lending statute.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 664. Trespass.

- (a) The Band, or other lessor, may initiate court proceedings under this Title, 12 MLBS, and 24 MLBS when a trespass occurs.
- (b) An individual or entity occupying Band lands without authorization is subject to immediate removal and the Band shall have no liability for loss or damage to personal property.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 665. Band's Rights When Leasehold or Assignment is Subject to a Mortgage.

In the event the leasehold or assignment is subject to a lawful mortgage, then, except where the Band is the mortgagee, the Band may not terminate the lease but may:

- (a) With the leasehold mortgagee's consent, take an assignment of the lease and assume borrower's obligations under the note and mortgage; or
- (b) Regardless of the leasehold mortgagee's consent, pay off the outstanding balance on the loan secured by the mortgage before entry of judgment terminating the lease.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 666. BIA Enforcement.

The BIA may, at its discretion and upon reasonable notice from the Band, enforce or cancel any lease document.

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

§ 667. Trust Responsibility.

By adopting this chapter, the Band does not intend that the federal government be divested of its trust responsibility in accordance with *Cherokee Nation v. Georgia*, 30 U.S. 1, 13 (1831).

Historical and Statutory Notes

Source:

Band Ordinance 05-21.

Ordinance 05-21
(Band Assembly Bill 19-02-05-21)


Introduced to the Band Assembly on this
Fourth day of November in the year
Two thousand twenty.

Passed by the Band Assembly on this
Fourth day of November in the year
Two thousand twenty.


Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: November 5, 2020


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND