AGENDA OF THE FINANCE COMMITTEE

TUESDAY, OCTOBER 9, 2018, 4:30 PM
CITY HALL, ROOM 207
AMENDED

A. Roll Call.

B. Approval of the Agenda.

C. Approval of Minutes.

1. Approval of the minutes from the September 25, 2018 meeting.

D. Regular Business.

1. Update from staff on requested amendments to Claims administration Procedure ordinance (GBMC 7.01 et seq).
2. Consideration with possible action on Notice of Decision from the US Dept of the Interior regarding the intent to take land into trust – Cornelius, Kestell, and Debenedetto parcels.

   The Council may convene in closed session pursuant to Section 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Council may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

E. Informational.

1. The next Finance Committee meeting (Joint Finance/Personnel Committee) will be held on Tuesday October 30, 2018 at 3:00 PM.
2. 2018 Contingency Fund:
   $86,366.39

F. Adjournment.

1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Finance Committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

Report to the
Finance Committee
of the City of Green Bay

MEETING DATE	PREPARED BY
October 9, 2018	

AGENDA ITEM # D.1.

Update from staff on requested amendments to Claims administration Procedure ordinance (GBMC 7.01 et seq).

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None

Report to the
Finance Committee of the City of Green Bay

MEETING DATE	PREPARED BY
October 9, 2018	Vanessa Chavez, Law Department Director

AGENDA ITEM # D.2.

Consideration with possible action on Notice of Decision from the US Dept of the Interior regarding the intent to take land into trust – Cornelius, Kestell, and Debenedetto parcels.

The Council may convene in closed session pursuant to Section 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Council may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. US DEPT OF THE INTERIOR NOTICE OF DECISION
2. US DEPT OF THE INTERIOR NOTICE OF DECISION (2)

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
5600 American Boulevard West, Suite 500
Bloomington, Minnesota 55437

RECEIVED
SEP 26 2018

IN REPLY REFER TO:
Division of Fee to Trust
Cornelius and Kestell

SEP 24 2018

NOTICE OF DECISION
INTENT TO TAKE INTO TRUST

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 9171 9690 0935 0036 1025 77

Honorable Tehassi Hill
Chairman, Oneida Nation
Post Office Box 365
Oneida, Wisconsin 54155

Dear Chairman Hill:

On January 11, 2008 and August 29, 2016 the Oneida Nation (hereinafter "Nation"), submitted fee-to-trust applications[1] for land known as the Cornelius and Kestell parcels, which are located in Brown County, Wisconsin. We have consulted with the local and state governments as required and have completed our analysis of the application and all comments received. This letter serves as our *Notice of Decision* to approve the applications and to acquire the land in trust status on behalf of the Nation.

Specifically, these fee-to-trust acquisitions are supported by the Oneida Nation Tribal Resolution No. 5-24-06-FF, dated March 24, 2006, for the Cornelius parcel and No. 8-16-06-K, dated August 16, 2006, for the Kestell parcel. The following are the legal descriptions of the Cornelius and Kestell properties:

Cornelius
Lot Eighteen (18), according to the recorded Plat of Red Oaks Estates, Section Thirty-three (33), Township Twenty-four (24) North, Range Twenty (20) East of the Fourth Principal Meridian, in the City of Green Bay, West side of Fox River, Brown County, Wisconsin, containing 0.195 acres, more or less.

Property Address: 2159 Red Oak Drive, Green Bay, Wisconsin 54304
Tax Parcel Number: 6H-1601

Kestell
Lot Four (4), Block Three (3), according to the recorded Plat of Sleepy Hollow

[1] Letter from Gerald Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Terrence Virden, Regional Director, BIA, Midwest Regional Office (January 11, 2008) (Cornelius property); Letter from Christina S. Danforth, Chairwoman, Oneida Nation to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 29, 2016) (Kestell property) (on file with the Midwest Regional Office).

Subdivision, being part of Lots Twelve (12) and Thirteen (13), Section Thirty-two (32), Township Twenty-four (24) North, Range Twenty (20) East of the Fourth Principal Meridian, in the City of Green Bay, West side of Fox River, Brown County, Wisconsin.

0.269, acres more or less.
Property Address: 2580 Zak Lane, Green Bay, Wisconsin 54304
Tax Parcel Number: 6H-1973

Regulatory Authority

The applicable regulations are set forth in the Code of Federal Regulations (CFR) Title 25, INDIANS, Part 151, as amended. The regulations specify that it is the Secretary's policy to accept lands "in trust" for the benefit of Tribes[2] when such acquisition is authorized by an Act of Congress; and, (1) when such lands are within the exterior boundaries of the Tribe's reservation, or adjacent thereto, or within a Tribal consolidation area; or (2) when the Tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate Tribal self-determination, economic development, or Indian housing.[3]

Analysis of maps provided with the applications show the subject parcels to be within the exterior boundary of the reservation. Also, these acquisitions facilitate Indian housing. Thus, the request for trust status is within the land acquisition policy as set forth by the Secretary of the Interior.

Accordingly, pursuant to 25 CFR § 151.10, *On-reservation acquisitions*, we are required to provide notice to state and local governments, and then consider the following criteria in evaluating the request:

(a) the existence of statutory authority;
(b) need of the tribe for additional land;
(c) the purpose for which the land will be used;
(e) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls;
(f) jurisdictional problems and potential conflicts of land use which may arise;
(g) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
(h) compliance with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

25 CFR § 151.10 – Notice and Comments

[2] A "tribe" is any group of Indians recognized by the Secretary as eligible for the programs and services from the Bureau of Indian Affairs. The Nation is currently listed as eligible to receive services from BIA. See 25 CFR § 151.2(b) and 83 Fed. Reg. 34865 (July 23, 2018).
[3] 25 CFR § 151.3.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.[4]

On December 2, 2015 and January 25, 2018, the City of Green Bay, Brown County, and the State of Wisconsin were consulted to solicit comments regarding potential impacts as a result of removal of this property from the tax rolls.[5]

On December 7, 2015 and February 2, 2018, Brown County provided two similar written responses[6] to the December 2, 2015 and January 25, 2018 Notice of Applications (NOA). The County provided information regarding property taxes, the impact of loss of tax revenue, assessments, services provided, and zoning.[7] Specifically, the County provided the following information and comments:

- The county provided the amount of property taxes levied on the property for 2014 and 2017;
- The county stated it has a service agreement with the tribe for payments in lieu of taxes and removal of the land from the tax roll does not have a fiscal impact on Brown County;
- The county indicated that there were no special assessment fees on the properties for 2014 and 2017;
- The county stated that there were no special assessment fees for 2014 and 2017;
- The county stated that services are provided by either Brown County or Oneida according to the service agreements according to the service agreements entered between Brown County and Oneida. The agreements cover services including, but not limited to, health, safety, and welfare issues, certain zoning issues, licensing and child support services;
- The county stated zoning is done by the municipality in which the land is located and Brown County may be involved in limited zoning issues (such as shore land zoning) and those issues are determined pursuant to the service agreements between Oneida and Brown County.

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[4] 25 CFR § 151.10

[5] Notice of (Non-Gaming) Land Acquisition (December 2, 2015 and January 25, 2018) (on file with the Midwest Regional Office).

[6] Letter from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (December 7, 2015) (the county provided a single comment letter for both subject properties addressed in this decision); Letter from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (two individual letters were issued for each of the subject properties) (on file with the Midwest Regional Office).

[7] Letter from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).

On, December 30, 2015, the City of Green Bay provided written responses[8] to the December 2, 2015 NOA. The City provided information regarding property taxes, the impact of loss of tax revenue, special assessments, services provided, and zoning. Specifically, the City provided the following information and comments:

- The city provided the amount of property taxes levied on the property for 2015;
- The city stated it has a service agreement with the tribe and its tax revenue "would be a reduction of the City's real estate tax base equal to the total value of land and improvements";
- The city stated it has no knowledge of any current special assessments against the property;
- The city currently provides all standard public works services to the property;
- The city stated it does not foresee any zoning or land use problems or conflicts with Oneida's current use of the Property.

On, February 28, 2018, the City of Green Bay provided written responses[9] to the January 25, 2018 NOA. The City provided information regarding property taxes, the impact of loss of tax revenue, special assessments, services provided, and zoning. Specifically, the City provided the following information and comments:

- The amount of property taxes levied on the properties for 2017;
- Removal of these properties from the tax rolls has a severe impact on the City's tax revenue;
- There are well over 150 properties currently located within the city representing "millions upon millions of dollars in assessed values";
- The community is divided because of an "inequitable tax burden" and jurisdictional checkerboarding;
- The city's operating expense is not reduced regardless of ownership or trust status, services are still required;
- There are no outstanding special assessments on the property;
- The City currently provides all standard public works services to the property, and residents are entitled to use and benefit from all public services regardless of taxation status;
- The Service Agreement between the city and the Nation, adopted in 2009, was terminated in April 2016. Consequently, the city is without means of mitigating impact to the city and the city's residents;
- There is great potential for land use conflicts; one of the primary reasons for terminating the 2009 service agreement was difficulty ensuring consistent land use;
- The city's enforcement of zoning restrictions has been limited, and the piecemeal application of zoning restrictions results in a non-cohesive residential community;

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[8] Letter from Mayor James J. Schmitt, City of Green Bay to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (December 30, 2015) (on file with the Midwest Regional Office).

[9] Letter from Mayor James J. Schmitt, City of Green Bay to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office). The city provided a single response letter for five pending applications located within Green Bay; two of the five properties listed are included in this decision and described above.

- The properties should not be removed from the tax rolls until a workable solution is implemented.

Comments from the City and the County were forwarded to the Nation.[10] On June 7, 2018, the Nation provided a single response letter[11] for five pending applications located within Green Bay; two of the five properties listed are included in this decision and described above. No comments were received from the State of Wisconsin for the December 2, 2015 or the January 25, 2018 Notices of Application.

25 CFR § 151.10 (a) – Statutory authority for the acquisition of the property.

The subject parcels are eligible for trust acquisition pursuant to Section 5 of the Indian Reorganization Act (IRA) of June 18, 1934, now codified as 25 U.S.C. § 5108. Section 5 of the IRA authorizes the Secretary of the Interior, or the authorized representative, to acquire land for the benefit of recognized Indian Tribes. A Tribe must be recognized at the time of the Secretary of the Interior decides to take land into trust pursuant to the IRA.[12] Because the Oneida Nation is currently listed as a federally recognized tribe eligible to receive services from the Bureau of Indian Affairs,[13] the "recognized" requirement of Section 19 of the IRA is satisfied.[14]

Also, on February 24, 2009, the United States Supreme Court issued its decision in Carcieri v. Salazar, 555 U.S. 379 (2009). The decision held that Congress granted discretionary authority to the Secretary of the Interior under the Indian Reorganization Act (IRA) to acquire land-in-trust for Indian tribes. To acquire land-in-trust pursuant to 25 U.S.C. § 5108, a tribe must have been "under Federal jurisdiction" at the time the IRA was passed in June 1934.

The Interior Board of Indian Appeals recently held that one bright-line test for determining whether a tribe was under Federal jurisdiction in 1934 turns on whether an IRA election was held for a tribe.[15] Additionally, on March 12, 2014, the Office of the Solicitor issued an Opinion on the meaning of "under federal jurisdiction" for purposes of the IRA, which states that the "calling of a Section 18 election for an Indian Tribe between 1934 and 1936 should unambiguously and conclusively establish that the United States understood that the particular tribe was under federal jurisdiction in 1934."[16] According to the Opinion, IRA elections held between 1934 and

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[10] Two letters from Tim LaPointe, Acting Regional Director, BIA, Midwest Regional Office to Tehassi Hill, Chairman, Oneida Nation (April 5, 2018) (on file with the Midwest Regional Office).

[11] Letter from Kelly M. McAndrews, Oneida Law Office to Scott Sufficool, Interim Dep. Regional Dir., BIA, Midwest Regional Office (June 7, 2018) (on file with the Midwest Regional Office).

[12] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014) ("A tribe need only be "recognized" at the time the statute is applied").

[13] List of entities eligible to receive services from BIA, 83 Fed. Reg. 34865 (July 23, 2018).

[14] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014).

[15] Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA 53 IBIA 62, 71-72 (2011).

[16] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014).

1936 are "such an example of unambiguous federal actions that obviate the need to examine the tribe's history prior to 1934."[17]

On December 15, 1934, a Federal election was held by the Department of Interior for the Oneidas to vote on whether to reject the IRA (IRA election).[18] Because the Secretary held an IRA election for the nation in 1934, we conclude that the Nation was under Federal jurisdiction at the time the IRA was enacted and that the Secretary of Interior is authorized, pursuant to 25 U.S. C. § 5108, to take land into trust for the tribe.

Further, in 2013 the Interior Board of Indian Appeals (IBIA) held that the Oneida Nation "was under Federal jurisdiction at the time IRA was enacted and the Regional Director is authorized pursuant to U.S.C. § [5108] to take land into trust for the Tribe."[19]

25 CFR § 151.10 (b) – The need of the Tribe for additional land.

The fee-to-trust land acquisition regulations require the BIA to consider the Tribe's need for additional land. Currently, there are approximately 14,083.62 acres held in trust[20] for the Nation and approximately 17,268 tribal members.[21]

Both subject parcels were allotted land lost by the Oneida Nation through the General Allotment Act. The subject parcels were reacquired in 1996 and 2004 to expand the Nation's land base. The two applications state that "returning the land to its original status as inalienable, to forever be held by the United States for the benefit of the Nation, ensures that tribal investments within the Oneida Reservation will never be lost." These acquisitions will "expand Oneida Nation land base and provide...future site[s] for continued residential use."[22]

We have determined that the Nation has established a need for additional land, supported by the Nation's obligation to provide housing for tribal members.

25 CFR § 151.10 (c) – Purpose for which the property will be used.

The fee-to-trust land acquisition regulations require the BIA to consider the purposes for which the land will be used. In examining the purpose or use, the BIA "must first determine the current use of the property, then ascertain the Tribe's plans for the property," which not only "facilitates a clear understanding for BIA of how the property will be used for purposes of determining whether to grant the fee-to-trust applications, but also assists local jurisdictions in their planning

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17 Id.

18 Ten Years of Tribal Government Under I.R.A., Theodore H., Haas, United States Indian Service (1947).

19 Village of Hobart Wisconsin v. Acting Midwest Regional Director, 57 IBIA 4, 22 (2013).

20 Trust Asset Accounting & Management System, List of Tribally Owned Tracts Report (August 1, 2018). Tribally owned fractional interests in allotted tracts were not included.

21 Socioeconomic Conditions within the Reservation of the Oneida Nation, dated April 4, 2018 (on file with the Midwest Regional Office).

22 Letter from Gerald Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Terrence Virden, Regional Director, BIA, Midwest Regional Office (January 11, 2008) (Cornelius property); Letter from Christina S. Danforth, Chairwoman, Oneida Nation to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 29, 2016) (Kestell property) (on file with the Midwest Regional Office).

for any ongoing services that may be needed and in commenting on a proposed fee-to-trust land acquisition."[23] Considering the purposes for which the land will be used "also informs and facilitates BIA's consideration of whether there may be jurisdictional or land use conflicts" and "determines the level of environmental review required under the National Environmental Policy Act."[24]

The purpose for the land acquisitions is clearly stated in the Nation's applications: each of the parcels have "historically…been used for residential purposes" and will "provide a future site for continued residential use."[25]

<u>25 CFR § 151.10 (e) – Impact on the State and its political subdivisions resulting from the removal of this property from the tax rolls.</u>

The NOA provides State and local governments the opportunity to submit comments regarding the proposed trust acquisition in the areas of regulatory jurisdiction, real property taxes, and special assessments. In its response to the NOA, the City states that it would realize $2,700.67 for tax year 2017 from the subject properties.[26]

According to the 2016 audit reports published by the local governments, the County's property tax levy for 2016 was $86,661,972 and the City's levy for 2016 was $52,699,543.[27] The gross property tax charged against the subject parcels for 2017 was $7,360.00,[28] of which the County received $1,341.70 and the City received $2,700.70.[29]

Jurisdiction	Total Tax	% Levy
Brown County	$1,341.70	0.001548%
City of Green Bay	$2,700.70	0.005125%

[23] Thurston County, Nebraska v. Great Plains Regional Director, BIA, 56 IBIA 296, 307 (2013).

[24] Id at 308.

[25] Letter from Gerald Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Terrence Virden, Regional Director, BIA, Midwest Regional Office (January 11, 2008) (Cornelius property); Letter from Christina S. Danforth, Chairwoman, Oneida Nation to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 29, 2016) (Kestell property) (on file with the Midwest Regional Office).

[26] Letter from Mayor James J. Schmitt, City of Green Bay to Scott Sufficool, Acting Regional Director, BIA Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office). The city provided a single response letter for five pending applications located within Green Bay; two of the five properties listed are included in this decision and described above.

[27] Wisconsin Department of Revenue Division of State and Local Finance Bureau of Local Government Services, Town, Village and City Taxes levied in 2016 and collected in 2017 (on file with the Midwest Regional Office).

[28] The county provided Property Tax Records for parcel Nos. 6H-1601 and 6H-1973. Two letters from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).

[29] The county provided Property Tax Records for parcel Nos. 6H-1601 and 6H-1973. Two letters from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).

The city states that there are no outstanding special assessments on the property.[30] Additionally, on July 30, 2018, updated tax records[31] were retrieved for each of the subject parcels; which concurred with the city's statement that there are currently no delinquent past due assessments assigned to these properties.

The city also states that although the removal of each individual property from the tax rolls has "a negligible impact on the city's operations," the removal of all of these properties will have a "severe impact on the City's tax revenue" and "inequitable tax burden among Green Bay residents." The City states that there are well over 150 trust properties located within the City of Green Bay that are currently held in trust, and which represent "millions upon millions of dollars in assessed values removed from the tax rolls."[32]

The BIA is only required to consider the present impact on the tax rolls of a proposed acquisition, i.e., the taxes currently assessed.[33] The county and the city will both experience a reduction to their tax bases of 0.001548% and 0.005125% respectively, when calculated based on tax bills and levies.

<u>25 CFR § 151.10 (f) – Jurisdictional problems and potential conflicts of land use.</u>

In accordance with 25 CFR Part 151, BIA must consider jurisdictional problems or potential conflicts but is not required to resolve those problems or issues.[34] The subject parcels contain an aggregate of 0.464 acres[35] of land; both are currently used[36] and zoned[37] for residential purposes. The City has stated that there is currently no incompatible zoning.[38]

Direct services provided by the Nation for tribal members and their families include: waste and recycling pickup, health care, elderly services, public safety, education and library services, recreation programs, public works, utilities, public transportation, housing, and mortgage loans and rentals. The Nation also provides many community services to non-tribal residents of the

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[30] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).

[31] Brown County, WI Property Tax Record for parcel Nos. 6H-1601, and 6H-1973 (July 30, 2018), http://www.public.applications.co.brown.wi.us/treas/landrecordssearch/entryform.asp (on file with the Midwest Regional Office).

[32] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).

[33] <u>City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director</u>, BIA, 49 IBIA 75, 81-82 (2009).

[34] <u>Thurston County, Nebraska v. Great Plains Regional Director, BIA</u>, 56 IBIA 296, 307 (2013).

[35] Dominica VanKoten, Chief Cadastral Surveyor, Bureau of Land Management, two <u>Land Description Review (LDR)Certificates</u> (June 7, 2016; June 27, 2016) (on file with the Midwest Regional Office).

[36] Letter from Gerald Danforth, Chairman, Oneida Tribe of Indians of Wisconsin to Terrence Virden, Regional Director, BIA, Midwest Regional Office (January 11, 2008) (Cornelius property); Letter from Christina S. Danforth, Chairwoman, Oneida Nation to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 29, 2016) (Kestell property) (on file with the Midwest Regional Office).

[37] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office). ("All of the Properties are currently zoned R-1.")

[38] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).

Oneida reservation. Services provided by the Oneida Police Department include first responders, traffic violations, criminal arrests, investigations, pick-ups and transportation. The Nation does not receive any reimbursement for these services. Fines from traffic tickets issued by the Nation are given to the county and/or state. The Nation provides utility services (sewer and water) within the Oneida Sanitary District. Parks and recreation areas have been constructed and maintained by the Nation for the benefit of tribal and non-tribal residents.[39]

The Nation has entered into a law enforcement agreement for mutual aid with the City of Green Bay.[40] Fire protection services also will be provided by the City of Green Bay.[41] Additionally, Brown County has an executed service agreement with the Nation regarding delivery of services to tribal lands within the County. On May 29, 2008 (amended September 16, 2008 and June 29, 2010), the Oneida Nation and Brown County entered into a service agreement which includes cross-deputation for law enforcement and mutual aid secondary assistance in emergency services.

On March 9, 2009, the Nation and the City of Green Bay entered into a service agreement, which includes mutual aid for secondary assistance in law enforcement and emergency services. On September 10, 2015, the Oneida Nation received a request from the City of Green Bay to meet in order to negotiate a Service Agreement amendment.[42] An amendment was not executed and the agreement was terminated by the City of Green Bay.[43] The city provided a list of services it currently provides to the property, including waste/recycling collection, snow removal, street maintenance, water/sewer, parks, policing, fire, inspections, and neighborhood services.[44] The City has stated that operating expenses will not be reduced regardless of ownership or trust status, since services are still required.[45]

The City also states that "a piecemeal application of zoning restrictions results in disjointed neighborhoods…" and this is "counterproductive to… a cohesive community in the residential neighborhoods at issue here." The "checkerboard" pattern of jurisdiction, however, is an "awkward" but "familiar feature of American government;" in fact, "federal facilities of all sorts, ranging from post offices to military bases, are scattered throughout the United States…a similar scatter is common throughout Indian County."[46] The City's assertions concerning jurisdictional

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[39] Oneida Nation, Socioeconomic Conditions within the Reservation of the Oneida Nation at 2-3 (April 4, 2018) (on file with the Midwest Regional Office).

[40] Law Enforcement Mutual Aid Agreement (October 16, 1996) (on file with the Midwest Regional Office).

[41] Email from James Bittdorf, Attorney, Oneida Nation (June 8, 2016) (on file with the Midwest Regional Office).

[42] Letter from Gerald Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Terrence Virden, Regional Director, BIA, Midwest Regional Office (January 11, 2008) (Cornelius property); Letter from Christina S. Danforth, Chairwoman, Oneida Nation to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 29, 2016) (Kestell property) (on file with the Midwest Regional Office).

[43] Press Release, Oneida Nation, Service Agreement with Oneida Nation Terminated by the City of Green Bay Common Council (April 7, 2016) (on file with the Midwest Regional Office).

[44] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA,Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).

[45] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).

[46] Oneida Tribe of Indians of Wis. v. Village of Hobart, 732 F.3d 837, 839 (7th Cir. 2013).

problems are insufficient to show that trust acquisition of this land would alter that pattern or worsen any existing problems with the pattern."[47]

Since there is no change in land use, and the Nation has intergovernmental agreements in place to cover the provision of services to trust property, we do not foresee any jurisdictional problems or potential land use conflicts.

25 CFR § 151.10 (g) – Is the Bureau of Indian Affairs (BIA) equipped to discharge the additional responsibilities and duties resulting from the acquisition of this land in trust status.

The Great Lakes Agency, BIA has reviewed the trust applications for the parcels of land identified as Cornelius and Kestell, and determined that it will be able to discharge the additional responsibilities associated with the acceptance of land into trust.[48] The subject parcels are located in Brown County, Wisconsin, comprising of 0.464 acres. The following staff located at the Great Lakes Agency, are readily available to assist the Tribe in their proposed uses of the property:

- Four Realty Specialists in the Branch of Realty, who are responsible for the overall administration and protection of Indian Trust land Resources;
- Seven foresters in the Branch of Forestry, who are responsible for managing and protecting Reservation forests;
- Nine engineers/technicians in the Branch of Roads, who are responsible for the maintenance and construction of BIA roads and bridges to provide a safe and adequate transportation system to Indian Reservations;
- Two Fuels Management Specialists;
- One Environmental Protection Specialist.

In addition, there are realty specialists, foresters, road engineers/technicians, and environmental specialists in the Midwest Regional Office who are available for additional consultations and guidance in the overall protection and management of these lands.

Acceptance of this property in trust status will not impose any significant additional responsibilities or burdens upon BIA beyond those already inherent in the federal trusteeship over the existing trust lands.

25 CFR § 151.10 (h) – Environmental Hazards.[49]

National Environmental Policy Act Compliance

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[47] Ziebach County, South Dakota v. Acting Great Plains Regional Director, Bureau of Indian Affairs, 38 IBIA 227, 231 (2002).

[48] Memo from Gerald Walhovd, Acting Superintendent, BIA, Great Lakes Agency to Diane Rosen, Regional Director, BIA, Midwest Regional Office (August 10, 2016) (Cornelius property); Memo from Gerald Walhovd, Acting Superintendent, BIA, Great Lakes Agency to Diane Rosen Regional Director, BIA, Midwest Regional Office (September 12, 2016) (Orlando property) (on file with the Midwest Regional Office).

[49] Memo from Martin Lorenzo, Environmental Protection Specialist, BIA, Midwest Regional Office (April 5, 2018) (Cornelius property); Memo from Martin Lorenzo, Environmental Protection Specialist, BIA, Midwest Regional Office, (December 11, 2017) (Kestell property) (on file with the Midwest Regional Office).

No further compliance with NEPA is required. The BIA-Midwest Region Office (BIA-MRO) determined that no change in land use is anticipated; therefore, the subject parcels contemplated Fee-to-Trust acquisition will not have a significant effect on the quality of the human environment (individually or cumulatively) and neither an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required (40 CFR 1508.4; 43 CFR 46.205) A separate Categorical Exclusion (CE) was issued for Cornelius on December 11, 2017 and Kestell on April 5, 2018.

National Historic Preservation Act (NHPA) Compliance
No further compliance with NHPA is required. The BIA-MRO determined that the subject parcels trust acquisition does not have the potential to cause effects on historic properties [36 CFR 800.3 (a) (1)]. The BIA-MRO issued separate determinations for each parcel on June 2, 2016.

Endangered Species Act (ESA) Compliance
No further compliance with ESA is required. The Nation recognizes the US Fish and Wildlife Services (USFWS) Information for Planning and Consultation (IPaC) Report for a listing of Threatened and Endangered Species for each defined project area. BIA-MRO also reviews the IPaC report in consultation and determination of Threatened and Endangered Species. The BIA-MRO determined that the subject parcels trust acquisition supports a "No Effect" determination based on the intent of the Nation to maintain current land use. The BIA-MRO issued separate determinations for each parcel on June 2, 2016.

602 DM 2 using ASTM International E 1527-13
Recognized Environmental Conditions (RECs) were not found on the subject parcels. This assertion is supported by the following Phase I Environmental Site Assessments (ESA):

- Cornelius - 05/2016 (Initial); 05/2017 (Update 1), 09/2017 (Update 2), and 04/2018 (Update 3);
- Kestell - 06/2016 (Initial), 02/2017 (Update I), 08/2017 (Update 2), and 12/2017 (Update 3).

In accordance with 602 DM 2, an additional pre-acquisition Phase I ESA will be completed within 180 days prior to the acquisition of title and acceptance into trust status.

Conclusion

Based on the foregoing, we issue notice of our intent to accept the Cornelius and Kestell parcels into trust status. Title will vest in the United States of America in trust for the Oneida Nation, in accordance with Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 5108, provided the Nation delivers marketable title to the properties in a manner as required in 25 CFR Part 151, Land Acquisition Regulations. In accordance with 25 CFR § 151.13, we have requested an examination of the title evidence by the Office of the Field Solicitor, Bloomington, Minnesota, to determine whether title to the parcel is marketable. The subject parcels will not be accepted in trust until all identified title exceptions have been met.

Appeal Rights

Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies. The Regional Director's decision may be appealed to the Interior Board of Indian Appeals (IBIA) in accordance with the regulations in 43 C.F.R. §§ 4.310-4.340.

If you choose to appeal this decision, your notice of appeal to the IBIA must be signed by you or your attorney and **must be either postmarked and mailed (if you use mail) or delivered (if you use another means of physical delivery, such as FedEx or UPS) to the IBIA within 30 days from the date of receipt of this decision.** The regulations do not authorize filings by facsimile/fax or by electronic means. Your notice of appeal should clearly identify the decision being appealed. You must send your original notice of appeal to the IBIA at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203. You must send copies of your notice of appeal to (1) the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, MS-4141-MIB, 1849 C Street N.W., Washington, D.C. 20240; (2) each interested party known to you; and (3) the Regional Director. Your notice of appeal sent to the IBIA must include a statement certifying that you have sent copies to these officials and interested parties and should identify them by names or titles and addresses. If you file a notice of appeal, the IBIA will notify you of further procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

If you have any questions regarding this matter, please do not hesitate to contact Russell Baker, Supervisory Realty Specialist, directly at (612) 725-4583.

Sincerely,

Tim LaPointe

Regional Director

CC: BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED:

Office of the Governor of Wisconsin
115 East State Capitol
Madison, Wisconsin 53702

9171 9690 0935 0036 1025 84

Office of the Executive
Brown County
Post Office Box 23600
Green Bay, Wisconsin 53707

9171 9690 0935 0036 1025 91

Office of the Mayor
City of Green Bay
100 North Jefferson Street Rm. 106
Green Bay, Wisconsin 54301-5026

9171 9690 0935 0036 1026 07

CC BY FIRST CLASS MAIL:

Jo Anne House, Chief Counsel
Oneida Law Office
N7210 Seminary Road
Post Office Box 109
Oneida, Wisconsin 54155

Patrick Pelky, (acting) Director
Division of Land Management
Oneida Nation
Post Office Box 365
Oneida, Wisconsin 54155

Superintendent, Great Lakes Agency
Bureau of Indian Affairs
916 West Lake Shore Drive
Ashland, Wisconsin 54806

RECEIVED
OCT 05 2018

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
5600 American Boulevard West, Suite 500
Bloomington, Minnesota 55437

SEP 28 2018

IN REPLY REFER TO:
Division of Fee to Trust
Debenedetto

NOTICE OF DECISION
INTENT TO TAKE INTO TRUST

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 9171 9690 0935 0020 2028 25

Honorable Tehassi Hill
Chairman, Oneida Nation
Post Office Box 365
Oneida, Wisconsin 54155

Dear Chairman Hill:

On August 11, 2015 the Oneida Nation (hereinafter "Nation"), submitted a fee-to-trust application[1] for the land known as the DeBenedetto parcel (hereinafter "subject parcel"), which is located in Brown County, Wisconsin. We have consulted with the local and state governments as required and have completed our analysis of the application and all comments received. This letter serves as our *Notice of Decision* to approve the application and to acquire the land in trust status on behalf of the Tribe.

Specifically, this fee-to-trust acquisition is supported by Oneida Nation Tribal Resolution No. 03-25-15-E, dated March 25, 2015. The following is the legal description of the DeBenedetto parcel:

Debenedetto
Lot eleven (11), according to the recorded Plat of Ringer Subdivision No. 1, recorded in Volume 16 Plats, page 51, as Doc. No. 802230, said Plat being part of Lot A, Section Thirty-two (32), Township Twenty-four (24) North, Range Twenty (20) East of the Fourth Principal Meridian, in the City of Green Bay, West side of Fox River, Brown County, Wisconsin.

0.289 acres, more or less.
Property Address: 1970 Belmont Drive Green Bay, Wisconsin 54304
Tax Parcel Number: 6H-2199

[1] Letter from Cristina S. Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 11, 2015) (on file with the Midwest Regional Office).

Regulatory Authority

The applicable regulations are set forth in the Code of Federal Regulations (CFR) Title 25, INDIANS, Part 151, as amended. The regulations specify that it is the Secretary's policy to accept lands "in trust" for the benefit of Tribes[2] when such acquisition is authorized by an Act of Congress; and, (1) when such lands are within the exterior boundaries of the Tribe's reservation, or adjacent thereto, or within a Tribal consolidation area; or (2) when the Tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate Tribal self-determination, economic development, or Indian housing.[3]

Analysis of maps provided with the application show the subject parcel to be within the exterior boundary of the reservation. Also, this acquisition facilitates Indian housing. Thus, the request for trust status is within the land acquisition policy as set forth by the Secretary of the Interior.

Accordingly, pursuant to 25 CFR § 151.10, *On-reservation acquisitions*, we are required to provide notice to state and local governments, and then consider the following criteria in evaluating the request:

(a) the existence of statutory authority;
(b) need of the tribe for additional land;
(c) the purpose for which the land will be used;
(e) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls;
(f) jurisdictional problems and potential conflicts of land use which may arise;
(g) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
(h) compliance with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

25 CFR § 151.10 – Notice and Comments

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or

[2] A "tribe" is any group of Indians recognized by the Secretary as eligible for the programs and services from the Bureau of Indian Affairs. The Nation is currently listed as eligible to receive services from BIA. See 25 CFR § 151.2(b) and 83 Fed. Reg. 34865 (July 23, 2018).
[3] 25 CFR § 151.3.

local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.[4]

On September 2, 2015, and January 25, 2018; the City of Green Bay, Brown County, and the State of Wisconsin were consulted to solicit comments regarding potential impacts as a result of removal of this property from the tax rolls.[5] No comments were received from the City, County, or the State in response to the September 2, 2015 Notice of Application (NOA).

On February 2, 2018, Brown County provided a written response[6] to the January 25, 2018 NOA. The County provided information regarding property taxes, the impact of loss of tax revenue, assessments, services provided, and zoning. Specifically, the County provided the following information and comments:

- The county provided the amount of property taxes levied on the property for 2017;
- The county stated it has a service agreement with the tribe for payments in lieu of taxes and removal of the land from the tax roll does not have a fiscal impact on Brown County;
- The county indicated that there were no special assessment fees on the property for 2017;
- The county stated that there were no special assessment fees for 2017;
- The county stated that services are provided by either Brown County or Oneida according to the service agreements according to the service agreements entered between Brown County and Oneida. The agreements cover services including, but not limited to, health, safety, and welfare issues, certain zoning issues, licensing and child support services;
- The county stated zoning is done by the municipality in which the land is located and Brown County may be involved in limited zoning issues (such as shore land zoning) and those issues are determined pursuant to the service agreements between Oneida and Brown County.

On, February 28, 2018, the City of Green Bay provided a written response[7] to the January 25, 2018 NOA. The City provided information regarding property taxes, the impact of loss of tax revenue, special assessments, services provided, and zoning. Specifically, the City provided the following information and comments:

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[4] 25 CFR § 151.10

[5] Notices of (Non-Gaming) Land Acquisition (September 2, 2015, and January 25, 2018) (on file with the Midwest Regional Office).

[6] Letter from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Scott Sufficool, Acting Regional Director, BIA Midwest Regional Office, (February 2, 2018) (on file with the Midwest Regional Office).

[7] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA Midwest Regional Office, (February 28, 2018) (on file with the Midwest Regional Office). The city provided a single comment letter for five pending applications located within Green Bay; one of the five properties listed are included in this decision and described above.

- The amount of property taxes levied on the property for 2017;
- Removal of the property from the tax rolls has a severe impact on the City's tax revenue;
- There are well over 150 properties currently located within the city representing "millions upon millions of dollars in assessed values";
- The community is divided because of an "inequitable tax burden" and jurisdictional checkerboarding;
- The city's operating expense is not reduced regardless of ownership or trust status, services are still required;
- There are outstanding special assessments on the property;
- The City currently provides all standard public works services to the property, and residents are entitled to use and benefit from all public services regardless of taxation status;
- The Service Agreement between the city and the Nation, adopted in 2009, was terminated in April 2016. Consequently, the city is without means of mitigating impact to the city and the city's residents;
- There is great potential for land use conflicts; one of the primary reasons for terminating the 2009 service agreement was difficulty ensuring consistent land use;
- The city's enforcement of zoning restrictions has been limited, and the piecemeal application of zoning restrictions results in a non-cohesive residential community;
- The property should not be removed from the tax rolls until a workable solution is implemented.

No comments were received from the State in response to the January 25, 2018, Notice of Application (NOA). On April 5, 2018, the above comments letters were forwarded to the Nation.[8]

25 CFR § 151.10 (a) – Statutory authority for the acquisition of the property.

The subject parcel is eligible for trust acquisition pursuant to Section 5 of the Indian Reorganization Act (IRA) of June 18, 1934, now codified as 25 U.S.C. § 5108. Section 5 of the IRA authorizes the Secretary of the Interior, or the authorized representative, to acquire land for the benefit of recognized Indian Tribes. A Tribe must be recognized at the time of the Secretary of the Interior decides to take land into trust pursuant to the IRA.[9] Because the Oneida Nation is currently listed as a federally recognized tribe eligible to receive services from the Bureau of Indian Affairs,[10] the "recognized" requirement of Section 19 of the IRA is satisfied.[11]

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[8] Letter from Tim LaPointe, Acting Regional Director, BIA Midwest Regional Office to Tehassi Hill, Chairman, Oneida Nation, (April 5, 2018) (on file with the Midwest Regional Office).
[9] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014) ("A tribe need only be "recognized" at the time the statute is applied").
[10] List of entities eligible to receive services from BIA, 83 Fed. Reg. 34865 (July 23, 2018).

Also, on February 24, 2009, the United States Supreme Court issued its decision in Carcieri v. Salazar, 555 U.S. 379 (2009). The decision held that Congress granted discretionary authority to the Secretary of the Interior under the Indian Reorganization Act (IRA) to acquire land-in-trust for Indian tribes. To acquire land-in-trust pursuant to 25 U.S.C. § 5108, a tribe must have been "under Federal jurisdiction" at the time the IRA was passed in June 1934.

The Interior Board of Indian Appeals recently held that one bright-line test for determining whether a tribe was under Federal jurisdiction in 1934 turns on whether an IRA election was held for a tribe.[12] Additionally, on March 12, 2014, the Office of the Solicitor issued an Opinion on the meaning of "under federal jurisdiction" for purposes of the IRA, which states that the "calling of a Section 18 election for an Indian Tribe between 1934 and 1936 should unambiguously and conclusively establish that the United States understood that the particular tribe was under federal jurisdiction in 1934."[13] According to the Opinion, IRA elections held between 1934 and 1936 are "such an example of unambiguous federal actions that obviate the need to examine the tribe's history prior to 1934."[14]

On December 15, 1934, a Federal election was held by the Department of Interior for the Oneidas to vote on whether to reject the IRA (IRA election).[15] Because the Secretary held an IRA election for the nation in 1934, we conclude that the Nation was under Federal jurisdiction at the time the IRA was enacted and that the Secretary of Interior is authorized, pursuant to 25 U.S. C. § 5108, to take land into trust for the tribe.

Further, in 2013 the Interior Board of Indian Appeals (IBIA) held that the Oneida Nation "was under Federal jurisdiction at the time IRA was enacted and the Regional Director is authorized pursuant to U.S.C. § [5108] to take land into trust for the Tribe."[16]

25 CFR § 151.10 (b) – The need of the Tribe for additional land.

The fee-to-trust land acquisition regulations require the BIA to consider the Tribe's need for additional land. Currently, there are approximately 14,182.602 acres held in trust[17] for the Nation and approximately 17,268 tribal members.[18]

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[11] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014).
[12] Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA 53 IBIA 62, 71-72 (2011).
[13] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014).
[14] Memo from the Office of the Solicitor to the Secretary of the Interior, re: The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, M-37029 at 25 (March 12, 2014).
[15] Ten Years of Tribal Government Under I.R.A., Theodore H., Haas, United States Indian Service (1947).
[16] Village of Hobart Wisconsin v. Acting Midwest Regional Director, 57 IBIA 4, 22 (2013).
[17] Trust Asset Accounting & Management System, List of Tribally Owned Tracts Report (September 27, 2018). Tribally owned fractional interests in allotted tracts were not included.

This property was allotted land lost by the Oneida Nation through the General Allotment Act and was reacquired in 1995 to expand the Nation's land base. The application states that "returning the land to its original status as inalienable, to forever be held by the United States for the benefit of the Nation, ensures that tribal investments within the Oneida Reservation will never be lost." This acquisition will "expand Oneida Nation land base and provide...future site[s] for continued residential use."[19]

We have determined that the Nation has established a need for additional land, supported by the Nation's obligation to provide housing for tribal members.

25 CFR § 151.10 (c) – Purpose for which the property will be used.

The fee-to-trust land acquisition regulations require the BIA to consider the purposes for which the land will be used. In examining the purpose or use, the BIA "must first determine the current use of the property, then ascertain the Tribe's plans for the property," which not only "facilitates a clear understanding for BIA of how the property will be used for purposes of determining whether to grant the fee-to-trust applications, but also assists local jurisdictions in their planning for any ongoing services that may be needed and in commenting on a proposed fee-to-trust land acquisition."[20] Considering the purposes for which the land will be used "also informs and facilitates BIA's consideration of whether there may be jurisdictional or land use conflicts" and "determines the level of environmental review required under the National Environmental Policy Act."[21]

The purpose for the land acquisitions is clearly stated in the Nation's applications: each of the parcels have "historically...been used for residential purposes" and will "provide a future site for continued residential use."[22]

25 CFR § 151.10 (e) – Impact on the State and its political subdivisions resulting from the removal of this property from the tax rolls.

The Notice of Application (NOA) provides state and local governments the opportunity to submit comments regarding the proposed trust acquisition in the areas of regulatory jurisdiction, real property taxes, and special assessments. The BIA must consider the present impact on the

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[18] Socioeconomic Conditions within the Reservation of the Oneida Nation, dated April 4, 2018 (on file with the Midwest Regional Office).
[19] Letter from Cristina S. Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 11, 2015) (on file with the Midwest Regional Office).
[20] Thurston County, Nebraska v. Great Plains Regional Director, BIA, 56 IBIA 296, 307 (2013).
[21] Thurston County, Nebraska v. Great Plains Regional Director, BIA, 56 IBIA 296, 308 (2013).
[22] Letter from Cristina S. Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 11, 2015) (on file with the Midwest Regional Office).

tax rolls of a proposed acquisition, i.e., the taxes currently assessed.[23] BIA must also consider the impacts to programs and services that State and local governments have articulated as resulting from a tax loss.[24] In its response to the NOA, the City states that it would realize $1,522.23 for tax year 2017 from the subject property.[25]

According to the 2016 audit reports published by the local governments, the County's property tax levy for 2016 was $86,661,972 and the City's levy for 2016 was $52,699,543.[26] The gross property tax charged against the subject parcel for 2017 was $4,148.30,[27] of which the County received $756.20 and the City received $1,522.20.[28]

Jurisdiction	Total Tax	% Levy
Brown County	$756.20	0.000873%
City of Green Bay	$1,522.23[29]	0.002889%

The city states that there are no outstanding special assessments on the property.[30] Additionally, on September 27, 2018, updated tax records[31] was retrieved for the subject parcel; which concurred with the city's statement that there are currently no delinquent past due assessments assigned to these properties.

The city also states that although the removal of each individual property from the tax rolls has "a negligible impact on the city's operations," the removal of all of these properties will have a "severe impact on the City's tax revenue" and creates an "inequitable tax burden among Green Bay residents." The City states that there are well over 150 trust properties located within the

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[23] City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director, BIA, 49 IBIA 75, 81-82 (2009).
[24] State of South Dakota and City of Wagner, South Dakota v. Acting Great Plains Regional Director, 63 IBIA 179, 188 (2016).
[25] Letter from Mayor James J. Schmitt, City of Green Bay to Scott Sufficool, Acting Regional Director, BIA Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).
[26] Wisconsin Department of Revenue Division of State and Local Finance Bureau of Local Government Services, Town, Village and City Taxes levied in 2016 and collected in 2017 (on file with the Midwest Regional Office).
[27] The county provided Property Tax Record for parcel No. 6H-2199. Letter from Rebecca S. Lindner, Assistant Brown County Corporation Counsel, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).
[28] 2017 Tax Bill, Parcel #6H-2199 (on file at BIA Midwest Regional Office)
[29] Letter from Mayor James J. Schmitt, City of Green Bay to Scott Sufficool, Acting Regional Director, BIA Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office). Although the 2017 Tax Bill for parcel 6H-2199 shows $1,522.20, we used the amount we received from the City to calculate impact.
[30] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).
[31] Brown County, WI Property Tax Record for parcel No. 6H-2199 (September 27, 2018), http://www.publicapplications.co.brown.wi.us/treas/landrecordsearch/entryform.asp (on file with the Midwest Regional Office).

City of Green Bay that are currently held in trust, and which represent "millions upon millions of dollars in assessed values removed from the tax rolls."[32]

The BIA is only required to consider the present impact on the tax rolls of a proposed acquisition, i.e., the taxes currently assessed.[33] The county and the city will both experience a reduction to their tax bases of 0.000873% and 0.002889% respectively, when calculated based on tax bills and levies.

25 CFR § 151.10 (f) – Jurisdictional problems and potential conflicts of land use.

In accordance with 25 CFR Part 151, BIA must consider jurisdictional problems or potential conflicts but is not required to resolve those problems or issues.[34] The subject parcel consists of 0.289 acres[35] of land; currently used[36] and zoned[37] for residential purposes. The City has stated that there is currently no incompatible zoning.[38]

Direct services provided by the Nation for tribal members and their families include: waste and recycling pickup, health care, elderly services, public safety, education and library services, recreation programs, public works, utilities, public transportation, housing, and mortgage loans and rentals. The Nation also provides many community services to non-tribal residents of the Oneida reservation. Services provided by the Oneida Police Department include first responders, traffic violations, criminal arrests, investigations, pick-ups and transportation. The Nation does not receive any reimbursement for these services. Fines from traffic tickets issued by the Nation are given to the county and/or state. The Nation provides utility services (sewer and water) within the Oneida Sanitary District. Parks and recreation areas have been constructed and maintained by the Nation for the benefit of tribal and non-tribal residents.[39]

The Nation has entered into a law enforcement agreement for mutual aid with the City of Green Bay.[40] Fire protection services also will be provided by the City of Green Bay.[41] Additionally,

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[32] Letter from Mayor James J. Schmitt, City of Green Bay to Scott Sufficool, Acting Regional Director, BIA Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).
[33] City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director, BIA, 49 IBIA 75, 81-82 (2009).
[34] Thurston County, Nebraska v. Great Plains Regional Director, BIA, 56 IBIA 296, 307 (2013).
[35] Dominica VanKoten, Chief Cadastral Surveyor, Bureau of Land Management, Land Description Review (LDR) Certificate (June 07, 2016) (on file with the Midwest Regional Office).
[36] Letter from Cristina S. Danforth, Chairman, Oneida Tribe Indians of Wisconsin to Diane K. Rosen, Regional Director, BIA, Midwest Regional Office (August 11, 2015) (on file with the Midwest Regional Office).
[37] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office). ("All of the Properties are currently zoned R-1.")
[38] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 28, 2018) (on file with the Midwest Regional Office).
[39] Oneida Nation, Socioeconomic Conditions within the Reservation of the Oneida Nation at 2-3 (April 4, 2018) (on file with the Midwest Regional Office).
[40] Law Enforcement Mutual Aid Agreement (October 16, 1996) (on file with the Midwest Regional Office).
[41] Email from James Bittdorf, Attorney, Oneida Nation (June 8, 2016) (on file with the Midwest Regional Office).

Brown County has an executed service agreement with the Nation regarding delivery of services to tribal lands within the County. On May 29, 2008 (amended September 16, 2008 and June 29, 2010), the Oneida Nation and Brown County entered into a service agreement which includes cross-deputation for law enforcement and mutual aid secondary assistance in emergency services.

On March 9, 2009, the Nation and the City of Green Bay entered into a service agreement, which includes mutual aid for secondary assistance in law enforcement and emergency services. On September 10, 2015, the Oneida Nation received a request from the City of Green Bay to meet in order to negotiate a Service Agreement amendment.[42] An amendment was not executed and the agreement was terminated by the City of Green Bay.[43] The city provided a list of services it currently provides to the property, including waste/recycling collection, snow removal, street maintenance, water/sewer, parks, policing, fire, inspections, and neighborhood services.[44] The City has stated that operating expenses will not be reduced regardless of ownership or trust status, since services are still required.[45]

The City also states that "a piecemeal application of zoning restrictions results in disjointed neighborhoods..." and this is "counterproductive to... a cohesive community in the residential neighborhoods at issue here." The "checkerboard" pattern of jurisdiction, however, is an "awkward" but "familiar feature of American government;" in fact, "federal facilities of all sorts, ranging from post offices to military bases, are scattered throughout the United States...a similar scatter is common throughout Indian County."[46] The City's assertions concerning jurisdictional problems are insufficient to show that trust acquisition of this land would alter that pattern or worsen any existing problems with the pattern.[47]

Since there is no change in land use, and the Nation has intergovernmental agreements in place to cover the provision of services to trust property, we do not foresee any jurisdictional problems or potential land use conflicts.

25 CFR § 151.10 (g) – Is the Bureau of Indian Affairs (BIA) equipped to discharge the additional responsibilities and duties resulting from the acquisition of this land in trust status.

The Great Lakes Agency, BIA has reviewed the trust application for the parcel of land identified as Debenedetto, and determined that it will be able to discharge the additional responsibilities

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[42] Letter from Cristina S. Danforth, Chairwoman, Oneida Tribe of Indians of Wisconsin, to Diane K. Rosen, Regional Director, BIA Midwest Regional Office (August 11, 2015) (on file with the Midwest Regional Office).
[43] Press Release, Oneida Nation, Service Agreement with Oneida Nation Terminated by the City of Green Bay Common Council (April 7, 2016) (on file with the Midwest Regional Office).
[44] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).
[45] Letter from Mayor James J. Schmitt, City of Green Bay, to Scott Sufficool, Acting Regional Director, BIA, Midwest Regional Office (February 2, 2018) (on file with the Midwest Regional Office).
[46] Oneida Tribe of Indians of Wis. v. Village of Hobart, 732 F.3d 837, 839 (7th Cir. 2013).
[47] See Ziebach County, South Dakota v. Acting Great Plains Regional Director, Bureau of Indian Affairs, 38 IBIA 227, 231 (2002).

associated with the acceptance of land into trust.[48] The subject parcel is located in Brown County, Wisconsin, comprising of 0.289 acres. The following staff located at the Great Lakes Agency, are readily available to assist the Tribe in their proposed uses of the property:

- Four Realty Specialists in the Branch of Realty, who are responsible for the overall administration and protection of Indian Trust land Resources;
- Seven foresters in the Branch of Forestry, who are responsible for managing and protecting Reservation forests;
- Nine engineers/technicians in the Branch of Roads, who are responsible for the maintenance and construction of BIA roads and bridges to provide a safe and adequate transportation system to Indian Reservations;
- Two Fuels Management Specialists;
- One Environmental Protection Specialist.

In addition, there are realty specialists, foresters, road engineers/technicians, and environmental specialists in the Midwest Regional Office who are available for additional consultations and guidance in the overall protection and management of these lands.

Acceptance of this property in trust status will not impose any significant additional responsibilities or burdens upon BIA beyond those already inherent in the federal trusteeship over the existing trust lands.

25 CFR § 151.10 (h) – Environmental Hazards.[49]

National Environmental Policy Act Compliance
No further compliance with NEPA is required. The BIA-Midwest Region Office (BIA-MRO) determined that no change in land use is anticipated; therefore, the Debenedetto contemplated Fee-to-Trust acquisition will not have a significant effect on the quality of the human environment (individually or cumulatively) and neither an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required (40 CFR 1508.4; 43 CFR 46.205) A separate Categorical Exclusion (CE) was issued for the parcel January 14, 2016.

National Historic Preservation Act (NHPA) Compliance
No further compliance with NHPA is required. The BIA-MRO determined that the subject parcel trust acquisition does not have the potential to cause effects on historic properties [36 CFR 800.3 (a) (1)]. The BIA-MRO issued separate determinations for each parcel on January 14, 2016.

[48] Memo from Kim Bouchard, Superintendent, BIA Great Lakes Agency to Diane Rosen, Regional Director, BIA Midwest Regional Office, (January 31, 2017) (on file with the Midwest Regional Office
[49] Memo from Martin Lorenzo, Environmental Protection Specialist, BIA, Midwest Regional Office (December 11, 2017) (on file with the Midwest Regional Office).

Endangered Species Act (ESA) Compliance

No further compliance with ESA is required. The Oneida Nation of Wisconsin sought concurrence from the US Fish and Wildlife Service (USFWS) for a "No Effect" determination for Threatened and Endangered Species on February 2016. BIA-MRO received formal notification of an March 14, 2016 letter from the USFWS Twin Cities Ecological Services Field Office issued to the Oneida Nation of Wisconsin identifying the proposed listing of the Northern long-eared bat (Myotis septentrinalis); requesting modifications to proposed activities to assure zero "take"; and offering to provide further consultation. The BIA-MRO determined that the DeBenedetto parcel trust acquisition supports a "No Effect" determination based on the intent of

602 DM 2 using ASTM International E 1527-13

Recognized Environmental Conditions (RECs) were not found on the Debenedetto. This assertion is supported by the following assessments including: separate Initial Phase I Environmental Site Assessments (ESA) dated: 01/2016 (Initial), 06/2016 (Update 1), 01/2017 (Update 2), 08/2017 (Update 3) and 12/2017 (Update 4). In accordance with 602 DM 2, an additional pre-acquisition Phase I ESA will be completed within 180 days prior to the acquisition of title and acceptance into trust status.

Conclusion

Based on the foregoing, we issue notice of our intent to accept the Debenedetto parcel into trust status. Title will vest in the United States of America in trust for the Oneida Nation, in accordance with Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 5108, provided the Nation delivers marketable title to the properties in a manner as required in 25 CFR Part 151, Land Acquisition Regulations. In accordance with 25 CFR Part 151.13, we have requested an examination of the title evidence by the Office of the Field Solicitor, Bloomington, Minnesota, to determine whether title to the parcel is marketable. The subject parcel will not be accepted in trust until all identified title exceptions have been met.

Appeal Rights

Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies. The Regional Director's decision may be appealed to the Interior Board of Indian Appeals (IBIA) in accordance with the regulations in 43 C.F.R. 4.310-4.340.

If you choose to appeal this decision, your notice of appeal to the IBIA must be signed by you or your attorney and **must be either postmarked and mailed (if you use mail) or delivered (if you use another means of physical delivery, such as FedEx or UPS) to the IBIA within 30 days from the date of receipt of this decision.** The regulations do not authorize filings by facsimile/fax or by electronic means. Your notice of appeal should clearly identify the decision being appealed. You must send your original notice of appeal to the IBIA at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203. You must send copies of your notice of appeal to (1) the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, MS-4141-MIB, 1849 C Street N.W., Washington, D.C. 20240; (2) each interested party known to you; and (3) the Regional Director. Your notice of appeal sent to the IBIA must include a statement certifying that you have sent copies to these officials and interested parties and should identify them by names or titles and addresses. If you file a notice of appeal, the IBIA will notify you of further procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

If you have any questions regarding this matter, you may contact Russell Baker, Supervisory Realty Specialist, directly at (612) 725-4583.

Sincerely,

ACTING

Regional Director

CC: BY CERTIFIED MAIL -- RETURN RECEIPT REQUESTED:

Honorable Scott Walker
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