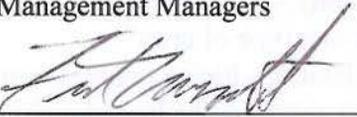


ONEIDA TRIBE OF WISCONSIN STANDARD OPERATING PROCEDURE	TITLE: Distribution of Tribal Agriculture Leases	SOP NO. 67.2.3-10
DIVISION: Land Management	APPROVED BY: Land Commission 	DATE: 4-23-07 amended 5-27-08 amended 12-29-10 amended 2-11-13
DEPARTMENT: Real Estate Services	APPROVED BY: Land Management Managers 	DATE: 6-25-07 amended 6-2-08 amended 01-24-11 amended 2-11-13
AUTHOR: Sheila Huff, Commercial Leasing Specialist	APPROVED BY: HRD	DATE: N/A

1. **PURPOSE**

To grant tribal Agricultural Leases on tribal fee and trust land, including New York, which are in the best interest of the Tribe. This SOP does not apply to agricultural leases granted pursuant to a condition of sale of land to the Tribe. The Land Commission may, at any time, decide to set aside land not subject to a lease for a special tribal project, including, but not limited to, conservation/park area or housing/commercial development.

2. **DEFINITIONS**

- 2.1. **Agriculture Lease** - a lease issued by Land Management on behalf of the Tribe for agricultural purposes on tillable and/or grazing land as determined by DOLM Director. The Tribe will not approve leases for land subject to a state or federal program, including but not limited to CRP, EQIP and WHIP unless: 1) planting and harvesting certain crops are acceptable under the terms of the program; and 2) the Lessee is a tribal department.
- 2.2. **Approved Plans** - plans approved by NRCS and OSRAC. Approved plans are required to maintain a lease.
- 2.3. **Blind Bidding (a/k/a- Sealed Bids)**- a system where individuals/businesses/departments interested in leasing tribal land submit a written sealed bid along with their application without knowing the bids of other interested individuals/businesses/departments.
- 2.4. **Business Day** - Office hours of the Oneida Tribe being Monday through Friday 8:00a.m. to 4:30p.m. not including holidays identified by the Human Resources Department.
- 2.5. **Conservation Plan** - plan developed by an individual/department which includes crop rotation, crop residue rotations and cover crop practices, conservation buffers, grassed waterways, etc.
- 2.6. **Conservation Reserve Program (CRP)** - a voluntary program administered by the Farm Services Agency that provides cost-share for specific conservation

- practices and annual rental payments to landowners that remove environmentally sensitive land from production.
- 2.7. **Cropping Methods** - the following definitions of cropping methods will be used in this SOP in an effort to clarify what is an acceptable farm practice and what is not an acceptable farm practice. All forms of cropping methods, except sub-leasing, are acceptable farm practices.
- 2.7.1. **Cash Cropping** - Growing and harvesting crops for direct sale rather than growing and harvesting crops for livestock feed or as food for the Lessee's family
- 2.7.2. **Custom Cropping** - A method of farming where the Lessee grows and harvests only one type of crop
- 2.7.3. **Seasonal Assistance** - hiring people (farm hands) to assist with growing and harvesting crops on the leased premises.
- 2.7.4. **Sub-Leasing** - A method of farming utilizing a written or oral agreement between the Lessee and a third party whereby the Lessee directly passes the use of the leased premises to a third party and collects a fee from the third party. The agreement transfers all the risk to the third party from the Lessee.
- 2.8. **DOLM** - The Oneida Tribe's Division of Land Management
- 2.9. **Eco-Services** - is a department of Environmental that provides technical assistance and coordinates the planning and development of ecological restoration.
- 2.10. **Environmental Quality Incentives Program (EQIP)** - a voluntary program administered by the Natural Resources Conservation Service (NRCS) that provides financial and technical assistance to agricultural producers for structural and agronomic conservation practices that address threats to the natural resources (soil, water, animals, plants, air) on their land.
- 2.11. **Fair Market Value.** An estimate of the market value of a property, based on what a knowledgeable, willing, and unpressured buyer would probably pay to a knowledgeable, willing, and unpressured seller in the real estate market, also, a number that is intended to reflect the value in an arm's-length transaction, consistent with the general value in the market for rentals and lease, that means the value of rental property for general commercial purposes
- 2.12. **Natural Resources Conservation Services (NRCS)** - a program under the United States Department of Agriculture (USDA) to implement farm management programs, providing monetary and technical assistance. NRCS as used in this SOP refers to the Tribal NRCS.
- 2.13. **Nutrient Management Plan** - plan developed by an individual/department which is based on realistic crop yield goals, soil tests to determine the available nutrients in the field, and takes into consideration credits for nutrients from legumes and manure applications. If the land to be leased is in a flood plain or has steep slopes, the nutrient management plan addresses these concerns.
- 2.14. **Oneida Sustainable Resources Advisory Council (OSRAC)** - tribal entity designed to prioritize and assist in delivery of USDA programs and services.

- 2.15. **Pest Management Plan** - plan developed by an individual/department identifying specific treatments for specific pests on specific areas of a field that economically protect the crop and minimize environmental damage.
- 2.16. **Preliminary Plans** - plans approved only by NRCS. Preliminary plans are required prior to entering into a lease.
- 2.17. **Tribal Member** - an enrolled member of the Oneida Tribe of Indians of Wisconsin.
- 2.18. **Tribal Member Owned Business** - a business where a tribal member owns and controls at least 51% of the business
- 2.19. **Tribal Departments** - are defined (only in this SOP) as an approved department, enterprise, program or service wherein agriculture is part of, or usual to, its operations.
- 2.20. **Wildlife Habitat Incentive Program (WHIP)** - a voluntary program administered by the Natural Resources Conservation Service (NRCS) that provides financial and technical assistance to establish and improve fish and wildlife habitat

3. PROCEDURES

- 3.1. **Establishing Fair Market Value** is determined by the Land Commission in response to changing market prices and recent bids received. As of January 2011 the base price set for ag bids was set at \$150/acre. As of March 1, 2013 the base price set for agricultural cultivation bids is \$200/acre.
- 3.2. **Renewing Leases.**
 - 3.2.1. When a lease with a Tribal Member or Tribal Department is set to expire within 1 year, the Commercial Leasing Specialist offers the lessee a new lease at Fair Market Value and requests current lessee to provide a soil analysis.
 - 3.2.2. When a lease with a Non-Member is set to expire within 1 year, the lessee must submit his/her interest to enter into a new lease in writing to the Commercial Leasing Specialist at least 6 months but no more than 1 year prior to the current lease expiring. The Commercial Leasing Specialist offers the lessee a new lease at Fair Market Value and requests current lessee to provide a soil analysis.
- 3.3. **Offering Leases to Oneida Farms.** The Commercial Leasing Specialist offers a lease at Fair Market Value to the Oneida Farms for:
 - 3.3.1. all new land acquisitions, not currently subject to a lease,
 - 3.3.2. all land where the current lessee did not exercise his/her option to enter into a new agricultural lease.
- 3.4. **Advertising Land.** When a current lessee does not exercise his/her option to enter into a new agricultural lease or when the Oneida Farms is not interested in leasing land the Commercial Leasing Specialist offers to the Oneida Farms, the Commercial Leasing Specialist brings the property to the Land Commission with a recommendation to advertise the opportunity to lease the land.

- 3.5. **Assembling the application.** Where the Land Commission determines the land will be leased pursuant to this SOP, the Commercial Leasing Specialist assembles the application packets to include:
- 3.5.1. Application developed by Commercial Leasing Specialist;
 - 3.5.2. Information regarding qualifications pursuant to this SOP;
 - 3.5.3. Survey of land to be leased, when available;
 - 3.5.4. Enrollment verification form; and
 - 3.5.5. Date, time and place of bid opening.
- 3.6. **Public Notice.**
- 3.6.1. Commercial Leasing Specialist drafts the public notice to include:
 - 3.6.1.1. Acreage, length of lease and location and address of parcel available for leasing. All new leases shall be for a term of 5 years with an option for the lessee to renew the lease for an additional 5 years.
 - 3.6.1.2. Location of application pick-up and drop-off
 - 3.6.1.3. Fair Market Value
 - 3.6.1.4. Instructions stating the applicant must clearly mark the sealed bids
 - 3.6.1.5. Application deadline
 - 3.6.2. Commercial Leasing Specialist advertises notice:
 - 3.6.2.1. in at least (1) issue of the Kalihwisaks
 - 3.6.2.2. on DOLM website for at least fifteen (15) calendar days
 - 3.6.2.3. at DOLM for at least fifteen (15) calendar days
- 3.7. **Receiving applications.** DOLM administrative staff date and time stamps applications when received and forwards to the Financial Accounts Area Manager. DOLM administrative staff ensures the bid remains sealed.
- 3.8. **Opening the sealed bids.** Only the Financial Accounts Area Manager or the designated representative is authorized to open the sealed bids. The Financial Accounts Area Manager or the designated representative records the bids in the presence of two witnesses (preferably the Division Director and the Commercial Leasing Specialist), announces the highest and lowest bid amounts to those in attendance, and forwards a copy of the bids to the DOLM Director and the original to the Commercial Leasing Specialist. During the bid opening, the bids remain confidential, only the dollar amount of the highest and lowest bids are disclosed.
- 3.9. **Ranking the applicants.**
- 3.9.1. Commercial Leasing Specialist ranks the applicants based on their bid amount from the highest bid to the lowest bid. For tribal members, tribal member owned businesses and tribal departments, the amount bid is increased by 10% to determine the bid's rank in comparison to the other bids. For example, if a tribal member bids \$110 per acre for a lease and a non-member bids \$120 per acre for a lease, when ranking the applicants, the tribal member will be ranked as though he/she bid \$121 per acre ($\$110 + 10\% = \121). In this example, the tribal member would be awarded the lease. Note, the base bid for tribal members, tribal member owned

- businesses and tribal departments must, at a minimum, meet the Fair Market Value in order to be qualified.
- 3.9.2. If Land Management receives no qualified applicants, the DOLM Director may consider:
 - 3.9.2.1. re-advertising at no more than 20% below the Fair Market Value or the minimum bid
 - 3.9.2.2. re-advertising the option to lease in other newspapers at the established Fair Market Value
 - 3.9.3. In the event of a tie for the highest bid, the Commercial Leasing Specialist contacts the individuals/departments with the tie to offer them the opportunity to submit an additional bid within 5 business days of being notified of the tie. The new bids are ranked pursuant to the ranking procedures. If no one submits a new bid, repeat this process.
- 3.10. **Applicant Qualifications.** Individuals/businesses/departments not meeting these minimum qualifications will be removed from the ranking list.
- 3.10.1. If the applicant is an individual, the applicant must meet the following minimum criteria:
 - 3.10.1.1. must have submitted application prior to the application deadline;
 - 3.10.1.2. must have submitted a bid that meets the Fair Market Value;
 - 3.10.1.3. must have minimum credit score of 600;
 - 3.10.1.4. must have maximum debt to income ratio of 36%;
 - 3.10.1.5. must be current with all current tribal leases and/or loans for one calendar year;
 - 3.10.1.6. must be at least 21 years of age;
 - 3.10.1.7. must not have filed for bankruptcy within past three calendar years;
 - 3.10.1.8. if applying as a tribal member, ensure enrollment verification form is attached; and
 - 3.10.1.9. any tribal debt must be paid within 10 business days of being notified of the opportunity to lease. This does not include current debt being paid in installments. For example, payroll deductions.
 - 3.10.2. If the applicant is a business, the applicant must meet the following minimum criteria:
 - 3.10.2.1. must have submitted application prior to the application deadline;
 - 3.10.2.2. must have submitted a bid that meets the Fair Market Value;
 - 3.10.2.3. business/managing member must have a minimum credit score of 650;
 - 3.10.2.4. business/managing member must have maximum debt to income ratio of 34%;
 - 3.10.2.5. must be current with all current tribal leases and/or loans for one calendar year;
 - 3.10.2.6. must be at least 21 years of age;

- 3.10.2.7. must not have filed for bankruptcy within past three calendar years;
- 3.10.2.8. if applying as a tribal member owned business:
 - 3.10.2.8.1. ensure enrollment verification form is attached; and
 - 3.10.2.8.2. ensure tribal member's interest in business is at least 51%
- 3.10.2.9. any tribal debt must be paid within 10 business days of being notified of the opportunity to lease. This does not include current debt being paid in installments. For example, payroll deductions.
- 3.10.2.10. must have a current business plan in place incorporating present and projected use of tribal land for agricultural, conservancy and/or any federal program purposes.
- 3.10.3. If the applicant is a tribal department, the applicant must meet the following minimum criteria:
 - 3.10.3.1. must have submitted application prior to the application deadline;
 - 3.10.3.2. must have submitted a bid that meets the Fair Market Value;
 - 3.10.3.3. must be current with all existing tribal leases for one calendar year.
 - 3.10.3.4. must have a current business plan in place incorporating present and projected use of tribal land for agricultural, conservancy and/or any federal program purposes.
- 3.11. **Choosing the applicant.**
 - 3.11.1. The highest ranked eligible applicant receives the opportunity to lease. If the highest ranked eligible applicant rejects the opportunity to lease, then the next highest ranked applicant receives the opportunity to lease.
 - 3.11.2. The commercial Leasing Specialist will prepare a report for each property advertised containing the following information:
 - 3.11.2.1. the total number of bids
 - 3.11.2.2. the amount of each bid
 - 3.11.2.3. any reasons for disqualification of a bidder
 The report shall not include the identity of any bidders.
- 3.12. **Applicant's Preliminary Plans.**
 - 3.12.1. Prior to entering into an agricultural lease, the applicant is required to work with NRCS to develop a preliminary conservation plan, nutrient management plan, and pest management plan. If NRCS is unavailable, the applicant is required to work with Eco Services to develop said plans.
 - 3.12.2. Applicant must submit said plans to the NRCS within 10 business days of being notified of the opportunity to lease.
 - 3.12.3. The NRCS is responsible for determining if such plans are acceptable and notifying Land Management of such acceptability within 10 business days. If no response, Commercial Leasing Specialist contacts NRCS to obtain approval or rejection.

3.12.4. If the applicant fails to submit the plans within 10 business days to NRCS or Eco Services as determined in this sub-section, or the applicant does not obtain an approved plan from NRCS, the next ranked applicant is awarded the opportunity to lease or if there is no second qualified applicant, it will be reposted.

3.13. **Drafting the lease.** After preliminary plans are approved, the Commercial Leasing Specialist drafts the agricultural lease and obtains approval pursuant to Land Management's Contract Review SOP. The terms of the lease shall include the following:

3.13.1. Prohibition on sub-leasing;

3.13.2. Requirement that participation in any federal or state crop programs requires Land Commission approval; and

3.13.3. Requirement to obtain approved conservation plan, nutrient management plan, and pest management plan within 30 business days of entering into the lease.

3.14. **Consolidating Existing Leases.** Where a tribal member lessee wishes to consolidate two or more leases into a single lease, the Commercial Leasing Specialist offers the lessee a single lease subject to the following provisions:

3.15. the lease term shall be the average number of years of the existing leases, averaged down to the lowest whole year. For example, if a lessee has three leases where the first lease expires in 2 years, the second lease expires in 3 years and the third lease expires in 5 years, the term of the consolidated lease will be 3 years ($2 + 3 + 5 = 10$. $10 \div 3 = 3.333 \approx 3$).

3.15.1. the lease fees for each leased property subject to the existing leases shall remain the same. For example, if a lessee has two leases where the first lease is \$150 per acre for the Former Schmoie property and the second lease is \$125 per acre for the Former Doe property, the lease fees will remain the same for each property leased in the consolidated lease.

4. **RECORDS.**

4.1. All applications are filed in the file room for a period of eighteen months. After eighteen months, only those applications resulting in a lease will be retained by Land Management. All other applications are destroyed after eighteen months.

4.2. The records of all bid documents are retained by the Financial Accounts Area Manager and shall be filed in the file room for a period of eighteen months. After eighteen months, the records are destroyed.

5. **REFERENCES**

5.1. Oneida Real Property Law

5.2. Contract Review SOP

5.3. Credit Report SOP

5.4. Conservation Plan SOP

5.5. Farm Lease Offer Form