Special General Tribal Council Meeting

Monday, June 13, 2016

6 p.m.

Oneida Radisson Hotel & Conference Center

2040 Airport Drive

Green Bay, Wisconsin

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GENERAL TRIBAL COUNCIL MEETING INFORMATION

EXPECTATIONS

No Children Please. All seats are needed for voting age members.

Smoking only allowed in designated area.

No E-cigarettes allowed per Clean Air Policy of BC-05-28-14A.

Please exit the meeting in an orderly manner.

Keeping in line with the Oneida principle of Kalihwi·yó; meeting attendees are expected to treat each other with respect and kindness.

Please do not:

- Use profanity,
- Interrupt others,
- Heckle or threaten others,
- Disrespect property, or exhibit behavior that disrupts the meeting or endangers the safety of other attendees,
- Be under the influence of alcohol or illegal drugs,
- Have a weapon on their person in violation of any applicable law, or
  Take action that violates Tribal law.

TO ATTEND THE MEETING

You must be an enrolled Tribal member.
You must be at least 18 years old.
You must present a valid Tribal or state photo ID when checking in and out.

PHOTO ID REQUIRED

A valid Tribal or state issued photo identification card must be presented. The Enrollment Department issues Tribal ID's.

Tribal ID Card Issuance hours and location:
9 a.m. to 4 p.m. weekdays
210 Elm St. Oneida, WI 54155
(920) 869-6200

GTC MEETING STIPEND

To be eligible to receive the $100 GTC meeting stipend; attendees must be in line to register no later than 15 minutes after the start of the meeting **and** sign out after the meeting adjourns.

Those leaving the designated GTC meeting area will not receive their stipend.

EXITING SAFETY INFORMATION

When the meeting is adjourned, please remain seated until your section is released by the Tribal Chairwoman

FOOD AND BEVERAGES

If you have medical needs, **please bring your own food and beverages** to ensure you are prepared if the meeting runs longer than 3 hours. Some food and beverages will be available for sale.

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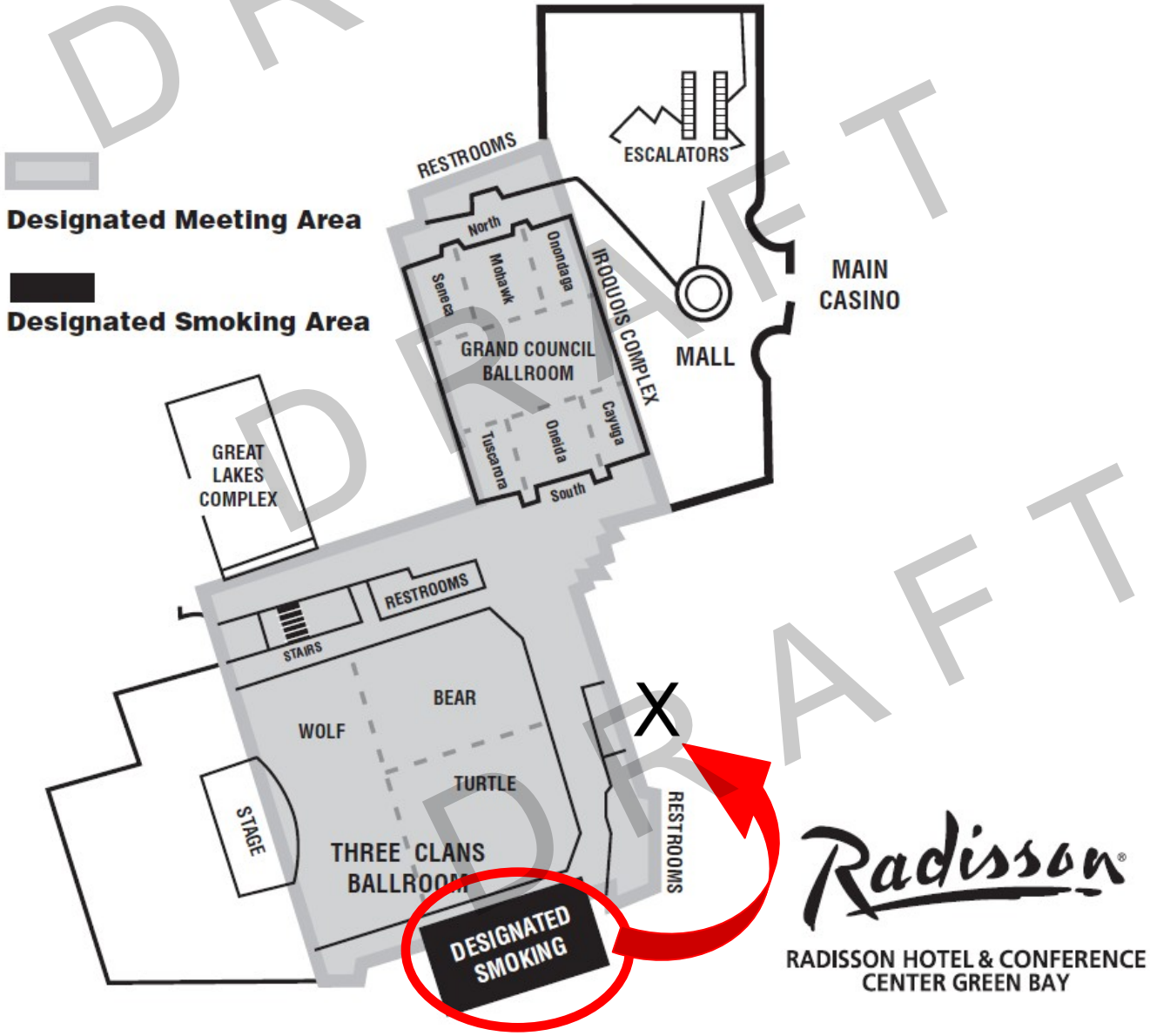
DESIGNATED GTC MEETING AREA

- Meeting attendees must remain inside the designated meeting area or smoking area to remain eligible to receive the meeting stipend.
- You must be an enrolled Oneida tribal member and 18 years or older to be in the designated meeting area



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Voluntary Retail Gift Card

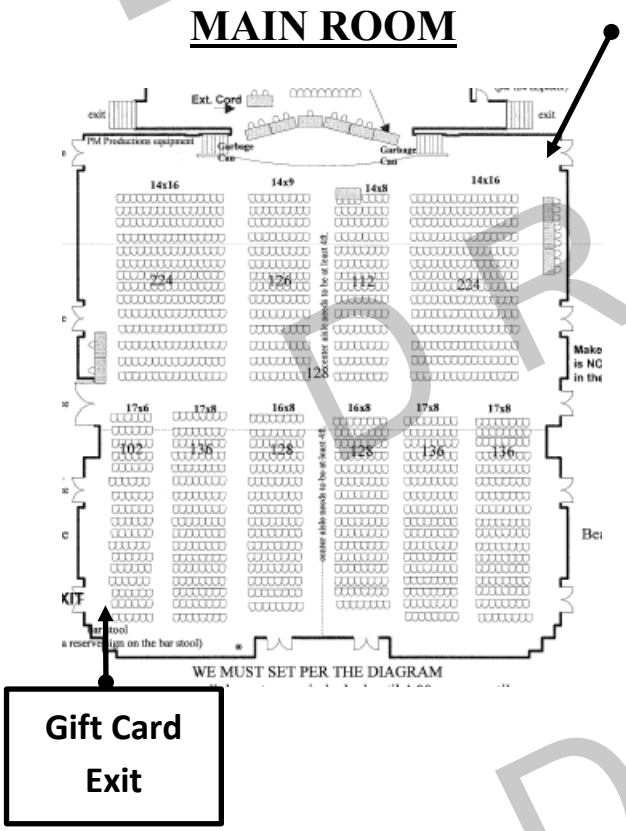
The Oneida Business Committee will again be offering the Voluntary Retail Gift Card at the June 13, 2016, Special GTC Meeting. There will be an **additional Gift Card Exit in the Main Room.**

Please note the following:

1) This is a VOLUNTARY choice.
2) Lost cards will not be replaced.
3) A signed acknowledgement will be required.

Three exits have been designated for General Tribal Council meeting attendees who choose to receive a retail gift card in lieu of stipend.

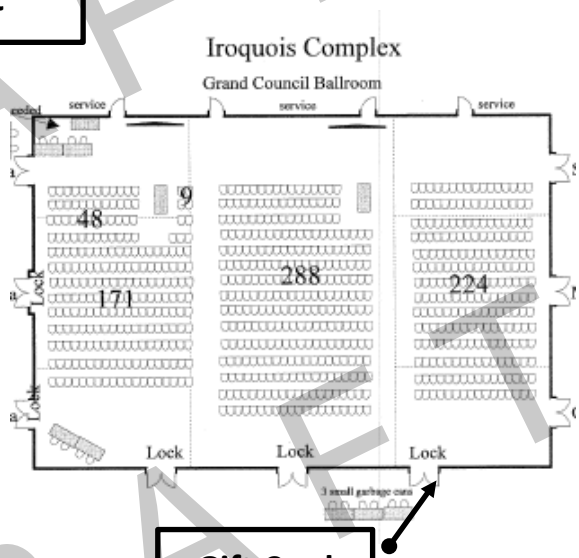
MAIN ROOM



Gift Card Exit

Gift Card Exit

OVERFLOW



Gift Card Exit

If you have additional questions, please contact the BC Support Office at 920-869-4364.

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Voluntary Retail Gift Card

Frequently Asked Questions

What if I lose my card, can I get it replaced? No, if a card is lost, it will not be replaced.

Is the card still taxable income? Yes, the card is considered taxable income; the records will be kept the same as the distribution of checks or direct deposit and it will be reflected on your 1099-MISC tax form.

Can I get a card at some meetings and choose a stipend at other meetings? Yes, at each GTC meeting you will have a choice.

Will there be special check-out lines for the cards at GTC meetings? Yes, if you want a card, there will be a special line for checkout to keep the exit process moving smoothly. **Please see the maps on the Announcement page.**

Will we eventually go 100% gift cards for stipends? GTC would determine if there is a full transition to gift cards. This would also require GTC to approve an amendment to the "GTC Meeting Stipend Payment Policy."

Can I redeem my card for cash at any of the places that accept the card? No, the card cannot be redeemed for cash.

Will I be able to use the card at the casino? No, the gift card cannot be redeemed at the casino, hopefully in the near future this can be considered. The gift card is valid at any of the following entities:

- Oneida One Stops, Travel Center and Smokeshops
- Oneida Market
- Oneida Museum
- Oneida Family Fitness
- Oneida Nation Farm
- Oneida Apple Orchard
- Oneida Licensing Department
- Oneida Health Center
- Oneida Housing
- Oneida Utilities

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ONEIDA GENERAL TRIBAL COUNCIL

AGENDA

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1. **WELCOME AND OPENING PRAYER**

2. **ANNOUNCEMENTS AND CALL MEETING TO ORDER**

3. **ADOPT THE AGENDA**

4. **NEW BUSINESS**

   A. **Per Capita**
      1) Presentations
         a) Petitioner Yvonne Metivier proposal
         b) Business Committee Recommendation
      2) Discussion
      3) Action

   B. **Petitioner Madelyn Genskow** *submitted 03/30/15*
      Review and consider three (3) resolutions:

      1) Business Committee Accountability
         a) Presentations
            i. Petitioner
            ii. Business Committee Recommendation
         b) Discussion
         c) Action

      2) Repeal Judiciary Law
         a) Presentations
            i. Petitioner
            ii. Business Committee Recommendation
         b) Discussion
         c) Action

Continued on next page

SPECIAL MEETING

Monday, June 13, 2016

6:00 p.m.

LOCATION

Radisson Hotel & Conference Center
2040 Airport Dr., Green Bay, WI

DIRECTIONS

Radisson Website:
http://www.radisson.com/green-bay-hotel-wi-54313/greenbay

Map Quest Directions:
www.mapquest.com/us/wisconsin/hotels-motels-green-bay/radisson-hotel-conference-center-304148266

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ONEIDA GENERAL TRIBAL COUNCIL

AGENDA – *CONTINUED*

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3) Open Records and Open Meetings Law
- a) Presentations
  - **i.** Petitioner
  - **ii.** Business Committee Recommendation
- b) Discussion
- c) Action

C. Petitioner Madelyn Genskow *submitted 02/10/15*
Review and consider one (1) resolution regarding Fee-to-Trust Process

1) Business Committee Recommendation
2) Action

D. Business Committee Presentation – Update on Fee to Trust

5. ADJOURN

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TOPIC:
PER CAPITA

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Oneida Nation

Certification of Petition Signatures

TO: General Tribal Council
FROM: Lisa Summers, Tribal Secretary
DATE: April 1, 2016
RE: Yvonne Metivier Petition re: Per capita payment FY-2017 to FY-2021

Certification of Sufficient Petition Signatures:

Petitioner Name:	Yvonne Metivier
Date Submitted:	February 19, 2016
Total # of signatures submitted:	70
Total # of invalid signatures[i]:	3
Total # of valid signatures:	67

Sixty-seven signatures were verified by the Oneida Enrollment Department on February 19, 2016. The number of signatures submitted by the petitioner is sufficient.

Petition: A copy of the petition statement is provided here:

PURPOSE: GTC directs OBC to pay $2,000.00 per capita beginning Budget year 2017 and 2018, 2019, 2020, and 2021.

The full petition is available per the Open Records and Open Meetings Law. Contact the Business Committee Support Office for more information at (920) 869-4364.

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[i] Reason(s) for invalidation: 2 – member was not 21; 1 – printed name not verifiable

JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER, PHD
SENIOR STAFF ATTORNEY

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ONEIDA, WISCONSIN 54155

(920) 869-4327 FAX (920) 869-4065

PATRICIA M. STEVENS GARVEY
KELLY M. MCANDREWS
MICHELLE L. MAYS
ROBERT W. ORCUTT

MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: January 5, 2016

SUBJECT: Petition – Metivier - $2000 Per Capita for FY2017 to FY 2021

You have requested a legal review regarding a petition submitted by Yvonne Metivier. The petition contains a single paragraph. The Enrollment Department has verified a sufficient number of signatures on the petition. The petition contains the following request.

> "GTC directs OBC to pay $2000.00 per capita beginning budget year 2017 and 2018, 2019, 2020, and 2021."

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, and various other resources. This opinion is broken into sections to address the issues raised in the petition – basic membership information, Indian Gaming Regulatory Act and Per Capita law.

This opinion does not address the tax consequences of acceptance or rejection of a per capita payment on the individual. Tax questions are unique to each individual and cannot be addressed in this type of an opinion. This opinion also does not address the consequences of acceptance or rejection of a per capita payment on the individual in regards to receiving program services at the federal, state, local or tribal level. The impact on program services is unique to the program service and the individual and cannot be addressed in this type of an opinion.

Much of the background information in this opinion is taken directly from the January 5, 2016, legal opinion regarding a petition presented by John Powless, Jr.

Background

Basic Membership Information[1] and Cost

As of December 31, 2014, there were 16,995 members of the Oneida Tribe of Indians of Wisconsin. Looking at membership trends, 55% of the members are between ages 21 and 54 which represent the largest age group of members. Although members age 55 and older represent about 22.5% of the membership, 9.5% of the members are between the ages of 55 and 61; close to one-half of all members age 55 and older. This age group of 55-61 will increase the number of

[1] The calculations and information regarding enrollments in this opinion are based on an Enrollments Report dated December 31, 2014.

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members receiving the elderly per capita payments by 1628 members over a five year period, or up to $3.27 million each year based on the $2000 elderly per capita payment.

From 2001 to 2014, new enrollments have decreased each year from 300 new enrollments in 2001 to 124 new enrollments in 2014. Further, the enrolled population has remained stable with slight increases for the past five years between 16,600 to 16,900 members. This is accounted for through the combination of deceased members and disenrollment requests.

The petition is a request for a per capita payment of $2000. Based on the December 2014 enrollment information, there are about 16,995 members. This equals about $34 million in per capita payments over a five year period totaling about $170 million.

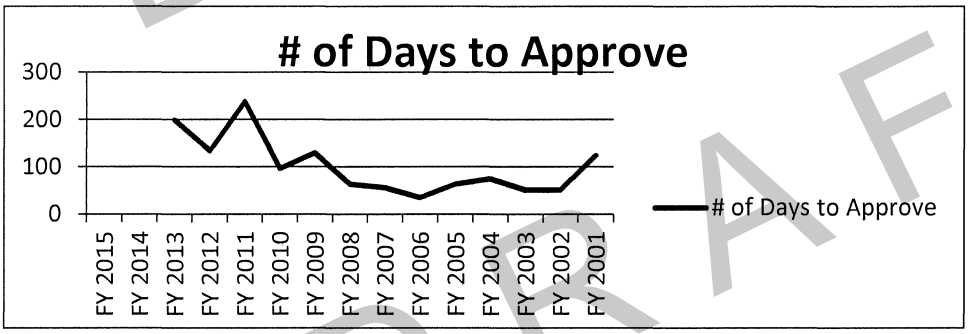
Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act identifies the authorized uses for "net revenues from any tribal gaming" in 25 U.S.C. section 2710(b)(2)(B), subsections (i) through (v).

(i) to fund tribal government operations and programs;
(ii) to provide for the general welfare of the Indian tribe and its members;
(iii) to promote tribal economic development;
(iv) to donate to charitable organizations; or
(v) to help fund operations of local government agencies.

Revenue Allocation Plan Approval Process

The Bureau of Indian Affairs has published regulations regarding per capita payments in 25 C.F.R. Part 290. A per capita payment from gaming revenues cannot be made if a Revenue Allocation Plan is not approved in accordance with these regulations. *24 C.F.R. 290.10 and .11.* The Secretary, or designated official, has 60 days to conduct the review and approve or disapprove the Revenue Allocation Plan. Failure to act within the 60 day time period does not mean the Revenue Allocation Plan is approved by default. *25 C.F.R. 290.19.* The chart below shows the number of days from submission to approval for the Revenue Allocation Plans submitted between 2001 and 2013.[2]



Information in the Revenue Allocation Plan

There are two primary directives in the regulations – identifying specific information which must be included in the Revenue Allocation Plan and identifying who may receive the per capita

[2] We have been unable to locate the approval letter for the FY2014 plan, and the FY2015 plan took 80 days between submission and approval.

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payment, including who is excluded from receiving the per capita payment. A Revenue Allocation Plan must contain the elements outlined in 24 C.F.R. 290.12, and be accompanied by the documents listed in 25 C.F.R. 290.17.

- Allocation, by percentages, of the use of net gaming revenues which equal to 100%.
- There must be adequate net revenues reserved for those governmental functions listed in 25 U.S.C. 2710(b)(2)(B) subsections (i) through (v).
- The allocation for each governmental function must "contain detailed information" to determine compliance with the Indian Gaming Regulatory Act.
- Protection and preservation of the interests of minors and incompetent adults.
- Notification to the member of tax liability.
- Specific eligibility requirements for those who will receive the per capita payment.

In addition, a Revenue Allocation Plan must be submitted with a cover letter requesting approval of the plan and the Tribal resolution adopting the plan.

The approved Revenue Allocation Plan for 2015 contains the following allocations.

- 27.62% - Tribal governmental programs defined as: Tribal administration, capital improvements to tribal offices, tribal public works program, tribal planning program, tribal enrollment program, tribal community health representative, tribal health services, Indian Health Services clinic, Indian school food service programs, tribal parenting program, summer youth workers' program, tribal library, tribal recreation program, tribal elderly program, veterans symposium, tribal arts and crafts program, and tribal cultural programs.
- 40.47% - General welfare of the Tribe and its members defined as: utility assistance program, funeral assistance program, tribal housing assistance program, higher education program, elderly services, social services programs, health services and the food distribution program.
- 6.96% - Tribal economic development defined as: investment and proposed tribal economic development projects.
- 1.32% - Donations to charitable organizations.
- 5.87% - Funding of local government operations that affect the Tribe and its members.
- 17.76% - Per capita payments.

The percentage allocations for the required elements of the Revenue Allocation Plan between 2001 and 2015 are set forth in the following chart. The description of each category has been consistent from year to year. It should be noted that the per capita payments are stable from 2001 to 2008 with a general per capita of $750 to $800, with an increase to the $1200 general per capita from 2009 to 2015.

The large change in the following charts in 2008 is the impact of the $5000/$10,000 per capita. Members should review the financial analysis to identify how funds were re-allocated and moved to make this payment. In addition, the legal and financial opinions regarding the 2008 per capita presented in the General Tribal Council meeting materials are available from the Records Management Office. The General Tribal Council meeting minutes of August 11, 2007, which approved the 2008 per capita payment are available on-line.

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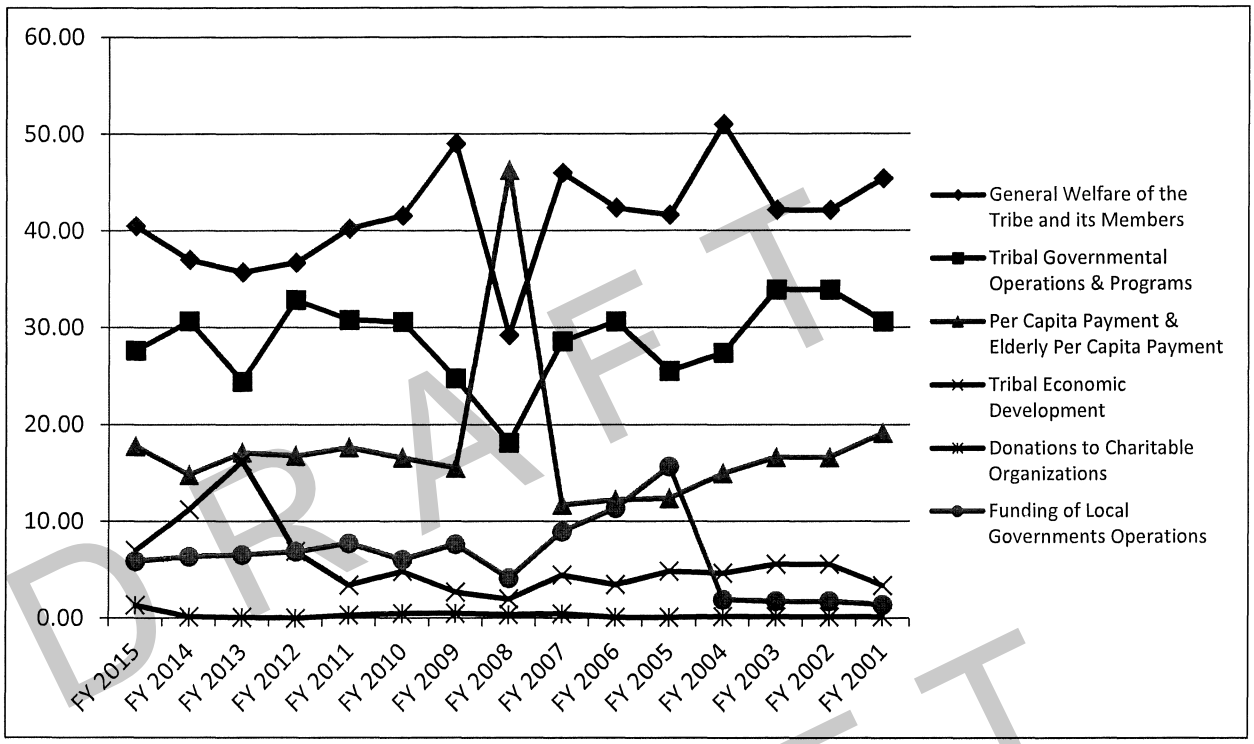

The Revenue Allocation Plan allocation percentages are identified based the adopted budget of the Tribe. A Revenue Allocation Plan identifies allocation of net gaming revenues; or gaming revenues less gaming related expenses. Further, the plan presents grouped financial information based on the requirements of the Indian Gaming Regulatory Act and related regulations. As a result, members will notice a difference between the adopted budget and the Revenue Allocation plan financial information. The chart below identifies the financial information related to the percentage allocations from a selection of Revenue Allocation Plans.

	2015	2012	2011	2008	2001
General Welfare of the Tribe and its Members	$51,029,713	$55,772,624	$57,240,470	$67,135,528	$36,433,435
Tribal Governmental Operations & Programs	$34,818,709	$49,926,847	$43,869,803	$41,674,683	$29,358,672
Per Capita Payment & Elderly Per Capita Payment	$22,392,000	$25,452,800	$25,090,000	$106,296,200	$14,390,000
Tribal Economic Development	$8,786,698	$10,434,595	$4,835,191	$4,509,738	$4,835,191
Donations to Charitable Organizations	$1,670,000	$0	$425,000	$835,000	$110,000
Funding of Local Government Operations	$7,398,578	$10,368,363	$10,988,681	$9,405,827	$1,489,200
Totals	$126,095,698	$151,955,229	$142,449,145	$229,856,976	$86,589,668

As has been identified in prior legal opinions as well as by the Treasurer, past and present, gaming revenues have begun to stabilize while the cost of conducting gaming continues to rise. As a result, the available revenue for allocation for activities identified in a Revenue Allocation Plan is reduced over time. Further, neither retail nor grant related income has increased to cover the gap created by increasing expenses. Although utilities, building maintenance costs, and programing costs continue to rise, the largest impact on the budget remains the employment base. As employee longevity with the Tribe increases, the salary and benefits continue to

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increase, including accruals and use of personal and vacation time. Therefore, even if all other expenses in the budget remained the same, the cost of conducting business and programming would continue to increase. Members are also encouraged to review the March 3, 2015, legal opinion "Petition – Genskow – Budget Development" for further information regarding the budgeting processes.

Financial Constraints

The Oneida Tribe budgets each year for activities based on estimated revenues from Tribal enterprises. In addition to revenues, the Tribe has borrowed funds to construct various facilities – Oneida Health Center, Anna John nursing facility, and various utilities for example – as well as to invest in economic opportunities. The Oneida Business Committee has approved the Treasurer's goal regarding paying down debt in an aggressive manner. This will reduce the overall cost of borrowing funds by reducing interest charged on the debt as well as keeping the rate of interest low during the borrowing period as the Federal Reserve Board begins increasing interest rates over the next year.

The bank loans and bonding require the Tribe to maintain certain financial conditions during the borrowing period. For example, the Tribe must have an adopted budget by a deadline or fines are assessed by the lenders. Further, there may be requirements to maintain certain debt ratios, develop levels of reserve funding, and maintain existing assets which are functioning as collateral for the bank loans and/or bonds. Members are encouraged to read the financial analysis to determine the impact of the proposed petition on these loans and bonds.

Finally, revenue streams from both gaming operations and retail operations have been utilized as collateral to obtain funding. For example, the retail revenues are collateral for a bond issuance which, in part, paid to construct the Anna John facility. It is not possible to disrupt the operations of these enterprises without unduly impacting the loan and/or bond agreements. Again, members are encouraged to review the financial analysis for this petition as well as the analysis submitted for the John Powless, Jr. petition, to obtain a clearer picture of the impact of the proposed petition.

Finally, nearly every Treasurer has identified that in creating a balanced budget some programming needs must go unfulfilled. Further, the Chief Financial Officer has spoken of a "structural deficit" defined as operational needs exceeding revenues prior to beginning the budget process requiring the organization to begin budgeting by reducing overall expenses; in the FY2015 budget, this was up to 12%, the FY2016 budget the reduction was similar. In the past, the Oneida Business Committee has worked to finalize balancing the budget prior to presentation to the General Tribal Council. The FY2016 budget was primarily balanced by the direct reports and members of boards, committees and commissions. In both circumstances, the budget was balanced by reducing funding to building maintenance and repair that is beginning to have a long term impact on the functionality of buildings and increasing the overall costs of repairs when they are eventually able to be budgeted. The budget has also been balanced by pushing back capital improvement processes intended to create improved facilities for conducting programs.

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Per Capita Ordinance

After many years of per capita payments the Oneida Business Committee adopted the Per Capita law in 2000 in response to reoccurring questions arising during the adoption of per capita payments by the General Tribal Council.[3] The goal was to, "have a consistent methodology for issuance of per capita payments[.]" *Sec. 9.1-2.* The ordinance standardizes such issues as eligibility to receive a payment (when enrolled, what age, if deceased), when the payments are made, and provides limited reasons to attach a per capita payment. In addition, to comply with the requirements for approval of a Revenue Allocation Plan, the ordinance addresses how the interests of minors and incompetent adults are protected. The Per Capita law was adopted in conformance with the delegated authority in the Administrative Procedures Act.[4]

The Per Capita law identifies that per capita payments will be made on or before September 30th. *Sec. 9.5-3(d).* The purpose of setting a payment date is to allow appropriate budgeting and cash management practices. This allows the per capita payment funds to be accrued over the entire year, to ensure cash availability for operational costs (i.e. payroll, program services, taxes, etc.), and to reduce losses in early or untimely withdrawals from various investments.

The Per Capita law also identifies when an individual is eligible to receive a per capita.

- If enrolled and file a payment request form[5] by July 1st. *Sec. 9.5-3(b).*
- If not enrolled, then -
  - Must file an application for enrollment prior to January 31st; and
  - Enrollment must be approved by Oneida Business Committee prior to March 31st; and
  - New member must file a payment request form filed by July 1st. *Sec. 9.5-3(a).*
- If deceased, must have filed a payment request form by July 1st. *Sec. 9.5-4.*

In addition, minors and incompetent adult payments are addressed in section 9.6 regarding deposits, early withdrawals, and when dispersed.

The Oneida Business Committee received a request to consider authorizing attachments to per capita payments regarding child support arrears. In addition, the Tribe receives tax levies from the federal government from time to time. Finally, there are members who owe a debt to the Tribe regarding a program payment, retail purchase, theft from the Tribe, and on occasion, fines. The Oneida Business Committee considered each of these issues and the public hearing comments as presented by the Legislative Operating Committee. The Oneida Business Committee adopted amendments to the Per Capita law which authorized these three exceptions and prohibited all other attachments. *Sec. 9.4-6.* The law requires attachment requests to be filed with the Judiciary prior to July 1st and the Judiciary to issue attachment orders on or before August 1st. The attachment orders are made in priority order of child support arrears, debt owed to the Tribe, and federal tax levies. If the attachment request is not made by July 1st, there are no exceptions to late filing.

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[3] See, for example, April 9, 1999, Special General Tribal Council minutes regarding minor's trust funds and pooled accounts.

[4] The Administrative Procedures Act was superseded by the Legislative Procedures Act adopted by the General Tribal Council by resolution # GTC-01-07-13-A. Both laws delegated authority to the Oneida Business Committee to adopt legislation in conformance with those procedures.

[5] The payment request form verifies the correct mailing address for the member and identifies whether the member wishes the Tribe to withhold federal taxes from the payment.

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Finally, section 9.4-3 of the law requires per capita payments to be made only pursuant to the direction of the General Tribal Council "through adoption of a resolution." There have been payments made since adoption of the law by motion of the General Tribal Council. In those circumstances, to comply with the Per Capita law, the Oneida Business Committee has adopted a resolution setting forth the per capita payment directive of the General Tribal Council.

Analysis

The petition proposes consideration of a per capita payment. It is within the authority of the General Tribal Council to approve such payments. However, it is not clear the ongoing financial impact regarding this per capita payment request. This is especially critical regarding the inability of the Tribe to provide the normal maintenance and repair of existing facilities of the Tribe. As a result, while such a per capita payment can be directed, and in the past the Oneida Business Committee has presented budgets which met those per capita directives, the result has been an ongoing cycle of deterioration of facility management in order to avoid reduction in services or employee lay-offs.

The Per Capita law was generated to provide answers to common questions regarding per capita payments in a consistent manner. Further, the law was intended to set forth elements required under federal laws and regulations such as the protection of interests of minors and incompetent adults as well as how a per capita is allocated. To the extent that the petition does not contain a resolution in compliance with the Per Capita law, the Oneida Business Committee has been able to provide corrective actions to adopt a resolution.

Conclusion

Adoption of a per capita payment is reserved to the General Tribal Council under the Per Capita law. The petition presents a request that is within the authority of the General Tribal Council to take up.

If the action is properly presented for adoption by the General Tribal Council, it will require a simple majority vote if included in the FY2017 budget prior to its adoption.

Members are encouraged to review the financial analysis regarding the impact on the Tribe in conjunction with this opinion. It is possible that the financial analysis may identify that it is not financially possible to make the requested per capita payment which would result in a motion to adopt the per capita payment out of order.

If you have further questions, please contact me.

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Oneida Nation
Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
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P.O. Box 365
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(920) 869-4375
(800) 236-2214
https://oneida-nsn.gov/Laws

Statement of Effect
Petition: Metivier Per Capita FY17 through FY21

Summary

This petition requests that General Tribal Council (GTC) direct the Oneida Business Committee (OBC) to pay two thousand dollars ($2,000) in per capita payments for Fiscal Years 2017 through 2021.

Submitted by Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

On February 9, 2016, a petition was submitted to the Tribal Secretary's Office and has since been verified by the Enrollments Department. On March 9, 2016, the OBC accepted receipt of the petition and forwarded it for the appropriate analyses, including this legislative analysis.

The petition states: "GTC directs OBC to pay two thousand dollars ($2,000) per capita beginning Budget year 2017 and 2018, 2019, 2020 and 2021."

After reviewing the petition and applicable laws of the Nation it has been determined that this petition would have no legislative impact. The Per Capita Law does not mandate a specific amount for per capita payments but rather leaves it to the direction of the GTC. *See 9.4-3.* Further, this petition does not contradict the GTC directive of May 5, 2013 for one thousand dollar ($1,000) per capita payments beginning in 2014 as that motion was for three (3) years and that period has lapsed.

Conclusion

There is no legislative impact from the petition.

Requested Action

Accept the legislative analysis of the Petition: Metivier Per Capita FY17 through FY21.

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Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

ONEIDA TRIBE OF INDIANS OF WISCONSIN

UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

ONEIDA FINANCE OFFICE
Office: (920) 869-4325 ● Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: March 3, 2016

FROM: Larry Barton, Chief Financial Officer

TO: Oneida Business Committee

RE: **Fiscal Impact of Metivier Petition – Per Capita Payment**

I. Background

A petition was submitted on February 19, 2016 and verified by the Enrollment Department. The Business Committee took action at the March 9th meeting. The petition contains the following: *"GTC directs OBC to pay $2,000 per capita beginning budget year 2017, 2018, 2019, 2020, and 2021";*

To provide the analysis for this petition, Finance utilized the background information provided in the analysis for the John Powless, Jr. Per Capita petition submitted on February 10, 2016.

Membership

As of December 31, 2015, according to the Oneida Enrollments Department, there are currently 17,114 enrolled Oneida Tribal members. The current Per Capita Distribution Plan was approved in Fiscal Year 2014 for 3 years at $1,000 annually for each member.

Current Per Capita	Estimated impact of the per capita petition		2016	2017	5 Year Total
	Average Expense to hold a GTC Meeting		$220,000		$ 220,000
17,114	Current Tribal Members	17,114			
$1,000	Proposed Per Capita Payment	$ 2,000			
$17,114,000	Sub Total			$34,228,000	$ 171,140,000[1]
$17,114,000	Total				$ 171,360,000

[1] The five year estimate is based on the current number of Tribal members held constant, not actuarial projections of future membership.

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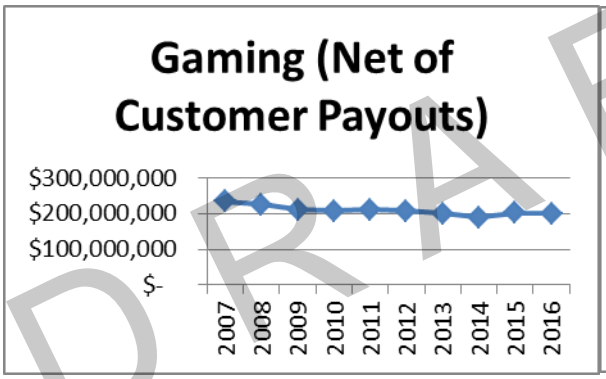
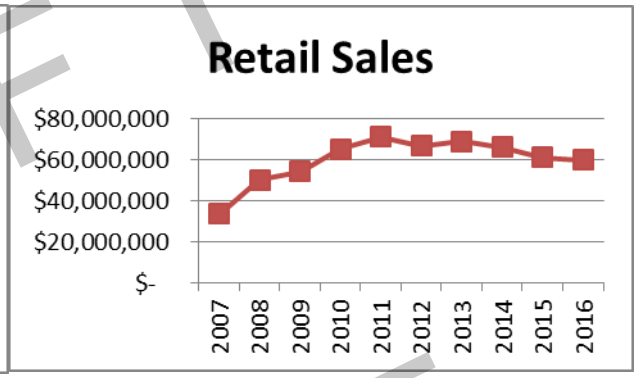
Current Financial Condition

First, Gaming and Retail Revenues, the primary source of funds which financially drive Tribal Operations, have been on a declining trend over the last few years. Net profit within the fiscal year 2017 forecast from Gaming is projected to be $100,386,964. Net profit within the fiscal year 2017 forecast for Retail is projected to be $8,125,155. This totals approximately $108,512,119 to fund Tribal operations, debt payments, and General Tribal Council mandates.





Fixed and mandated expenses for Fiscal Year 2017 are currently projected to be;

- General Per Capita* $17,127,000
- Education $14,339,585
- Debt Payments (principal and interest) $11,902,044
- Elder Per Capita $ 5,080,000
- General Tribal Council meeting stipends $ 2,700,000
- Required set aside for Bond repayment $ 1,001,073
- Elder Trust Fund Transfer $ 500,000
- Elder OLIPP Premiums Funding $ 500,000
- Burial Expenses for Minor Members $ 17,500

Total of $ 53,167,202

The remaining balance of Tribal Contribution is approximately $ 55,344,917 to fund programs and services.

*The General Per Capita payment amount as of the date of writing this analysis hasn't been approved by General Tribal Council. At a minimum, it is anticipated the $1,000 from the previous per capita plan will continue.

Adoption of the petitioner's resolution would change the fixed and mandated expenses for Fiscal Year 2017 to be;

- General Per Capita $34,228,000
- Education $14,339,585
- Debt Payments (principal and interest) $11,902,044
- Elder Per Capita $ 5,080,000

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- General Tribal Council meeting stipends $ 2,700,000
- Required set aside for Bond repayment $ 1,001,073
- Elder Trust Fund Transfer $ 500,000
- Elder OLIPP Premiums Funding $ 500,000
- Burial Expenses for Minor Members $ 17,500

Total of $ 70,268,202

Assuming passage by GTC of this petition, Tribal Contribution remaining to fund programs and services is approximately $ 38,243,917.

The Fiscal Year 2017 forecast has a total need of $55,019,974 in Tribal Contribution to fund programs and services. Adoption of the petitioner's resolution would require operations to cut $16,776,057 from current programs and services. Additional cuts would need to be made to fund requests Gaming equipment, Operational equipment, Land Acquisition, Technology Projects, or Capital Improvement Projects dollars in the budget.

Gaming Net Profit	$100,386,964
Retail Net Profit	+$8,125,155
Available Tribal Contribution	$108,512,119
General Per Capita	-34,228,000
Education	-14,339,585
Debt Payment	-11,902,044
Elder Per Capita	-5,080,000
General Tribal Council stipends	-2,700,000
Required Set Aside for Bond Repayment	-1,001,073
Elder Trust Fund Transfer	-500,000
OLIPP Elder Premiums Funding	-500,000
Burial Expenses For Minor Members	-17,500
Tribal Contribution Remaining for Programs and Services	38,243,917
Tribal Contribution Funding Request in FY2017 Forecast	-55,019,974
Cuts needed to Tribal Contribution Funding Request in FY2017	(16,776,057)

Employment

According to Oneida Human Resources Department, as of December of 2015, the Tribe employed 2,710 employees. Of that, 1,564 are Tribal members; 182 are enrolled in a different Tribe; and 964 are non-Tribal. Utilizing an average wage of $18.89 per hour with a 35% fringe rate, approximately 317 employees funded with Tribal Contribution would need to be laid off to cover the increased cost of the per capita payment.

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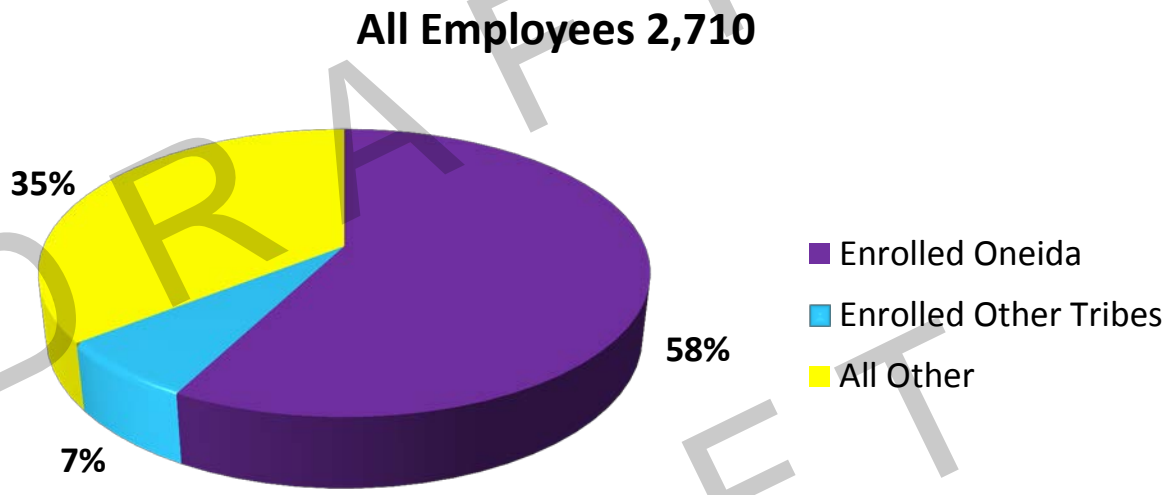
Average wage per hour	$18.89
Average fringe rate per (35% of $18.89)	6.61
Total hourly cost per employee	$25.50
Multiply by total hours paid per year (Five 8 hour days per wk.)	2,080
Total Annual Cost	$53,040
Multiply by 317 employees	16,813,680



A lay-off would have an additional impact to unemployment compensation as the Tribe is in the self-reimbursing program within the State of Wisconsin. Unemployment claims for laid-off employees would be billed to the Tribe and would become an added expense for the Tribe.

Mortgage Receivables

Currently the Division of Land Management oversees various loan programs for Tribal members that assist with ownership and repair. The balance of this revolving loan program is approximately $26,635,433.84 and there are currently 420 loans held by Tribal members and 244 members who hold loans with Division of Land Management are also Tribal employees. While the approval of the petition would result in an increased per capita payment for the five years indicated in the resolution, in the long term the petition has the potential to result in lay-offs and therefore, impact the member's ability to pay their debt in the long term. A report from NeighborWorks states job loss or reduced income as the number one reason why homeowners face foreclosure. A high foreclosure rate would have a detrimental impact the revolving loan fund and hinder the Division of Land Management's ability to provide future mortgage loans. Also, any resulting loss of revenue directly impacts the Tribe's land acquisition funds. This risk exposure is defined as systemic risk which can compound detrimental financial impact. Further elements of risk may become apparent but are not currently identified.

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Programs & Services
Funding the Per Capita petition without an impact to jobs, programs, and services is not possible as the Tribe doesn't have an unrestricted cash reserve equal to the fiscal impact of the petition and Tribal Contribution from Gaming and Retail is anticipated to be flat or a slight decline in the next five years. The decision of which specific jobs, programs or services would need to be cut would be a leadership and management decision. Considerations should be given to how a mass lay off-would impact the remaining workforce morale and overall residual impact, or feeling of job security.

Benefits
Many programs that serve the membership are income based. The following needs-based programs may be affected by an increased Per Capita distribution:

- Supplemental Security Income (SSI) based on age
- Supplemental Security Income (SSI) based on disability
- Need- based Veteran's benefits
- Medicare Buy-In Programs (Qualified Medicare Beneficiary (QMB) , Specified Low-Income Medicare Beneficiary (SLMB), and Specified Low Income Beneficiary Plus (SLMB+))
- Wisconsin FoodShare
- Medical Assistance
- USDA Food Distribution Program on Indian Reservations (FDIPR)
- W-2
- Temporary Aid for Needy Families
- Section 8 / Housing Assistance Voucher Program (at this time, not Oneida Housing Authority)
- Title V
- Other

Risk

- **Credit Covenant Compliance (Bank Loan)**
  The line of credit agreement with Bank of America Merrill Lynch has a compliance requirement termed a Fixed Charge Coverage Ratio. This is a calculation of the amount of Gaming earnings before interest, taxes and depreciation/amortization (EBITDA) left after all transfers to the Tribe for and debt payments. If debt were used as the funding source for the petition it would be result in the Fixed Coverage Charge Ratio being reduced to .79 to 1. The Tribe's minimum permissible ratio is 1.05 to 1. As a result the action may result in a default being declared by Bank of America, penalties being applied, or the loan being called.

- **Future Credit Underwriting/Rating**
  Adding the full impact of petition as new debt would increase total debt load by $85.6 million. The Tribe doesn't have access to this level of debt. While this is slightly less than the trend of Gaming earnings before interest, taxes, and depreciation/amortization (EBITDA) every year and it would decrease the strength of the Tribe's balance sheet and most likely would result in higher pricing for risk adjusted interest rate we would pay for our debt service needs. This would result increase the total cost of any new debt issued by the Tribe.

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- **Credit default of Bank Loans may necessitate liquidating assets**
  As indicated above, if the Tribe added $85.5 million in new debt, we would be in a situation of non-compliance with our Fixed Charge Coverage Ratio debt covenant. If we cannot find a means to bring the Tribe back into compliance, that could trigger an Event of Default. One Event of Default on any of the four existing debt agreements can cause a cascading effect of a Default on the remaining agreements. This would force the Tribe to raise cash by liquidating (selling) assets sufficient to raise enough cash to pay off all $65.05 million in debt (plus any new debt taken in order to pay out a $34.2 per capita distribution) at one time.

- **Unrestricted Net Assets**
  The Fiscal Year 2015 Audited Financial Statements show a balance of $82.2 million in Unrestricted Net Assets. The total cash and short term investments included in this category is $37.2 million, an amount substantially lower than the fiscal impact of the petition.

- **Government Financial Officers Association (GFAO) Best Practices**
  The Appropriate Level of Unrestricted Fund Balance in the General Fund best practice advises governments that it is essential that governments maintain adequate levels of fund balance to mitigate current and future risks (i.e. revenue shortfalls and unanticipated expenditures). Discussion on the adequate level within this statement notes, "The adequacy of unrestricted fund balance in the general fund should take into account each government's own unique circumstances. For example, governments that may be vulnerable to natural disasters, more dependent on a volatile revenue source, or potentially subject to cuts in state aid and/or federal grants may need to maintain a higher level in the unrestricted fund balance." The Tribe's revenues from Gaming have varied significantly from year to year and funding for many programs and services are subject to cuts in State aid and Federal grants annually. (Appropriate Levels of Unrestricted Fund Balance in the General Fund Best Practice Statement; Government Finance Officers Association; September 2015.)

  Achieving a Structurally Balanced Budget best practice advises governments to adopt rigorous policies aimed at achieving and maintaining a true structurally balanced budget. A structurally balanced budget is when recurring revenues are equal to recurring expenses.

  Determining the Appropriate Levels of Working Capital In Enterprise Funds best practice advises governments that under no circumstances should the target for working capital be less than forty-five (45) days' worth of annual operating expenses and other working capital needs of the enterprise fund. A target of forty-five days would only be appropriate for those enterprise funds with the lowest amount of need for a buffer or safety net. Adoption of the petition will deplete working capital levels resultant in elevated risk to the community and organization.

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Future Outlook
There is substantial financial insecurity in fiscal year 2017 and beyond due to the recurrent $29-35 million structural budget deficit and variability in Gaming revenues. The result in the budgets for fiscal year 2017 and beyond is Cost Containment. If Gaming revenues decline substantially, there is an increased risk to the funding for General Tribal Council mandates in future budgets as well as funding any Capital Improvement Projects (CIP). The current budget forecast for fiscal year 2017 starts with a negative variance of approximately $29.65 million

II. Executive Summary of Findings

A mandated expenditure of this level presents several financial risk management issues and would be deemed fiscally irresponsible.

Since the peak in revenue in 2007 to today, Gaming revenue has fallen 19% (nineteen percent). The economic recession has forced the organization to both implement cost containment measures as well as find long-term sustainable ways to decrease expenses such as payroll and other fixed expenses. This trend is alarming and continued spending at the present rate is unsustainable.

According to the Indian Gaming and Reorganization Act, the authorized uses for "net revenues from any tribal gaming" in 25 U.S.C. section 2710(b)(2)(B), subsections (i) through (v).
Subsection ii states *"to provide for the general welfare of the Indian tribe and its members"*
In 2015, 40.47 % of Gaming net revenues went to General welfare and 17.76 % to per capita. Therefore over 58% of the funding in 2015 was used for direct member benefits, programs, and services.

III. Financial Impact

The financial impact if this Petition is adopted ranges from $34.2 million to $53.86 million depending on the funding mechanism. If there is to be an increase in per capita spending due to adoption of this Petition, failure to counteract by significant reductions in jobs and services runs the risk of putting the Tribe in non-compliance with the covenants of our debt agreements. Should such an event of default occur, there is the potential of forcing the Tribe to liquidate assets in order to pay down the additional $65.05 million in consolidated long term debt within a very short period of time. The total therefore would be $ $118,910,000 in the event of bank loan default. Future ability to source loan capital for future projects will be negatively impacted.

IV. Recommendation

Because of our fiduciary responsibility to the Oneida Tribe and General Tribal Council, the Finance Department is compelled to recommend the denial of this Petition. Finance is in opposition to this petition and cannot recommend a Per Capita plan that would seek to increase spending on Per Capita without an identified recurring source of funding.

Dear General Tribal Council,

Once again, Oneida tribal members gather as the General Tribal Council to do the work of the Supreme Governing Body of the Tribe.
The petition asks for 2,000 for 2017-2021.

The past twenty years, since the Mike Metoxen per capita petition in the 1990's, have brought a number of items regarding per capita to the GTC. It was determined by the GTC, in the 1980's, that instead of taking big per capita payments, that Tribal Members voted to put Gaming profits into infrastructure: education, healthcare, housing, and more. The GTC has always balanced the need to build the tribe and has kept per capita payments low and reasonable.

The Treasurer's staff will present to the GTC and tell you that there is no money for this 2,000 for 2017-2021 per capita, there will be layoffs, and cuts in services and programs. And that the GTC has heard for twenty years.

All tribal members must humbly submit to the decision of the GTC and the vote, you each have one vote, will determine whether or not there will be a 2,000 per capita beginning 2017-2021.

Since the GTC became more powerful and informed when the stipend invited tribal members to become a big body of 1500 to 2000 in 2007, the people have learned about their government, their elected leaders, and revenues and

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expenditures. The GTC makes good decisions and it is for tribal members to exercise their right to express their view of the how the Tribe's revenues should be spent.

Yvonne Metivier, Petitioner

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Oneidas bringing several hundred bags of corn to Washington' s starving army at Valley Forge, after the colonists had consistently refused to aid them.

UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possble.

MEMORANDUM

TO: General Tribal Council

FROM: Oneida Business Committee

DATE: May 10, 2016

SUBJECT: Per Capita Plan Proposal as Required by GTC Directive

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The purpose of this correspondence is to provide General Tribal Council (GTC) with a recommendation on a per capita plan and payment amount that doesn't require cuts to programs and services.

Background

The current per capita payment plan is in the amount of $1,000; which began in Fiscal Year 2013 and was for three years.[1] When this payment amount was adopted, the discussion included a long term plan regarding future per capita payments.

The OBC developed a per capita work group who completed research on previous payment plans, the reasons behind those plans, and who also gathered feedback from members through a survey. For your review, the survey results have been included in this packet as supplemental material.

Through this research the Oneida Business Committee has proposed the following per capita payment plan for five years beginning in Fiscal Year 2017:

$1300 per year x 17,200 members = $22,360,000

Annual allocation for debt, principal, interest and fees is $8.8 million dollars.

[1] Motion by Michelle Danforth, seconded by Loretta V. Metoxen for a $1,000 per capita payment for three years on October 1, starting in 2014. Motion approved by a show of hands.

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$300 increase per member equals $5.2 million dollars.

Replenishment of Permanent Executive Contingency Emergency Fund is $3.4 million dollars and after five years the balance of this fund should reach $17,200,000.

This plan is to use the Permanent Executive Contingency Emergency Fund to pay off the Bank of America line of credit and to fully fund the remaining balance needed for the balloon payment for the Thornberry Creek at Oneida debt which would be responsible financial management.

The budget allocation that would have been utilized to pay these two loans in each year can then be allocated to fund a per capita plan which would allow an increase from the current $1,000 to $1,300. This option is the most financially prudent and secure option as it retires a variable rate note before the Federal Reserve Bank implements interest rate increases forecasted to occur in the future and funds the amount in the Thornberry Creek at Oneida debt sinking fund to 100% of the value of the balloon payment due in 2018; reduces the long-term liabilities of the Tribe by $16.3 million; and identifies a funding source for a per capita increase that **doesn't require cuts to programs and services.**

Next steps required of the Oneida Business Committee will be to make necessary changes to the existing Per Capita law to create a perpetual annual per capita payment for our members.

Recommended Actions

Motion to adopt per capita plan using funds from the Permanent Executive Contingency Emergency Fund for FY2017 through FY2021.

Motion to direct the Oneida Business Committee to make necessary changes to the existing Per Capita law to create a perpetual annual per capita payment.

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RE: Per Capita Business Committee Recommendation

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(Multimedia Presentation)

TOPIC:
PETITIONER
MADELYN GENSKOW

REVIEW AND CONSIDER THREE (3) RESOLUTIONS

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Oneida Nation

Certification of Petition Signatures

TO: General Tribal Council
FROM: Lisa Summers, Tribal Secretary
DATE: April 8, 2016
RE: Madelyn Genskow Petition re: Review and consider three (3) resolutions

Certification of Sufficient Petition Signatures:

Petitioner Name:	Madelyn Genskow
Date Submitted:	March 30, 2015
Total # of signatures submitted:	61
Total # of invalid signatures[i]:	1
Total # of valid signatures:	60

Sixty signatures were verified by the Oneida Enrollment Department on March 31, 2015. The number of signatures submitted by the petitioner is sufficient.

Petition: A copy of the petition statement is provided here:

PURPOSE: We the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that Public hearings are required we direct the Business Committee to hold the required Public Hearings and bring these resolutions to the GTC in

RECEIVED BY THE OFFICE OF TRIBAL SECRETARY ONEIDA BUSINESS COMMIT

The full petition is available per the Open Records and Open Meetings Law. Contact the Business Committee Support Office for more information at (920) 869-4364.

[i] Reason(s) for invalidation: 1 – Name could not be verified

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ONEIDA BUSINESS COMMITTEE Accountability Resolution

WHEREAS, it appears that the members of the Business Committee cannot make public statements regarding certain problems in the Tribe without a majority vote of the Business Committee and

WHEREAS, this has caused Oneida General Tribal directives to not be carried out because the General Tribal Council is not informed and

WHEREAS, it is documented that the Resolution 11-15-08 C requiring full disclosure was never carried out

NOW THEREFORE BE IT RESOLVED . The first item on every Agenda of the Annual and Semi-Annual meetings shall be that each individual member of the Business Committee must verbally report to the GTC if they, as an individual member of the Business Committee, know if there are any GTC Directives that are not being carried out.

BE IT FINALLY RESOLVED this item may not be deleted from the agenda.

RECEIVED BY THE OFFICE
OF TRIBAL SECRETARY
ONEIDA BUSINESS COMMITTEE
MAR 30 2015
ONEIDA TRIBE OF
INDIANS OF WISCONSIN
INITIALS

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JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER, PHD
SENIOR STAFF ATTORNEY

ONEIDA LAW OFFICE
N7210 SEMINARY ROAD
P.O. BOX 109
ONEIDA, WISCONSIN 54155

(920) 869-4327 **FAX (920) 869-4065**

PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS
MICHELLE L. MAYS

MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: October 5, 2015

SUBJECT: Petition – Genskow – Oneida Business Committee Reporting

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You have requested a legal review regarding a petition submitted by Madelyn Genskow. The petition contains three resolutions. The legal opinion will review only the resolution identified above. The Enrollment Department has verified a sufficient number of signatures on the petition.

The resolution contains three Whereas sections.

- "…it appears that the members of the Business Committee cannot make public statements regarding certain problems in the Tribe without a majority vote of the Business Committee[.]"
- "…this has caused Oneida General Tribal Council directives to not be carried out because the General Tribal Council is not informed[.]"
- "…it is documented that the Resolution 11-15-08 C requiring full disclosure was never carried out[.]"

Whereas sections are intended to provide legislative history and background regarding why the resolution is brought forward. Whereas sections are not enforceable.

The resolution contains two Resolve sections.

- "…The first item on every Agenda of the Annual and Semi-Annual meetings shall be that each individual member of the Business Committee must verbally report to the GTC if they, as an individual member of the Business Committee, know if there are any GTC directives that are not being carried out."
- "…this item may not be deleted from the agenda."

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, and various other resources. This opinion is broken into sections to address the issues raised in the resolution – public speaking and resolution # GTC-1-15-08-C.

Public Speaking

The Oneida Business Committee is the elected body representing the Tribe when the General Tribal Council is not in session. As a body, the Oneida Business Committee meets in both open and executive/closed session to receive information and requests regarding issues, discuss those issues, and make a decision by either adopting a motion or a resolution. The Oneida Business

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Committee, as a body, acts on behalf of the Tribe unless a specific delegation is made to a member of the Oneida Business Committee to act on an issue or represent the Tribe.

Individual members of the Oneida Business Committee may speak on their own behalf. However, such speech must recognize the position they hold and the quality of the information they are given as a result of their elected position. In other words, members of the Oneida Business Committee receive and have access to information which is not public information.[1]

Oneida Leadership Group Agreements. When the 2014 Oneida Business Committee began office they met to discuss how they would proceed during their term of office regarding policy and direction of the Tribe as well as how they would interact with each other. The result of those meetings was the "Oneida Leadership Group Agreements." These agreements are set forth below.

- Hold each other accountable for our actions.
- Community atmosphere – we are here to help each other and hold each other up.
- Leave the titles at the door. We are equal working together, on a level playing field.
- Challenge the status quo thinking and maintain an open mind.
- Be present physically and emotionally.
- Respectful communication in tone and style.
- Support the decision of the team.
- Come prepared.
- Pay attention and listen.
- No interrupting.
- Deliver the mail to the right address.
- Assume the best.
- Share the time; everyone gets a chance to speak.
- Check attitude at the door.
- Focus on the issue, not the person.
- Be solution-oriented to problems.
- Do not take any decisions personally.
- Maintain our values.

In addition to the Group Agreement, the Oneida Business Committee has also identified that six members must be present in order to make a decision. Based on this, and the Group Agreement, the members of the Oneida Business Committee committed to meeting to discuss issues and arrive at a consensus that everyone could support.

Public Relations – Newspaper. In the past, the Oneida Business Committee has directed that all contact with reporters (whether print or other media) be conducted through the Public Relations Office. The Public Relations Office is now a responsibility of Intergovernmental Affairs and Communications. The current Oneida Business Committee has not formally re-affirmed this policy; however, the Intergovernmental Affairs and Communications personnel continue to act as a point of contact for reporters.

[1] See also discussion at September 21, 2015, Special General Tribal Council meeting, Chair comments regarding certain business activities requiring confidentiality.

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General Tribal Council Reporting. The Oneida Business Committee continues to provide the travel expense reports as directed by the General Tribal Council. Further, consistent with the prior Oneida Business Committee, a cover letter from the Oneida Business Committee is submitted with the Annual and Semi-Annual Reports. Members of the Oneida Business Committee are contacted regarding subjects to include and the cover letter is approved by the Oneida Business Committee.

Kaliwhisaks. The Kaliwhisaks includes a legislative page for members of the Oneida Business Committee. This page allows, on a rotating basis, individual Oneida Business Committee members to address a letter to the members on issues of importance from their individual perspective.

Oneida Business Committee – Quarterly Reporting. Each subcommittee or standing committee on which members of the Oneida Business Committee participates provides a quarterly report. These reports identify matters before that body, priorities set on activities of the body, and highlights regarding activities or actions taken by the body. These reports supplement the minutes of these entities. Examples of these types of entities include the Community Development and Planning Committee and the Legislative Operating Committee.

Resolution # GTC-11-15-08-C

The General Tribal Council met on November 15, 2008, to review a petition submitted by Madelyn Genskow. That petition contained nine resolutions, one of which was regarding the Treasurer's reports. The petitioner identified that the purpose of the resolution was to have the audits of the Tribe reported to the General Tribal Council, and that the financial reports should include the component units of the Tribe. *Meeting Packet, p 119.* The minutes indicate that very little discussion took place. However, the discussion reported identifies that the intent was to make information available to the members, to increase "communication." The members rejected a motion to adopt a resolution proposed by the Oneida Business Committee which required reporting in accordance with Generally Accepted Accounting Principles and Government Accounting Standards.

The General Tribal Council adopted Resolution # GTC-11-15-08-C after a brief discussion and clarification of its intent and application. The resolution contains four Resolves which can be summarized as follows.

- The Treasurer's report must include the annual audit[2] of the Tribe and the component units.[3]

[2] Prior to adoption of the resolution a Parliamentarian question was presented regarding whether the resolution as in order. The ruling was as follows – "The resolution does not require an audit be conducted outside of existing audit processes as clarified in discussion on the floor and as a result does not violate existing tribal law." *General Tribal Council Meeting Minutes, November 15, 2008, p. 13.* This Resolve is interpreted as requiring only an annual audit of the Tribe.

[3] A "component unit" is a corporate or external entity that derives a majority of its activities from the Tribe and as a result is dependent on the Tribe for its profit and losses. Current component units of the Tribe are identified as the Oneida Seven Generations Corporation (because of the management of commercial property owned by the Tribe) and the Oneida Golf Enterprise (because of the financial reliance on the Tribe).

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- The Treasurer's report must include an annual audit of the Tribe that reviews the finances of the Tribe and its component units.
- No Tribal employee shall enter into an agreement with a corporation that requires the agreement to remain confidential.
- This resolution will be implemented at the next General Tribal Council meeting a Treasurer's report is submitted.

Prior to adoption of this resolution the Treasurer reported to the General Tribal Council at the Annual, Semi-Annual and budget meetings.[4] In addition, the Treasurer reported to the Oneida Business Committee on a quarterly basis. The reports contained an overview of the financial status of the Tribe and occasionally included information regarding investments made by the Tribe. Since adoption of the resolution, the Treasurer continues to provide the same reporting at the Annual, Semi-Annual and budget meetings, as well as the quarterly reporting at the Oneida Business Committee meetings. However, on an annual basis, the audits of the Tribe and the corporate entities of the Tribe are also submitted to General Tribal Council. In addition, in the Annual and Semi-Annual reports, a brief financial status of the corporations and return on investment is also reported.

The budget for the Tribe remains available at specific public locations (Oneida Community Library and SEOTs offices). In addition, the external and internal audits of the Tribe are available in accordance with the Audit Law. Finally, the annual audit and corporate annual audits are available for viewing with the Tribe's budget.

Analysis

This resolution contains three Whereas sections and two Resolves. The Whereas sections make two general allegations. First, that General Tribal Council directives have not been carried out because an Oneida Business Committee member cannot speak without approval of a majority of the Oneida Business Committee. Second, that "full disclosure" was never carried out. The resolution also contains two Resolves. First, the agenda of the Annual and Semi-Annual meetings must have, as the first item on the agenda, each Oneida Business Committee member to present a verbal report on General Tribal Council directives not being carried out. The second Resolve directs that the agenda item cannot be deleted.

Whereas – Restriction on Public Speaking. It is not clear what directive or restriction is being referred to which restricts an Oneida Business Committee member from speaking. However, there are some processes the Oneida Business Committee has agreed to utilize during their term. For example, the Oneida Business Committee has agreed to a consensus decision making process and committed to that process. For example, the Group Agreements identify that the members of the Oneida Business Committee would "support the decision of the team." If the Oneida Business member have agreed to the difficult process of consensus building, support of that consensus is critical to participation.

[4] See opinion, "Genskow Petition – Resolution – Treasurer Reporting to GTC," dated July 14, 2008, for the history of Treasurer's reports to the General Tribal Council.

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If the specific limiting directive or restriction to speech is identified, it will be possible to provide a more in depth review. Without that information, it is not possible to identify what, if any, such a restriction may have had on a member of the Oneida Business Committee.

In addition to the above, the Whereas section suggests that the restriction on speech was somehow the cause of a General Tribal Council directive not being carried out. The General Tribal Council, since the adoption of the Constitution in 1936, has adopted many motions and resolutions directing action. It is not possible to review all of those actions in the limited time available to determine which, if any, were not carried out; even if that review were limited to short time period the research would be significant.[5] Neither the resolution nor the petition identify any examples of General Tribal Council directives that were not carried out, nor has it identified any examples of General Tribal Council directives that were not carried out because a member of the Oneida Business Committee was restricted or limited from speaking. If such examples or specific occasions were identified, further review would be needed and this opinion would need to be updated.

Whereas – Full Disclosure. This Whereas section alleges that a General Tribal Council Resolution was not carried out. The petition does not identify how this resolution has not been implemented, it simply states that it is "documented" that the resolution has not been carried out. As a result, it is not possible to conduct a review of this allegation and to provide an analysis.

Resolve – Agenda Item – Individual Verbal Report. The first Resolve requires individual Oneida Business Committee members to report on failures to carry out General Tribal Council directives. This verbal report is to be presented at an Annual or Semi-Annual meeting. The report could be as simple as – "I do not know of any actions." However, even if there are issues reported, it is not clear what, if any action General Tribal Council could take. A verbal report would not contain sufficient information, presented to the membership prior to the meeting, for informed decision making by the body.

The Oneida Business Committee members take an oath of office prior to entering office. The oath identifies that they will carry out and execute the laws of the Oneida Tribe of Indians of Wisconsin. As such, this directive to present a verbal report at the Annual or Semi-Annual meeting appears to suggest a number of interpretations that would violate that responsibility. For example, the Resolve could be interpreted that a member of the Oneida Business Committee could not take steps to implement corrective action because he or she would then be unable to present a verbal report on such inaction. In the alternative, the verbal report could involve individuals who would have no notice of such action being brought before the General Tribal Council.

- If that individual were an elected official, a verbal report would be in violation of the Removal Law, or the Constitution if this were an allegation against another Oneida Business Committee member.

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[5] This research would be made even more difficult where subsequent actions of the General Tribal Council superseded in whole or in part prior actions of that body.

- If the individual were an employee, a verbal report would be in violation of the delegated authority regarding employment matters to the Human Resources Department and the Personnel Commission.
- If the individual were a gaming employee, a verbal report could be in violation of licensing issues under the Oneida Nation Gaming Ordinance.

The Resolve is not sufficiently clear to provide basic notice requirements to the General Tribal Council to make informed decisions, and does not provide sufficient protections regarding the due process of individuals. As a result, the overbroad nature of the Resolve would pose significant legal issues.

Resolve – Prohibited from Deleting. The second Resolve directs that this verbal reporting item on the agenda may not be deleted. However, it is not clear if such a directive can be implemented. Adoption of the agenda, in accordance with notice requirements under the Ten Day Notice Policy, is subject to the will of the General Tribal Council. For example, for at least the past 20-plus years the General Tribal Council has taken action to re-arranging the agenda placing priority on items by moving the item to the beginning of the agenda. Further, the General Tribal Council has also deleted items from the agenda. It is possible, that even after adoption of this Resolve, the General Tribal Council could still, by two-thirds vote, delete an item from the agenda.

Conclusion

This resolution contains Whereas sections which are unclear. It is not possible to provide a legal analysis regarding the allegations being made.

The resolution contains two Resolves. The first Resolve may result in directing an Oneida Business Committee member to violate the laws and/or Constitution of the Tribe. At the very least, it is a directive to provide a report for which insufficient information has been presented to the members in a timely manner in which to make an informed decision. This Resolve contains constitutional issues which are likely to render it out of order.

The second Resolve contains a directive that the directed agenda item cannot be removed. It is not possible to restrict the procedural actions of the General Tribal Council in this manner. Unlike direct information and notice be presented prior to a meeting, the agenda itself is subject to the authority of the General Tribal Council. As a result, at most, this Resolve could result in a two-thirds vote to amend the agenda to delete these items.

If you have further questions, please contact me.

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Oneida Tribe of Indians of Wisconsin
Legislative Reference Office

Lynn A. Franzmeier, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst

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Statement of Effect
Petition Resolution 1: OBC Accountability

Summary

On March 30, 2015, the Tribal Secretary's Office received a petition which states "we the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required Public hearings and bring these resolutions to the GTC intact." The petition further requests that the meeting be held on a Saturday.

The Petition was verified by the Enrollment Project Specialist on March 31, 2015, and on April 22, 2015, the Oneida Business Committee (OBC) directed the Legislative Reference Office to complete a legislative analysis on the petition. This Statement of Effect addresses the first of three resolutions attached to the Petition, pertaining to OBC Accountability.

Submitted by: Candice E. Skenandore, Legislative Analyst, Legislative Reference Office

Legislative Analysis

According to this Resolution, it appears that the OBC cannot make public statements regarding certain problems in the Tribe without a majority vote by the OBC. The Resolution further claims that this has caused General Tribal Council directives from being carried out. An example was made that states that Resolution 11-15-08-C requiring full disclosure was never carried out.

This Resolution seeks to add a permanent item to the agenda for all Annual and Semi-Annual General Tribal Council meetings which requires each OBC member to verbally report if they know of any General Tribal Council directives that are not being carried out. The Resolution requires this verbal report to be the first item on the agenda; in addition, this item cannot be deleted from the agenda.

This Resolution has no legislative impact at this time. Please consult the legal and fiscal analyses to determine if this Resolution has any legal or fiscal impacts.

Conclusion

Adoption of this Resolution would not affect any current Tribal legislation.

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ONEIDA TRIBE OF INDIANS
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ONEIDA FINANCE OFFICE
Office: (920) 869-4325 η Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: January 20, 2016

FROM: Larry Barton, Chief Financial Officer

TO: Patricia King, Treasurer
Oneida Business Committee

RE: **Financial Impact of Resolution– Oneida Business Committee Accountability**

I. Background

Under consideration is a petition which contains a proposed Resolution titled, "Oneida Business Committee Accountability Resolution." The "whereas" sections of the proposed Resolution assert that Oneida Business Committee members may not make public statements regarding "problems in the Tribe" without a majority vote of the Business Committee. Further, the proposed Resolution asserts that GTC Resolution # 11-15-08-C requiring full disclosure was never carried out.

The resolved section of the proposed Resolution would require that each Annual and Semi-Annual meeting of the General Tribal Council begin with all nine (9) Business Committee Members individually providing a verbal report detailing whether they know of any General Tribal Council directives which are not being carried out. Further, adoption of the Resolution would not permit removing this item from the agenda of an Annual or Semi-Annual meeting.

II. Executive Summary of Findings

The proposed Resolution contains no examples of the assertions. There is not the presence of items citing reasons for the proposal. It calls for verbal reports to open certain General Tribal Council meetings. Any actions pertaining to said verbal reports may be in violation of a 10 day notice policy.

III. Financial Impact

There is no direct financial impact of the draft resolution as written. It is unknown how long these nine verbal reports – one from each Business Committee member – would take. If the time

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frame required complete an agenda is extended too far, recent activity has shown that those in attendance may choose to recess before completion, which would require at least one additional meeting to complete the agenda. In this case, we would incur costs to convene a second meeting. For the time frame January 19, 2015 to January 6, 2016 we held ten (10) General Tribal Council meetings. The average cost of these meetings was $191,264. It is therefore possible that this proposed Resolution would delay the time to complete an agenda, leading the GTC members in attendance to recess a meeting before its completion.

TOTAL ESTIMATED FINANCIAL IMPACT: zero to $382,528

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.

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To: General Tribal Council
From: Madelyn (Cornelius) Genskow

Madelyn Genskow

May 2, 2016
Re: Business Committee Accountability Resolution

They have not carried out the following General Tribal Council directives:

1.Benefits books are not mailed to tribal members including Guidelines, updated annually.

1.a. (Community Funds) where several tribal members were funded $450.00 for gym and dance classes, swim classes, cheer leading class, etc.

2. Oneida hymn singing to be taught in the tribal schools.

3. Land Commissioner to be elected, not appointed.

4. Ombudsmen. As an advocate for someone to the Health Center I found out that if you have a problem at the Health Center. You report the problem to Sandy Schuyler – whose boss is the Director of the Health Center – not to the ombudsman, as directed by the General Council, should be independent of the management of the Health Center.

5. GTC Resolution 11-15-2008C: No one in the Tribe is to sign a corporate contract that the tribal members can not see. The current "Open Records Law" 7.4 limitations upon access and exceptions and 7.4.1 **(B) contracts or other agreements which specifically prohibit disclosure of the content of the contract of agreement to third parties. - the GTC would be the third party.**

See attachments.

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VII. New Business:

1. External Donation Requests – Discussion
Patricia King, Treasurer

There was a discussion regarding how to move forward with donation requests; Larry Barton provided a brief historical overview of how external giving was provided; in the past few years with diminished dollars concentration was on Oneida Community, local churches, longhouse and vets groups. After discussion there was consensus donation requests can be placed on the FC agenda for review and that information provided today can be accepted as FYI.

Motion by Jennifer Webster to accept all the information as FYI. Seconded by Wesley Martin, Jr. Motion carried unanimously.

VIII. Executive Session: No requests submitted

IX. Community Fund: This should in The GTC ordered "Benefits Book".

1. Green Bay Elite Cheer fees for daughter (JM)

Motion by Jennifer Webster to approve from the Community Fund the Green Bay Elite Cheer fees for the daughter of the requestor in the amount of $500.00. Seconded by Larry Barton. Motion carried unanimously.

2. YMCA Gym/Swim class fees for daughter (YYZS)

Motion by Larry Barton to approve from the Community Fund the YMCA gym and swim class fees for daughter of requestor (YYZS) in the amount of $450.00. Seconded by Jennifer Webster. Motion carried unanimously.

3. YMCA Gym/Dance class fees for daughter (YMZS)

Motion by Wesley Martin Jr. to approve from the Community Fund the YMCA gym and dance class fees for daughter of requestor (YMZS) in the amount of $450.00. Seconded by Fawn Billie. Motion carried unanimously.

4. YMCA Gym/Swim class fees for daughter (YCZS)

Motion by Jennifer Webster to approve from the Community Fund the YMCA gym and swim class fees for daughter of requestor (YCZS) in the amount of $450.00. Seconded by Wesley Martin, Jr. Motion carried unanimously.

X. Follow Up:

1. RPM Advertising – Contract Extension Addendum
Brenda Buckley, Gaming Marketing

No one present to provide follow up information, the FC had several questions pertaining to if there was included in agreement a limited waiver of sovereign immunity, and an updated legal review of this addendum; also there was discussion of this already being approved at both FC and OBC levels and this is follow up.

Motion by Larry Barton to defer until Gaming Marketing can be present and to specifically answer the limited waiver of sovereign immunity and updated legal review. Seconded by Wesley Martin, Jr. Motion carried unanimously.

Thank you and/or FYI:

1. FYI – Outagamie County Service Agreement
Paula King-Dessart, OBC Office Manager

Nathan King was present and provided a handout that further explains services within this agreement and to explain much of the agreement is about mitigation of land into trust; he also

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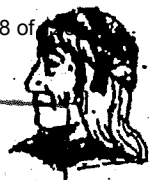
Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE



UGWA DEMOLUM YATEHE Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

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(General Tribal Council Resolution 11-15-08-C)

Treasurer's Report to include all Receipts and Expenditures and the Amount and Nature of all Funds in the Treasurer's Possession and Custody

Whereas, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin, and

Whereas, the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and

Whereas, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and

Whereas, Article I, Section 4 of the bylaws of the Tribe establishes that the Treasurer of the Oneida General Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Oneida General Tribal Council, whether such funds be Tribal funds or special funds for which the Oneida General Tribal Council is acting as trustee or custodian, and

Whereas, aforementioned article and section of the bylaws of the Tribe further establishes that the Treasurer of the Oneida General Tribal Council shall deposit all funds in such depository as the Oneida General Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her possession and custody at each regular meeting of the Oneida General Tribal Council and at such other times as requested by the Oneida General Tribal Council or the Oneida Business Committee, and

Whereas, while in session, the Oneida General Tribal Council in the past has been denied information regarding all receipts and expenditures of the Tribe including receipts and expenditures of all and including, but not limited to, component units (tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) in the semi-annual and

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annual reports provided to the Oneida General Tribal Council at regularly scheduled Oneida General Tribal Council meetings, and

Now Therefore Be It Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer reports hereinafter include an independently audited annual statement that provides the status or conclusion of all the receipts and debits in possession of the Treasurer of the Tribe including, but not limited to, all corporations owned in full or in part by the Tribe, and

Be It Further Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer's reports to the Oneida General Tribal Council at the semi- annual and annual Oneida General Tribal Council meetings hereinafter include an independently audited annual financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer of the Tribe and including, but not limited to component units (Tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) owned in full or in part by the Tribe, and

Be It Further Resolved, that no "agent" of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures and the nature of such funds) and that such an agreement is not binding to the Tribe, and

Be It Finally Resolved, that the Oneida General Tribal Council hereby directs implementation of this resolution at the next regular Oneida General Tribal Council meeting or at such special meeting of the Oneida General Tribal Council whereby a Treasurer's report is requested.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council in session with a quorum of 1,254 members present at a meeting duly called, noticed and held on the 15th day of November 2008, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in any way.

Patricia Hoeft

Patricia Hoeft, Tribal Secretary
ONEIDA BUSINESS COMMITTEE

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Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Nation
BUSINESS COMMITTEE

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MEMORANDUM

To: General Tribal Council

From: Oneida Business Committee

Date: May 11, 2016

RE: Oneida Business Committee Recommended Action
Genskow Resolution – Business Committee Accountability

We have received and reviewed the petition, legislative analysis, legal analysis and financial analysis, and the petitioner's statements regarding the above resolution. We have also reviewed the Action Report from the April 11, 2016, General Tribal Council meeting where the following motion was made.

"Motion by Tehassi Hill to accept resolution on page 58 as information only, and for the Tribal Secretary to provide a written report at the Annual General Tribal Council meeting regarding General Tribal Council directives. Seconded by Sandy Schuyler. Motion carried by show of hands."

This motion by the General Tribal Council carries out the request on the proposed resolution by the petitioner. There is no further action needed.

In addition, every Oneida Business Committee member reports out to the General Tribal Council in the Annual and Semi-Annual report under the Oneida Business Committee's report, and has a column in the Kaliwhisaks on a rotating schedule in which the Oneida Business Committee member gives a report on subjects of interest or requiring further discussion.

In addition, if there are issues requiring action, Oneida Business Committee members:

- meet every two weeks each month in regular session;

- can meet as needed in Special or Emergency Oneida Business Committee meetings;
- participate as members of the Audit Committee;
- participate as members of the Legislative Operating Committee;
- participate in the Officers' meetings; and
- meet in regularly scheduled Strategic or Administrative Work meetings.

It serves no purpose to wait until the Annual or Semi-Annual meeting to report on a directive not being carried out. Especially when that can be brought to the attention of the Oneida Business Committee at almost any time to be taken up and addressed.

Recommended Action: Motion to accept the resolution as information only.

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RE: Business Committee Accountability

Business Committee Recommendation

(Multimedia Presentation)

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Resolution to Repeal the Judiciary Law, GTC Resolution 01-07-13-B, and GTC Resolution 07-01-13-A titled Adoption of Corrective Amendments to the Oneida Code of Laws and Oneida Tribal Policies regarding references to the Oneida Appeals Commission and/or Oneida Tribal Judicial System, and Business Committee Resolution 06-25-14-B.

Whereas, the **Oneida General Tribal Council** always has been and always shall be **the Supreme power of the Oneida Indian Tribe of Wisconsin.**

Whereas, in 2008 there was a **StrateGlobe contract** signed by officers of the Oneida Business Committee of $575,500.00 without the knowledge of all the Business Committee and

Whereas, the fact that the **StrateGlobe contract** for $575,500.00 is documented in Business Committee minutes dated **May 14, 2008 page 12**, and there is more discussion regarding **StrateGlobe contract** on **May 28, 2008 minutes pages 8 and 9**, and Business Committee minutes of **June 11, 2008 page 6** document that Councilman Ed Delgado request the Oneida Business Committee have access to the **StrateGlobe contract** for information, and that a motion was made by a Business Committee member which was approved for the Business Committee to view the contract and

Whereas, this documents that the Oneida Tribal Attorneys allowed a situation where even the Oneida Business Committee did not have access to see the contract without a motion being made and

Whereas, Business Committee minutes dated **June 11, 2008 page 9** document that after the Business Committee came out of Executive Session, the **StrateGlobe contract** was terminated and

Whereas, on November 15, 2008 the General Tribal Council approved a resolution submitted by Madelyn Genskow, **Resolution 11-15-08-C**, which read in part **"no agent of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures, and the nature of such funds) and that such an agreement is not binding to the Tribe** and

Whereas, on January 7, 2013 the General Tribal Council adopted the **Judiciary Act by Resolution 01-07-13-B** and

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Whereas, on July 1, 2013 the Business Committee presented **Resolution 07-01-13-A titled Adoption of Corrective Amendments to the Oneida Code of Laws and Oneida Tribal Policies Regarding References to the Oneida Appeals Commission and/or Oneida Judicial System**, to the General Tribal Council, and the General Tribal Council adopted it and

Whereas, the Oneida Business Committee used **GTC Resolution 07-01-13-A** as authority to pass **Business Committee Resolution 06-25-14-B** and

Whereas, in **Resolution 06-25-14-B**, which included the following words: **now therefore let it be resolved that the attached amendments to the Garnishment Law, Oneida Nation Gaming Ordinance, Open Records and Open Meeting Law, Oneida Worker's Compensation Law, and Zoning and Shoreland Protection Law were adopted by the B.C. effective November 1, 2014** and

Whereas, the **Open Records and Open Meetings Law** under **7.4 titled "Limitations Upon Access and Exceptions"** the following is stated: The following shall be exempt from inspection and copying, Item (b) states: **Contracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties** and

Whereas, this law under 7.18 titled **Enforcement** states **"The Judiciary shall have the power, in its discretion and upon good cause shown, to issue an appropriate order, injunction or prohibition to declare any action taken in violation of this law void in whole or in part"** and

Whereas, the Business Committee has misled the Oneida General Tribal Council and now the contracts and how the Oneida tribal money is spent is once again kept secret from the Oneida people.

Now therefore be it resolved, the General Tribal Council will regain its authority as the **supreme power of the Oneida Tribe.**

Be it further resolved, the **GTC Resolution 01-07-13B** that approved the Judiciary Act is repealed effective immediately.

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Be it further resolved, that **GTC Resolution 07-01-13A which the Business Committee used abusively** is repealed effective immediately.

Be it further resolved, that **GTC Resolution 11-15-08C** is restored, which will provide full disclosure to the Oneida people regarding how their money is spent.

Be it finally resolved, this resolution will provide **full disclosure** to all contracts, not just corporate.

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BUSINESS COMMITTEE

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General Tribal Council Resolution 11-15-08-C

Treasurer's Report to include all Receipts and Expenditures and the Amount and Nature of all Funds in the Treasurer's Possession and Custody

Whereas, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin, and

Whereas, the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and

Whereas, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and

Whereas, Article I, Section 4 of the bylaws of the Tribe establishes that the Treasurer of the Oneida General Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Oneida General Tribal Council, whether such funds be Tribal funds or special funds for which the Oneida General Tribal Council is acting as trustee or custodian, and

Whereas, aforementioned article and section of the bylaws of the Tribe further establishes that the Treasurer of the Oneida General Tribal Council shall deposit all funds in such depository as the Oneida General Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her possession and custody at each regular meeting of the Oneida General Tribal Council and at such other times as requested by the Oneida General Tribal Council or the Oneida Business Committee, and

Whereas, while in session, the Oneida General Tribal Council in the past has been denied information regarding all receipts and expenditures of the Tribe including receipts and expenditures of all and including, but not limited to, component units (tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) in the semi-annual and

(PAGE TO SEE THE FULL DISCLOSURE RESOLVE.) page 2

annual reports provided to the Oneida General Tribal Council at regularly scheduled Oneida General Tribal Council meetings, and

Now Therefore Be It Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer reports hereinafter include an independently audited annual statement that provides the status or conclusion of all the receipts and debits in possession of the Treasurer of the Tribe including, but not limited to, all corporations owned in full or in part by the Tribe, and

Be It Further Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer's reports to the Oneida General Tribal Council at the semi- annual and annual Oneida General Tribal Council meetings hereinafter include an independently audited annual financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer of the Tribe and including, but not limited to component units (Tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) owned in full or in part by the Tribe, and

Be It Further Resolved, that no "agent" of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures and the nature of such funds) and that such an agreement is not binding to the Tribe, and

Be It Finally Resolved, that the Oneida General Tribal Council hereby directs implementation of this resolution at the next regular Oneida General Tribal Council meeting or at such special meeting of the Oneida General Tribal Council whereby a Treasurer's report is requested.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council in session with a quorum of 1,254 members present at a meeting duly called, noticed and held on the 15th day of November 2008, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in any way.

Patricia Hoeft

Patricia Hoeft, Tribal Secretary
ONEIDA BUSINESS COMMITTEE

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JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
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SENIOR STAFF ATTORNEY

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(920) 869-4327 **FAX (920) 869-4065**

PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS
MICHELLE L. MAYS

MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: October 14, 2015

SUBJECT: Petition – Genskow – Repeal of Judiciary

You have requested a legal review regarding a petition submitted by Madelyn Genskow. The petition contains three resolutions. The legal opinion will review only the resolution identified above. The Enrollment Department has verified a sufficient number of signatures on the petition.

The resolution contains 13 Whereas sections.

- "…the Oneida General Tribal Council always has been and always shall be the Supreme power of the Oneida Tribe of Indians of Wisconsin."
- "…in 2008 there was a StrateGlobe contract signed by the officers of the Oneida Business Committee of $575,000.00 without the knowledge of all the Business Committee[.]"
- "…the fact that the StrateGlobe contract for $575,000.00 is documented in Business Committee minutes dated May 13, 2009 page 12, and there is more discussion regarding StrateGlobe contract on May 28, 2008 minutes page 8 and 9, and Business Committee minutes of June 11, 2008 page 6 document that Councilman Ed Delgado request the Oneida Business Committee have access to the StrateGlobe contract for information, and that a motion was made by a Business Committee member which was approved for the Business Committee to view the contract[.]"
- "…this documents that the Oneida Tribal Attorneys allowed a situation where even the Oneida Business Committee did not have access to see the document without a motion being made[.]"
- "…Business Committee minutes dated June 11, 2008 page 9 document that after the Business Committee came out of Executive Session, the StrateGlobe contract was terminated[.]"
- "…on November 15, 2008 the General Tribal Council approved a resolution submitted by Madelyn Genskow, Resolution 11-15-08-C, which read in part "no agent of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures, and the nature of such funds) and that such an agreement is not binding to the Tribe[.]"
- "…on January 7, 2013 the General Tribal Council adopted the Judiciary Act by Resolution 01-07-13-B[.]"
- "…on July 1, 2013 the Business Committee presented Resolution 07-01-13-A titled Adoption of Corrective Amendments to the Oneida Code of Laws and Oneida Tribal Policies Regarding References to the Oneida Appeals Commission and/or Oneida Judicial System, to the General Tribal Council, and the General Tribal Council adopted it[.]"
- "…the Oneida Business Committee used GTC Resolution 07-01-13-A as authority to pass Business Committee Resolution 06-25-14-B[.]"

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- "…in Resolution 06-25-14-B, which included the following words: now therefore be it resolved that the attached amendments to the Garnishment Law, Oneida Nation Gaming Ordinance, Open Records and Open Meeting Law, Oneida Worker's Compensation Law, and Zoning and Shoreland Protection law were adopted by the B.C. effective November 1, 2014[.]"
- "…the Open Records and Open Meetings Law under 7.4 titled "Limitations Upon Access and Exceptions" the following is stated: the following shall be exempt from inspection and copying, Item (b) states: Contracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties[.]"
- "…this law under 7.18 titled Enforcement states "The Judiciary shall have the power, in its discretion and upon good cause shown, to issue an appropriate order, injunction ir prohibition to declare any action taken in violation of this law void in whole or in part[.]"
- "…the Business Committee has misled the Oneida General Tribal Council and now the contracts and how the Oneida tribal money is spent once again kept secret from the Oneida people[.]"

Whereas sections are intended to provide legislative history and background regarding why the resolution is brought forward. Whereas sections are not enforceable.

The resolution contains five Resolve sections.

- "…the General Tribal Council will regain its authority as the supreme power of the Tribe.
- "…the GTC Resolution 01-07-13B that approved the Judiciary Act is repealed effective immediately."
- "…GTC Resolution 07-01-13A which the Business Committee used abusively is repealed effective immediately."
- "…GTC Resolution 11-15-08C is restored, which will provide full disclosure to the Oneida people regarding how their money is spent."
- "…this resolution will provide full disclosure to all contracts, not just corporate."

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, and various other resources. This opinion is broken into sections to address the issues raised in the resolution – StrateGlobe contract, authority of the General Tribal Council, Judiciary transition, and Open Records and Open Meetings Law.

Contract - StrateGlobe

The proposed resolution identifies as series of actions regarding a contract with StrateGlobe appearing in the Oneida Business Committee meeting minutes. The resolution alleges that a contract was signed by the officers of the Oneida Business Committee, that the Oneida Business Committee was not allowed to see the contract, and that legal counsel was prohibiting the Oneida Business Committee from seeing the contract. Please see the legal opinion dated August 3, 2015, *Genskow – Petition – Recording Subcommittees*, for a complete review of this matter.

In summary, a contract was entered into between StrateGlobe and the Human Resources Department. Some officers of the Oneida Business Committee signed on the purchase requisition form that authorizes payment within the Tribe's accounting systems, no officers signed the contract. The contract was brought to the attention of the Oneida Business Committee by the Oneida Law Office under the contract reporting policy because it appeared to have been fully executed prior to legal review. The Oneida Business Committee requested a report and the contract was discussed at several meetings. Ultimately, the Oneida Business Committee accepted a report from the General Manager regarding the contract having been terminated. Councilman

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Delgado had placed an item on the Oneida Business Committee agenda to request a copy of the contract as that was how requests were made during that period. The contract was presented to the Oneida Business Committee to review. The contract was terminated by the General Manager, not the Oneida Business Committee.

The proposed resolution alleges that the actions described in the resolution show that the "Oneida Tribal Attorneys" allowed a situation where even the Oneida Business Committee did not have access to see the document without a motion being made." A review of the records identifies that the Oneida Law Office brought the contract to the attention of the Oneida Business Committee and that the Oneida Business Committee first asked for a report and then a copy of the contract. What the records show is that the process actually worked properly and the contract activity was reviewed and addressed by the appropriate parties.

Authority of General Tribal Council

The General Tribal Council was created by the membership in the 1930s when the members adopted the Constitution of the Oneida Tribe of Indians of Wisconsin. The Constitution identifies delegated authority and restrictions on authority of the General Tribal Council. As such, the General Tribal Council has significant, but not unlimited authority.

Between the 1930s and the 1940s, the members were called into session to carry out the day-to-day activities of the Tribe. Examples of those actions include adoption of a Membership Ordinance, review of the finances of the Tribe, and authorizations to cut firewood. Many times during this period, the General Tribal Council was unable to obtain the necessary quorum to take action.

As a result of this difficulty in obtaining a quorum, the General Tribal Council adopted resolution # GTC-2-20-49. This resolution created an Executive Committee and "such powers as are enumerated in Article IV of the [1939] Constitution of the Oneida Tribe of Indians of Wisconsin are hereby delegated to the Executive Committee." *Resolve #1.*

This Executive Committee, made up of an elected Chairperson, Vice-Chairperson, Secretary and Treasurer were responsible for carrying out the daily activities of the Tribe. This responsibility included applying for grants and loans, hiring and disciplining employees, creating a budget and managing the governmental relations at a local, state and federal level.

By the 1960s, the members and the Executive Committee had begun the process of review of the Constitution. There were four amendments presented. These amendments included amendments to the Constitution which replaced the Executive Committee with the Oneida Business Committee. The General Tribal Council accepted the amendments in August 1969. In addition, the General Tribal Council delegated the Article IV powers to the new Oneida Business Committee.

However, this did not disturb the previously delegated powers. Examples of those delegated powers are as follows.

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- Credit Committee – recommendations on loans obtained by the Tribe. The committee existed prior to the adoption of the Constitution.[1]
- Membership Committee - membership decisions delegated in 1938 in the Membership Ordinance.[2]
- Election Committee(s) – created for each election of the Executive Committee since 1939.[3]
- Land Committee – approved land assignments under Ordinance #1, Land adopted February 28, 1941.[4]
- Oneida Housing Authority – created April 20, 1963.[5]
- Personnel Selection Committee – delegated authority within the Tribal Management System adopted on February 8, 1977.[6]

In 1982, the General Tribal Council adopted resolution # GTC-2-28-82. This resolution is generally referred to as the "day-to-day" resolution. This resolution clarifies the responsibilities of the Oneida Business Committee to "become actively involved in the legislative areas" and gave examples of legislative activities. In addition, the resolution directs that a General Manager be hired "to be directly responsible for the programs and enterprises of the Tribe along with the Personnel Office and the Accounting Office.

In 1990, the General Tribal Council adopted 'job descriptions' for the Oneida Business Committee which set forth the duties and responsibilities of members of the Oneida Business Committee. This compliments the delegated authority in the Constitution and in the 1969 actions of the General Tribal Council.

On March 4, 1991, the General Tribal Council adopted the Ten Day Notice Policy. The goal of the Ten Day Notice Policy was to require notice of meetings and information regarding the subject matters to be presented. Over the years, the procedures and expectations regarding this policy have evolved. This included sufficient time to schedule the room and make materials available.

The General Tribal Council adopted the Administrative Procedures Act and created the Oneida Appeals Commission by resolution # GTC-8-19-91-A. The Administrative Procedures Act identifies how legislation is developed and presented for adoption by the Oneida Business Committee. This delegated authority is now specifically identified in the Legislative Procedures Act.

In addition, the 1991 action delegated judicial authority to the Oneida Appeals Commission. This delegation has subsequently been transferred to the Judiciary. The Judiciary is delegated judicial authority through the Judiciary law.

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[1] The responsibilities of this entity have been transferred to the Treasurer and the supporting personnel in the Finance Department.
[2] This entity is now the Trust and Enrollment Committee delegated responsibility for enrollments and the trust funds.
[3] This entity is now the Election Board created under the Election Law.
[4] This entity is now the Land Commission delegated authority under the Real Property Law.
[5] This entity has been dissolved and is now a program of the Tribe.
[6] This entity is now the Personnel Commission which acts under the Tribe's Personnel Policies and Procedures.

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As identified above, there have been numerous delegations of authority since adoption of the Constitution which created the General Tribal Council. As a result, although the General Tribal Council does retain the authority given to it in the Constitution, it must also comply with the previous actions of that body, the laws adopted in accordance with delegated authority, and the recognized rules of procedure for its meetings. This is necessary to allow elected and appointed officials and employees to take action in their day-to-day activities.

The members are the "supreme power of the Oneida Tribe of Indians of Wisconsin" since it is those individuals which adopted the Constitution and delegated authority to the General Tribal Council. However, under that delegated authority by the members, the General Tribal Council is the governing body when a quorum exists at a duly called and noticed meeting. And, in accordance with the Constitution, By-laws and adopted job descriptions, the Oneida Business Committee acts under the delegated authority of the General Tribal Council when that body is not in session. Finally, employees of the Tribe take actions under the delegated authority given to them in their programming activities.

Transition from Oneida Appeals Commission to Judiciary

In 1991, the Oneida Business Committee adopted a resolution creating the Oneida Appeals Commission. Several months later the General Tribal Council ratified that action by adopting resolution # GTC-8-19-91-A (Addendum). The Oneida Appeals Commission was not the first judicial entity of the Tribe. Prior to this body the General Tribal Council and Oneida Business Committee had created other specialty administrative courts, such as those for membership decisions. The Oneida Appeals Commission operated continuously until March of 2015. At that time, all cases of the Oneida Appeals Commission were either transferred to the Judiciary or dismissed.

In addition to the transition from the Oneida Appeals Commission to the Judiciary, the Oneida Business Committee also adopted the Family Court law. This law transferred all family law cases from the Oneida Appeals Commission to the Family Court. When the Judiciary law was adopted, this court was incorporated into the new tribal court system.

After much discussion by the General Tribal Council at meetings spanning a period of over two years, the General Tribal Council adopted two resolutions on January 7, 2013. The first resolution, # GTC-01-07-13-A, *Adoption of the Administrative Procedures Act Amendments and the Legislative Procedures Act*, deleted references to legislative processes in the Administrative Procedures Act and adopted the Legislative Procedures Act. This new law, identifies how laws may be adopted by the Oneida Business Committee or the General Tribal Council

The General Tribal Council also adopted resolution # GTC-01-07-13-B, *Adoption of the Judiciary Law*. This resolution was much more comprehensive in that it adopted a law, identified a transition process, repealed sections of other laws, and directed further action to adopt supporting laws for the Judiciary.

The Judiciary law creates the tribal court system and identifies delegated authority. In addition, the law identifies the number and qualifications for judicial officers, as well as how they are

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selected. The Judiciary law is the primary law governing the tribal court system and is supported by other laws adopted independently.

- Judiciary Canons of Conduct, resolution # BC-06-11-14-B
- Judiciary Rules of Appellate Procedure, resolution # BC-3-25-15-C
- Judiciary Rules of Civil Procedure, resolution # BC-04-25-14-A
- Judiciary Rules of Evidence, resolution # BC-04-23-14-A

The transition period identified that individuals with cases before the Oneida Appeals Commission, whether as an original hearing body or an appeal, could choose to remain in the Oneida Appeals Commission or transfer to the Judiciary. If individuals chose to remain in the Oneida Appeals Commission, their cases had to be concluded by March 1, 2015. This gave plaintiffs, defendants, appellants and appellees approximately one and a half years to conclude cases already in the process. Cases could still be brought in the Oneida Appeals Commission up until its dissolution, however if they were not completed they were dismissed without prejudice and the case would need to be filed in the Judiciary from the beginning process, not as a transfer case.

The Judiciary is made up of a Trial court, a Family court and an Appellate court. The court's docket, from all three groups, is primarily made up of child support cases being heard in the Family court. However, the Trial Court does hear a significant number of garnishments under the Tribe's Per Capita law. Finally, there are appeals from the Trust Committee regarding appeals of General Tribal Council meeting stipend eligibility and trust fund disbursements, the Environmental Resources Board regarding appeals of hunting citations, Land Commission regarding foreclosures and evictions, Oneida Housing Authority regarding foreclosures and evictions, Personnel Commission regarding employment matters, as well as other areas of the Tribe from which an appeal is possible.

Open Records and Open Meetings Law

The Oneida Business Committee adopted the Open Records and Open Meetings Law by resolution # BC-01-12-05-B. The law was last amended in 2014 by the Oneida Business Committee in accordance with resolution # GTC-07-01-13-A to change references to the Oneida Appeals Commission to the Judiciary. This resulted in amendment to section 7.2-1 by adding a definition of "Judiciary" and replacing "Oneida Appeals Commission" with "Judiciary" in sections 7.11-1, 7.11-3, 7.13-1(a) and 7.18-1. This was consistent with amendments made under that same resolution to the Garnishment Ordinance, Oneida Nation Gaming Ordinance, Worker's Compensation Law and Zoning and Shoreland Protection Law.

The Open Records and Open Meetings Law was adopted with the intent to provide access to information. The law allows members and employees to request copies of records held by the record "owner" in the normal course of business. It does not require that records, reports or other documents be created, and it does not authorize an employee of the Tribe to grant access to records for which the employee is not the owner or holds no responsibility for managing. For example, the Law Office maintains an electronic database of contracts reviewed, however only the owner of the contract has authority to release that document.

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The law does contain exceptions to the release of records in section 7.4 which states the following.

> While the law addresses records produced in the course of governmental business, it is recognized that Tribal governmental business often includes matters relating to Tribal business enterprises and other generally non-governmental duties,. This section is intended to address records of a sensitive nature, where the public's right to a document is outweighed by the public interest in keeping such documents confidential.

The law identifies 16 groups of exceptions. These range from draft documents prior to public submission, personnel matters, trade secrets and financial information, criminal investigation records, medical information, attorney-client privileged, personal information, student records, and internal audit reports unless released for viewing. These exceptions have been identified since adoption of the law in 2005. The limited number of exceptions is intended to protect three types of information – personal information, the business processes of third parties generally kept confidential, and drafts of work product until such time as presented in a public manner.

The law also contains several sections regarding enforcement. For example, section 7.11-1 allows a requesting party to appeal a denial to an Area Manager. Ultimately, the requesting party may file with the Judiciary a request for an order releasing a record. *See sec. 7.11-3.* This process has been in the law since its adoption. It provides third party review of a request and the denial in order to determine whether a record is open or confidential.

Analysis

If this proposed resolution is adopted, resolution # GTC-01-07-13-B and resolution # GTC-07-01-13-A are repealed. The former resolution created the Judiciary, repealed parts of the Administrative Procedures Act, and dissolved the Oneida Appeals Commission. The proposed resolution does not create another court system or identify what, if anything is done with existing cases within the Judiciary. Further, it is not clear if this action also dissolves the Family court. As a result, all cases before the Judiciary would also be immediately dismissed with no further action and all personnel would be laid off.

Financially, there are actions with the dissolution of the Judiciary which would need to be addressed. A review would need to be conducted to determine if any grant funds were involved and would need to be re-paid to the granting agency. All existing contracts would need to be terminated and paid out in accordance with their termination clauses. And, current personnel of the Judiciary would need to have existing personal/vacation time paid out and placed in layoff status.

Based on the above, "immediate" dissolution of the Judiciary is likely to result in harm to individuals with cases in the court system. Further, it is not possible to have an immediate dissolution given the need to address those cases and allow for transfer back to various courts from which they arrived unless the court simply sends notice of dismissal of all matters. In addition, where personnel are involved, immediate dissolution would be required to be delayed to address personnel issues. Finally, immediate dissolution would need to take into account existing grant and contract related issues.

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In addition, since the Judiciary is inter-connected with other programs of the Tribe immediate dissolution of the Judiciary may have a much wider impact. For example, as identified above, the Judiciary hearings child support cases, foreclosures and evictions from the Division of Land Management and the Housing Authority, citations from the Environmental Resources Board, and various other entities. Alternative hearing bodies or processes would need to be developed to address the gap created by dissolution of the Judiciary.

Conclusion

The proposed resolution erroneously describes a 2008 contracting activity as well as erroneously describes the process by which existing laws of the Tribe were amended to conform to the new Judiciary. These Whereas sections should either be corrected or deleted.

The proposed resolution contains five Resolves which repeal certain laws and proposes expansion of the application of an existing resolution. As stated, the proposed Resolves are problematic since immediate dissolution is not possible. Further, even if such an action were possible, it will more likely than not cause irreparable harm to those parties with cases in the Judiciary. It is recommended that if this resolution is considered, that the Resolves be deleted and the Oneida Business Committee be directed to adopt a dissolution transition plan for implementation. Any action regarding this resolution would require a two-thirds vote in accordance with the Ten Day Notice Policy affecting a prior action of the General Tribal Council.

If you have further questions, please contact me.

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Oneida Tribe of Indians of Wisconsin
Legislative Reference Office

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Statement of Effect
Petition Resolution 2: Repeal Judiciary

Summary

On March 30, 2015, the Tribal Secretary's Office received a petition which states "we the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required Public hearings and bring these resolutions to the GTC intact." The petition further requests that the OBC coordinate with the petitioner on the time of the meeting.

The Petition was verified by the Enrollment Project Specialist on March 31, 2015, and on April 22, 2015, the Oneida Business Committee (OBC) directed the Legislative Reference Office to complete a legislative analysis on the petition. This Statement of Effect focuses on Resolution 2, pertaining to the repeal of GTC Resolution 01-07-13-B, which adopted the Judiciary Law; the repeal of GTC Resolution 01-07-13-B, which, according to the Resolution, has been used abusively by the OBC; restores Resolution GTC-11-15-08-C to provide full disclosure to the Oneida people regarding how their money is spent; and requires full disclosure to all contracts, not just corporate.

Submitted by: Lynn A. Franzmeier, Staff Attorney; and Candice E. Skenandore, Legislative Analyst; Legislative Reference Office

Legislative Analysis

The "Whereas" section of the Resolution states that after the General Tribal Council (GTC) adopted Resolution GTC-01-07-13-B: Adoption of the Judiciary Law, GTC then adopted Resolution GTC-07-01-13-A: Adoption of Corrective Amendments to the Oneida Code of Laws and Oneida Tribal Policies Regarding References to the Oneida Appeals Commission and/or Oneida Judicial System. According to the Resolution, GTC-07-01-13-A was used by the OBC as authority to pass Resolution BC-06-25-14-B which, in part, adopted amendments to the Open Records and Open Meetings Law.

The Resolution points out two sections of the Open Records and Open Meetings Law: 7.4(b) which states "Contracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties"; and 7.18 which states "The Judiciary shall have the power, in its discretion and upon good cause shown, to issue an appropriate order, injunction or prohibition to declare any action taken in violation of this law void in whole or in part." The Resolution states the Business Committee has misled GTC and "now the contracts and how the Oneida tribal money is spent is once again kept secret from the Oneida people." According to the Resolution, GTC Resolution 11-15-08-C states "no agent of the Tribe shall enter into any

agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures, and the nature of such funds) and that such an agreement is not binding to the Tribe…"

The Resolution declares GTC will regain its authority as the supreme power of the Oneida Tribe and also repeals GTC Resolution 01-07-13-B.

Repealing the Judiciary Law may have a legislative impact on additional Tribal laws that were adopted based, at least in part, on the Judiciary Law, including:

- Rules of Civil Procedure
- Rules of Evidence
- Rules of Appellate Procedure
- Family Court
- Family Court Rules
- Judicial Canons of Ethics

In addition, approximately 25 additional Tribal laws were amended to remove references to the Oneida Appeals Commission and add the Judiciary. If GTC-01-07-13-B is repealed, Tribal laws that reference the Judiciary based on that Resolution may need to be updated to reflect the proper judicial system of the Tribe, if any.

This Resolution also repeals GTC Resolution 07-01-13-A which allowed the OBC to make corrective amendments to the Oneida Code of Laws and Oneida Tribal Polices regarding references to the Oneida Appeals Commission and/or the Oneida Tribal Judicial System. There is no legislative impact associated with this portion of the Resolution.

This Resolution also "restores" GTC Resolution 11-15-08-C, implying that GTC Resolution 11-15-08-C is not being followed. GTC Resolution 11-15-08-C is still in effect and, among other things, requires that 1) all Treasurer reports include an independently audited annual statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer, including but not limited to all corporations owned in full or in part by the Tribe; 2) all Treasurer's reports to the GTC at annual and semi-annual GTC meetings include independently audited annual financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer including, but not limited to component units (Tribally chartered corporations, and autonomous entities, limited liability companies, states chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants owned in full in party by the Tribe; and 3) no agent of the Tribe can enter into any agreement with any corporation that prohibits full disclosure of all transactions and that such agreement is not binding to the Tribe.

This Resolution states that restoring GTC Resolution 11-15-08-C will provide full disclosure to the Oneida people regarding how their money is spent. In addition, this Resolution claims to provide full disclosure to all contracts, not just corporate contracts; however, the Open Records Open Meetings Law exempts inspection and copying contracts which specifically prohibit disclosure of the content of the contract to third parties from inspection and copying *[See Open Records Open Meetings 7.4-1 (b)]*.

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Please consult the legal and fiscal analyses to determine if this Resolution has any legal or fiscal impacts. A two-thirds vote by GTC is required in order to adopt this Resolution *[See Oneida Tribal Council Ten Day Notice Policy, III.1.a.3].*

Conclusion

Adoption of this Resolution would repeal the Judiciary Law and may result in a need to amend the Open Records and Open Meetings law and various laws that (1) were adopted to compliment the Judiciary Law; and (2) reference the Judiciary.

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Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

ONEIDA TRIBE OF INDIANS OF WISCONSIN

UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

ONEIDA FINANCE OFFICE
Office: (920) 869-4325 η Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: January 22, 2016

FROM: Larry Barton, Chief Financial Officer

TO: Patricia King, Treasurer
Oneida Business Committee

RE: **Financial Impact of Resolution– Repeal Judiciary Law**

I. Background

Under consideration is a submitted petition which contains thirteen (13) "whereas" sections and five (5) "resolved" sections. As indicated by the Legal Analysis, the "whereas" sections may not be enforceable, so we will not assess. The main focus of the five (5) "resolved" sections is to seek the immediate repeal of GTC Resolution #01-07-13-B, which approved establishment of the Oneida Judiciary Law and the establishment of a Trial Court and a Court of Appeals. The proposed Resolution also seeks to repeal GTC Resolution #07-01-13-A, which allowed the Oneida Business Committee to make amendments to the Oneida Code of Laws and to Tribal Policies. Lastly, the proposed Resolution seeks to "restore" GTC Resolution #11-15-08-C, which implies it has not been followed.

II. Executive Summary of Findings

GTC Resolution #01-07-13-B, if it were "immediately repealed," would dissolve the Oneida Judiciary (Trial Court and Court of Appeals). What is not clear is what would happen with the Family Court. This Court was established as a distinct function of the Oneida Judiciary, via BC Resolution # 05-08-13-A.

The proposed Resolution is silent on what framework would be left behind or established to handle the legal processes and services provided by the Oneida Judiciary, if the Judiciary Law were to be repealed. According to the Legal Analysis, the bulk of cases being heard are child support cases in Family Court. However, there are also issues that arise pertaining to garnishments under the Tribe's Per Capita Law, as well as appeals of items regarding GTC meeting stipend eligibility, Trust Fund disbursements, hunting citations and various foreclosure or eviction proceedings.

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III. Financial Impact

In the approved FY 2016 Budget, the total estimated cost of the Oneida Judiciary is $1,046,506. Currently, there are no grant funds that were included in FY 2016. The budget is mainly Tribal Contribution, with a small amount listed as External Sales. In addition, the Family Court budget for FY 2016 is $243,641. Again, a very small amount of this cost is External Sales. The bulk is Tribal Contribution, with no grant funds listed.

Theoretically, the financial impact of adopting the proposed Resolution would be an annual budgetary savings of at least $1,046,506 – and possibly as much as $1,290,147 if the Family Court were also dissolved. However, the proposed Resolution does not speak to how the services provided by the Oneida Judiciary would be addressed. At minimum some form of alternative hearing bodies would have to be established. As we cannot predict what format these bodies would take to handle hearing all the cases before the Court System, we cannot offer a definitive potential financial impact of the Resolution.

TOTAL ESTIMATED FINANCIAL IMPACT: Indeterminable

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.

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To: General Tribal Council
From: Madelyn (Cornelius) Genskow

Madelyn Genskow

May 3rd, 2016

Re: Resolution to Repeal the Judiciary

I have submitted this resolution for the following reasons:

1) Judges are not recusing themselves when they have had adverse actions or opinions against Oneida People that have a case brought to the Judiciary.

2) Some of the judges have violated the law themselves and now are judging the Oneida people.

3) Under section 7.18 of the open records law – enforcement. The Judiciary shall have the power, in its discretion and upon good cause shown, to issue and appropriate order, injunction or prohibition and to declare any action taken in violation of this law void in whole or in part. This statement gives the Judiciary TOTAL POWER and the tribal member is left with no recourse.

4) According to the financial impact statement the Judiciary is currently costing the tribe $1,046,506.00 and will cost an additional and possibly as much as $1,290.147.00 if the family court carries on – All this for a court that has some judges who have violated laws themselves and who don't know enough to recuse (to remove themselves from the case) when they should. Some examples for a judge to recuse themselves are: friends, prior financial business, relatives (father, mother, brother, sister, cousins, aunts, uncles etc), prior disagreement/problems with the parties in the case before them.

5) The Oneida Business Committee has changed the administrative procedures act. Previously that law had been decided by the General Tribal Council and now the Business Committee is saying that because of the Judiciary law, the Business Committee now has the power to change these important laws without consent of the General Tribal Council.

6) The resolution for full disclosure will now cover corporate contracts and **all contracts including the tribal attorneys and management. We have a right to know how much they are being paid. All cities and municipalities in the USA have a requirement that the residents have a right to know what is being paid to the city or municipality employees.**

RECEIVED BY THE OFFICE
OF TRIBAL SECRETARY
ONEIDA BUSINESS COMMITTEE
MAY 3 2016
ONEIDA TRIBE OF
INDIANS OF WISCONSIN
INITIALS

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B.C. minutes regarding "StrateGlobe Contract

Action: Motion Patty Hoeft to accept the Seven Generations Corporation quarterly report as FYI, seconded by Ed Delgado. Motion carried unanimously.

d. Legislative Affairs Update

1. Tana Aguirre — RE: Town of Oneida address/fire signs reconsideration

Action: Motion by Mercie Danforth to table the town of Oneida address/ fire signs reconsideration, seconded by Ed Delgado. Motion carried unanimously.

RECEIVED BY THE OFFICE OF TRIBAL SECRETARY ONEIDA BUSINESS COMMITTEE
MAY 3 2016
ONEIDA TRIBE OF INDIANS OF WISCONSIN
INITIALS

e. Attorney Brief

a. Attorney Contract - Patricia M. Garvey

Action: Motion by Mercie Danforth to approve the Patricia M. Garvey attorney contract, seconded by Ed Delgado. Motion carried unanimously.

b. Attorney Contract - Brian T. Stevens

Action: Motion by Mercie Danforth to approve the Brian T. Stevens attorney contract, seconded by Ed Delgado. Motion carried unanimously.

Action: Motion by Mercie Danforth to extend the attorney contract report to the Executive Staff meeting, seconded by Patty Hoeft. Motion carried unanimously.

Action: Motion by Patty Hoeft to direct the General Manager to bring back an explanation of the StrateGlobe contract of $575,500 to the May 28 Business Committee meeting and the explanation should include reasons for using sole source, seconded by Ed Delgado. Motion carried unanimously.

Action: Motion by Patty Hoeft to direct the Treasurer to explain to the Business Committee at the May 28 Business Committee meeting how the purchasing procedures work and to identify sign-off authority procedures and to identify the positions of management and Business Committee members and their sign-off authority,

IT has been reported That members of The B.C. signed, without The other B.C. Do not be mislead by Some of The B.C. who make The motions. The GTC members are not allowed To see The StrateGlobe Contract To document which 2 members of The B.C. if any signed The Contract. In adopting Stevens

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B.C. meeting minutes regarding StrateGlobe Contract

meeting agenda the Oneida Housing Authority rent calculations and that we add the draft ordinance to restructure the Oneida Housing Authority program starting May 30, seconded by Trish King. Motion carried unanimously.

Action: Motion by Patty Hoeft to direct the General Manager to give the Business Committee a status report on May 30, seconded by Melinda J. Danforth. Motion carried unanimously.

Action: Motion by Patty Hoeft to recess until 1:30 p.m., seconded by Mercie Danforth. Motion carried unanimously.

Back in Regular Session at 1:32 p.m.

3. Debbie Thundercloud — RE: Food Distribution/Pantry Transfer from Development Division to GSD

Action: Motion by Ed Delgado to accept the Food Distribution/Pantry transfer from the Development Division to Governmental Service Division as FYI, seconded by Vince DelaRosa. Motion carried unanimously.

4. Debbie Thundercloud, Fred Muscavich — RE: Duck Creek Trail (CIP #06-004) development - FYI

Action: Motion by Paul Ninham to accept the Duck Creek Trail (CIP #06-004) Development as FYI, seconded by Kathy Hughes. For: Patty Hoeft, Ed Delgado, Mercie Danforth, Kathy Hughes, Vince DelaRosa, Melinda J. Danforth, Paul Ninham. Abstained: Trish King. Motion carried.

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5. Debbie Thundercloud — RE: StrateGlobe Contract

Action: Motion by Patty Hoeft to direct the Treasurer to provide a report on a monthly basis to the Business Committee listing all contracts and purchases that are $250,000 or more starting June 25, seconded by Vince DelaRosa. Motion carried unanimously.

6. Mercie Danforth — RE: Purchasing and Sign Off Authority Procedures

Excerpt from May 14, 2008: Motion by Patty Hoeft to direct the Treasurer to explain to the Business Committee at the May 28 Business Committee meeting how the purchasing procedures work and to identify sign off authority procedures and to identify the positions of management and Business Committee members and their sign off authority, seconded by Vince DelaRosa. For: Patty Hoeft, Ed Delgado, Kathy Hughes, Vince DelaRosa, Abstained: Mercie Danforth. Motion carried.

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B. C. meeting minutes Regarding STrate Globe Contracts

Action: Motion by Patty Hoeft to defer the request to explain the purchasing and sign off authority procedures to the June 11 Business Committee meeting, seconded by Vince DelaRosa. Motion carried unanimously.

7. Patty Hoeft — RE: Request to add Audit Committee final OHA report to the Special Business Committee agenda on May 30

Action: Motion by Vince DelaRosa to approve adding the Audit Committee final OHA report to the Special Business Committee agenda on May 30, seconded by Patty Hoeft. For: Patty Hoeft, Ed Delgado, Kathy Hughes, Melinda J. Danforth, Trish King, Paul Ninham, Vince DelaRosa. Abstained: Mercie Danforth. Motion carried.

8. Gerald Danforth — RE: Environmental Resource Board Recommendations

Action: Motion by Kathy Hughes to approve the appointments of Richard Baird, Nicole Morrain, Tom Oudenhoven and Jennifer Jourdan to the Environmental Resource Board, seconded by Paul Ninham. Motion carried unanimously.

9. Gerald Danforth — RE: Brown County Service Agreement

Action: Motion by Vince DelaRosa to approve the Brown County Service Agreement, seconded by Paul Ninham. Motion carried unanimously.

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c. **Travel Requests**

1. Debbie Danforth — RE: Request procedural exception for travel policy to allow 4 school system staff to attend BIE Summer Reading Institute in Bloomington, MN June 9-12, 2008

Action: Motion by Ed Delgado to approve the procedural exception to allow for four school system staff to attend the BIE summer reading institute in Bloomington, MN, June 9 through 12, 2008, seconded by Melinda J. Danforth. Motion carried unanimously.

10. **Finance Committee - none**

11. **Legislative Operating Committee (LOC)**

1. Vince DelaRosa — RE: Approval of LOC meeting minutes of May 5, 2008

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Human Services' Indian Health Service, seconded by Melinda J. Danforth. Motion carried unanimously.

b. Requests

1 Debbie Thundercloud — RE: Approval of the Indian Housing Plans (IHP) for the years 2003-2007

Action: Motion by Patty Hoeft to direct the General Manager to start reviewing the amendments of the Indian Housing Plans for the years 2003-2007 with the Business Committee starting on June 13, seconded by Vince DelaRosa. For: Patty Hoeft, Ed Delgado, Kathy Hughes, Vince DelaRosa, Melinda J. Danforth, Paul Ninham. Opposed: Trish King. Motion carried.

2. Debbie Thundercloud — RE: Approval of the Indian Housing Plans (IHP) for the year 2008

Action: Motion by Patty Hoeft to direct the General Manager to start reviewing the new Indian Housing Plans for the year 2008 with the Business Committee starting on June 13, seconded by Vince DelaRosa. For: Patty Hoeft, Ed Delgado, Kathy Hughes, Vince DelaRosa, Melinda J. Danforth, Paul Ninham. Opposed: Trish King. Motion carried.

3. Eric Krawczyk — RE: Approval of Pandemic Influenza and Community Containment Plan

Action: Motion by Kathy Hughes to defer the approval of pandemic influenza and community containment plan to the June 25 Business Committee meeting to bring back a cover page and to include all 38 pages of the document, seconded by Vince DelaRosa. Motion carried unanimously.

4. Melinda J. Danforth — RE: Approval of Joint Oneida Business Committee and Oneida Gaming Commission Quarterly minutes

Action: Motion by Kathy Hughes to approve the joint Oneida Business Committee and Oneida Gaming Commission quarterly minutes, seconded by Vince DelaRosa. Motion carried unanimously.

5. Ed Delgado — RE: Request the Oneida Business Committee have access to the StrateGlobe LLC contract for information

Action: Motion by Kathy Hughes to approve the request that the Oneida Business Committee have access to the StateGlobe LLC contract for information, seconded by Vince DelaRosa. Motion carried unanimously.

Documents that things were set up in such a way - that even the Business Committee could not see the StrateGlobe Contract! The motion had to be made. Do not be mislead into thinking that the person making the motion was not one who had signed the Contract. Madelyn Genetin

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15. Legislative Affairs Update

1. Seminary Road
   a. Land Commission position
   b. Letter from Environmental
   c. Letter of request from Town of Oneida

Action: Motion by Patty Hoeft to approve the recommendation of option 2 to use Oneida trust land for road construction for Seminary Road, seconded by Kathy Hughes Motion carried unanimously.

2. Farm Bill update

Action: Motion by Melinda J. Danforth to accept the Farm Bill as FYI, seconded by Paul Ninham. Motion carried unanimously.

16. Executive Session

Action: Motion by Vince DelaRosa to go back into regular session at 2:40 p.m., seconded by Ed Delgado. Motion carried unanimously.

a. Tabled Business - none

b. Old Business - none

c. New Business

1. Debbie Thundercloud RE: Strateglobe Contract update

Action: Motion by Kathy Hughes to accept the StrateGlobe contract update as FYI with the contract terminated as of June 13, 2008, seconded Paul Ninham. Motion carried unanimously.

d. Legislative Affairs Update

1. Congressional Quarterly Contract

Action: Motion by Trish King to approve the Congressional Quarterly contract, seconded by Paul Ninham. Motion carried unanimously.

e. Attorney Brief

1. Subrogated claims, Cornelius v. K-Mart Corp., et al.
2. Subrogated claims, Gonzalez v. MSI Preferred Insurance Co., et al.
3. Subrogated claims, McClure, et al.

Do not be mislead by the name of the person who made the motion. Modelyn Genskow

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Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Oneida Nation
BUSINESS COMMITTEE

P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040

UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

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MEMORANDUM

To: General Tribal Council

From: Oneida Business Committee

Date: May 11, 2016

RE: Oneida Business Committee Recommended Action
Genskow Resolution – Repeal Judiciary Law

We have received and reviewed the petition, legislative analysis, legal analysis and financial analysis, and the petitioner's statements regarding the above resolution. We have also made note of the constitutional amendments and the requirements within the Constitution.

After reviewing the submitted materials, we agree that the information presented by the petitioner is inaccurate and for that reason, should not be acted upon by the General Tribal Council. While the petitioner has submitted accurate excerpts from documents, the information has incorrectly interpreted the actions in those documents.

For example:

- The Oneida Business Committee did not approve the Stratglobe contract and did not terminate the Stratglobe contract. The explanation provided in the legal analysis presents a clear picture of these events,
- The General Tribal Council adopted a resolution which authorized the Oneida Business Committee to change "Oneida Appeals Commission" to "Judiciary" to reflect the changes made when the Judiciary Act was adopted earlier that year. The Oneida Business Committee then changed "Oneida Appeals Commission" to "Judiciary" in several laws of the Tribe, one of which was the Open Records and Open Meetings law. The Oneida Business Committee did not make any other changes to any law without first going to a Public Meeting as required by the Legislative Procedures Act adopted by the General Tribal Council.

We also believe that taking the action in the proposed resolution may be unconstitutional. As a result of the amendments to the Constitution adopted by the members and approved by the Secretary of the Interior and the Interior Board of Indian Appeals, a Judiciary is a constitutional requirement. See Article V, section 1. Based on these amendments, the judicial powers are delegated to a “Judiciary” and any existing body continues to exist until such time as the General Tribal Council delegates that authority to another body.

Recommended Action: Motion to reject the resolution.

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RE: REPEAL JUDICIARY LAW
BUSINESS COMMITTEE RECOMMENDATION

(MULTIMEDIA PRESENTATION)

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Resolution Regarding the Open Records Law

Where as, on March 25th, 2015 Oneida tribal member Yvonne Metivier requested from the Oneida Records Dept. Research for minutes and audio for General Tribal Council meetings where by a motion was made to create the position of Ombudsman, and

Where as, Yvonne Metivier also on March 25th, 2015 requested, was there and General Tribal Council action to create the position of Internal Services Position? And

Where as, the request was denied by the Director of the Oneida Tribal records Department who sited the Open Records and Open Meeting Law 7.7.7. and

Where as, in the past requests have been made for research of minutes and audio of GTC meetings by tribal member Madelyn Genskow regarding GTC minutes and audio and Business Committee minutes, and requests were honored prior to March 25th 2015 and

Where as, the members of the General Tribal Council need access to tribal records in order to hold the Business Committee and Management accountable to the General Tribal Council.

Where as, when Madelyn Genskow requested information regarding the General Manager boxes and their content and who was in possession of those record boxes, she was told that the Internal Services Director could have access to those boxes but tribal members could not and

Where as the types of issues the Position of Ombudsman deals with has been radically changed since it was started by the GTC to address concerns at the Health Center and

Now therefore, be it resolved, the GTC orders that the GTC must approve the Open Records and Open Meetings Law in its entirely.

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JO ANNE HOUSE, PHD
CHIEF COUNSEL
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PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS
MICHELLE L. MAYS

MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: November 20, 2015

SUBJECT: Petition – Genskow – Open Records and Open Meetings Law

---

You have requested a legal review regarding a petition submitted by Madelyn Genskow. The petition contains three resolutions. The legal opinion will review only the resolution identified above. The Enrollment Department has verified a sufficient number of signatures on the petition.

The resolution contains seven Whereas sections.

- "…on March 25th, 2014 Oneida tribal member Yvonne Metivier requested from the Oneida Records Dept. Research for minutes and audio for General Tribal Council meetings where by a motion was made to create the position of Ombudsman[.]"
- "…Yvonne Metivier also on March 25th, 2015 requested, was there and General Tribal Council action to create the position of Internal Services Position?"
- "…the request was denied by the Director of the Oneida Tribal records Department who cited the Open Records and Open Meetings law 7.7.7[.]"
- "…in the past requests have been made for research of minutes and audio of GTC meetings by tribal member Madelyn Genskow regarding GTC minutes and audio and Business Committee minutes, and requests were honored prior to March 25th, 2015[.]"
- "…the members of the General Tribal Council need access to tribal records in order to hold the Business Committee and Management accountable to the General Tribal Council[.]"
- "…when Madelyn Genskow requested information regarding the General Manager boxes and their content and who was in possession of those record boxes, she was told the Internal Services Director could have access to those boxes but tribal members could not[.]"
- "…the types of issues the Position of Ombudsman deals with has been radically changed since it was started by the GTC to address concerns at the Health Center[.]"

Whereas sections are intended to provide legislative history and background regarding why the resolution is brought forward. Whereas sections are not enforceable.

The resolution contains one Resolve section.

- "the GTC orders that the GTC must approve the Open Records and Open Meetings Law in its entirety."

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, and various other resources. This opinion is broken into sections to address the issues raised in the resolution – Open Records and Open Meetings law, records requests, General Manager's records, Ombudsman, and Internal Services Division Director.

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Open Records and Open Meetings Law

The Open Records and Open Meetings law was adopted in January 2005 by the Oneida Business Committee in accordance with the authority delegated in the Administrative Procedures Act. The law is intended, "...to advance the democratic principle of open government by providing access to information regarding the affairs of government[.]" *Section 7.1-1.* In order to advance this policy, "...this law shall be construed with a presumption of public access...consistent with the conduct of governmental business. The denial of public access is generally contrary to the public interest, and only under certain exceptions may access be denied[.]" *Section 7.1-2.*

As identified in other opinions and reviews of the Open Records and Open Meetings law, there are exceptions to public access, or open records. Generally, section 7.4-1 defines records warranting an exception to public access, "...where the public's right to a document is outweighed by the public interest in keeping such documents confidential." Those exceptions are specifically listed in section 7.4, *Limitation Upon Access and Exceptions*. Unless an exception to a public record is specifically listed in this section, the presumption is that the record is a public document.

- Documents submitted or created prior to award of a bid or contract.
- Contracts prohibiting disclosure.
- Documents which if released would result in an invasion of privacy.
- Law enforcement documents.
- Documents which identify trade secrets or financial information of third parties.
- Drafts of documents.
- Documents containing medical information.
- Documents protected by attorney-client privilege.
- Documents from an investigation which contain personal information.
- Documents from the Child Protective Board.
- Documents which contain information which would result in danger to an individual.
- Documents protected by other law.[1]
- Audit related documents.[2]
- Personnel related documents.[3]
- Documents related to a gaming license background check.[4]
- Documents related to student records.

The Open Records and Open Meetings law identifies that records requests should be made to the owner of the record. Where the owner of the record is no longer available, such as a prior member of the Oneida Business Committee or an individual no longer employed by the Tribe, the responsible party is the Tribal Secretary. The owner of a record has a reasonable time in which to respond to a request for records. If the request is denied, the requesting party can appeal that to the Area Manager, or if no Area Manager to the Tribal Secretary. If the records are the

[1] For example: Resolution # BC-8-14-91-A and the rules of order prohibit discussing individuals in open session; General Tribal Council has identified that the financial records of the Tribe shall be held in confidence; and the Membership Ordinance regarding enrollment records.
[2] However, final audit reports, subject to redaction, are available for viewing by Tribal members.
[3] Under the Oneida Personnel Policies and Procedures, personnel records and information is considered confidential.
[4] See Oneida Nation Gaming Ordinance; Tribe-State Gaming Compact regarding vendor licensing; and contracts for the purposes of obtaining background information, especially those concerning financial records.

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responsibility of the Tribal Secretary, the appeal can be made directly to the Judiciary. Any appeal of a denial must be made within five business days. Finally, if the denial is upheld, an appeal may be made to the Judiciary. The Open Records and Open Meetings law places the burden on the owner of the record to prove why the denial of the request is within the scope of the law and the exceptions granted.

Records Requests

Records requests can be made to any department or program throughout the organization which maintains documents. A review of requests of this size is beyond the scope of this opinion. To obtain a picture of records requests the Records Management Office was contacted to identify information. The Records Management Office holds "inactive" records on behalf of the organization. *Section 7.9.* Inactive records include those required to be maintained by law such as accounting and financial records, prior elected officials, and prior employees. Most records, under the Open Records and Open Meetings law, have a hold period of seven years prior to destruction. *Section 7.9-4.*

The information provided involved a time period between February 19, 2015, and September 22, 2015. I have also requested copies of records requests and the responses to those requests. A selection of this latter group of records was submitted. During this time period, there were 40 requests made for records to the Records Management Office by 10 different individuals. Most requests were made for audio recordings with the second category being minutes. Of those requests, 19 were made by Madelyn Genskow, six were made by Leah Dodge, four were made by Mike Debraska, and six other individuals made between one and three requests each.

The report identifies that of the 40 requests, five requests were approved in part and denied in part, one request was denied in full. Two examples of the partial approval/denial are as follows.

- ***March 25, 2015 Request***
  - Audio and minutes for a specific General Tribal Council meeting in 2008.
    - Approved
  - Audio and minutes for a specific General Tribal Council meeting in 2011.
    - Approved
  - General request for Ombudsman information from a General Tribal Council meeting.
    - Denied – the request was insufficiently specific to allow for the records to be pulled.
  - General request for information related to the "Internal Services position."
    - Denied – the request was insufficiently specific to allow for the records to be pulled.
- ***April 22, 2015 Request***
  - General request for information related to the Internal Services Division Director position approval by the Oneida Business Committee.
    - Denied – the request was insufficiently specific to allow for the record to be pulled and the meeting minutes of the Oneida Business Committee are already publicly available through the Tribe's website.
  - Request a specific General Tribal Council meeting in 2005.
    - Approved
  - General request regarding job descriptions and the Quality of Life Subcommittee.

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- Denied – the request was insufficiently specific to allow for the record to be pulled.

The Open Records and Open Meetings law identifies how long records are to be kept and how the records can be accessed. As part of the implementation of the law and technology advances, the Tribe is moving toward electronic records storage and delivery. This changes how records can be made available and accessed.

The Records Management Office is actively involved in the transition from paper records to electronic storage. This involves scanning, reviewing and tagging records with key words. Once this is done, the record is loaded into the OnBase program which allows for storage and retrieval. In addition, with the key word access and the ability to search documents, OnBase also allows easier research of those records. However, the research process still contains a significant amount of paper document searching and reliance on memory to narrow down the search parameters.

In addition to digitization of records, the Tribal Secretary's Office and the Intergovernmental Affairs and Communications department are actively working towards on-line access of records. This on-line access includes public access records such as the laws of the Tribe, resolutions of the Oneida Business Committee and information regarding tribal operations. In addition, the on-line access contains information available only to Tribal members such as General Tribal Council meeting minutes and packets. As records are placed on-line, they become available for members to retrieve without making a records request. For those records, the Records Management Office identifies where they are located on the website and directs the requesting party to search the on-line information. This self-access and research makes records available to members and requestors 24 hours a day, seven days a week. These records are no longer subject to a records request under the Open Records and Open Meetings law.

The Records Management Office has also moved away from fulfilling general research requests. Those requests are not within the Open Records and Open Meetings law parameters which outline the primary responsibilities of the office, and generally are time consuming activities which have been conducted on a time-available basis. The office is working towards making records more available in general and easier to research through an on-line database.

General Manager's Records

There are a number of boxes of records by previous General Managers of the Tribe. These boxes are maintained under the current retention schedules and are sorted, digitized, and destroyed as time allows within the Records Management Office. However, the particular boxes identified in the proposed resolution involve four boxes of records requested in 2013 and six boxes of records requested in 2014 spanning two different General Managers out of more than 100 boxes from previous General Managers. The boxes forwarded to the Internal Services Division Director contained departmental reports, business plans, and notes from various meetings attended. In a brief discussion with the Internal Services Director, it appears that the boxes may have been

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forwarded for a review of the business plans contained in those records.[5] All of the boxes were released and were not returned. The documents were subject to consolidation and re-use or destruction as duplicative or out of date.

A report on a telephone request made by Madelyn Genskow regarding the "King Dome" was included as a part of the reports delivered by the Records Management Office. This telephone request was made in early February 2015. The Records Management Office report identified six hours was spent reviewing the "General Managers" boxes for references to the request and no such records were identified.

The proposed resolution alleges that the petitioner was "told that the Internal Services Director could have access to those boxes but tribal members could not[.]" In general, not every record of the Tribe is available for viewing under the Open Records and Open Meetings Law. Further, the law requires that the request be sufficiently specific so as to identify a record and not be a general fishing expedition. Although there was no written request made, the report identifies that a search for the general record requested was made and that no such record existed. As a result, it would be a true statement, individuals (whether members, employees, or otherwise) would not have access to the boxes to browse through the documents. Although the contents of boxes sent to the Records Management Office must be clearly described, there are often confidential records included in those materials – such as financial records related to business opportunities, personnel records, and personal notes not subject to release – which is the case with some of the identified boxes.

Ombudsman

The position of Ombudsman was created by motion of the General Tribal Council at the conclusion of a meeting held on July 11, 2005.

> "Motion…that a ombudsman position be established that would listen to the concerns of the employees of the health center and tribal community members, and that these concerns are brought to the assistant general manager, and the issues and how their resolved be published in the Kaliwhisaks on a regular basis[.]" *General Tribal Council Minutes, July 11, 2005, pg. 16.*

The July 11, 2005, General Tribal Council meeting was a special meeting called to address a petition regarding the Oneida Health Center. At the time, a significant turnover in doctors was occurring at the health center and there appeared to be a high level of dissatisfaction with administrative decisions. A review of discussion, mailed packet, handouts and presentations during this meeting does not identify any discussion regarding an ombudsman position or scope other than the motion having been made and adopted.

A job description was developed and an individual hired to fill the position. The position has been filled and vacated by employee(s) between its creation in 2005 and today, until being filled by the current employee. The job description approved in 2005 is substantially similar to the job

[5] Since there are a significant number of "General Manager" boxes in the Records Management Office inactive files, and ten specific boxes were requested out of all the boxes present, it appears that this was not a general request for boxes, but a specific request for boxes containing a specific type of record. As identified above, the common record appears to be "business plans." However, there are also a great number of entries regarding departmental reports that also report to the Internal Services Division Director which may have been the focus of the request.

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description in place today which was posted on January 6, 2011. The primary difference appears to be transferring supervision from the Chief of Staff to the General Manager and more clearly identifying the duties and responsibilities. The job description remains focused on providing services to the Comprehensive Health Division.

National Ombudsman. At the October 9, 2013, Oneida Business Committee meeting a discussion took place during the presentation of the Ombudsman quarterly report. The report discussed a dispute resolution process for the Tribal organization. The national concept arose out of a discussion from membership in a national networking association. The follow-up discussion after the report was accepted was regarding a national or municipal Ombudsman office. The motion from that meeting was as follows.

> "Motion…to ask Diane McLester-Heim to bring back a recommendation in 90 days to the Business Committee on how to expand the Ombudsman role to a National one for the Tribe[.]"

On January 22, 2014, the Oneida Business Committee referred this issue of a National Ombudsman to the Quality of Life Committee. That committee met on several occasions to discuss this question. On June 10, 2014, the Quality of Life Committee adopted the following motion.

> "Motion…to accept the report and recommendation to work with HRD to change the job description for the Ombudsman to reflect the responsibilities of a National Ombudsman and to forward a recommendation to the OBC recommending this change be included within the FY2015 budget if necessary[.]"

At the June 25, 2014, Oneida Business Committee meeting the following motion was adopted.

> "Motion…to approve the recommendation from the Quality of Life Committee to revise the Ombudsman job description to become a National Ombudsman and to include adjustments if needed within the FY2015 budgeting process[.]"

The current Oneida Business Committee has determined that it will not implement this change from an Ombudsman focused on the health care area to a more organization-wide responsibility.

A review of the quarterly reports for 2015 identify that the office receives the majority of interaction from the health care area, however there are contacts from or about departments across the organization. These reports identify "contacts" made to the Ombudsman by Tribal members. There is no indication that an employee has not, or cannot, sufficiently address health care issues brought to the Ombudsman. These matters are in addition to the health care matters being addressed. It appears that these contacts, other than health care contacts, have been occurring since at least 2012 based on the initial quarterly report submitted on January 11, 2012.

Internal Services Division Director

The organization of the Tribe has been modified many times.[6] In some circumstances that has occurred as a result of direction by the General Tribal Council. A primary example of that is

[6] This includes organizational structures before and after adoption of the Constitution. A thorough history of the Tribe's employment and organizational structure can be found on the Tribe's website at http://www.oneidanation.org/HumanResources/page.aspx?id=20080, accessed on November 19, 2015.

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resolution # GTC-2-25-82 directing the creation of a General Manager position to manage employment.

The organization of programs under the General Manager has changed several times since 1982 actions. The current structure of the Tribe was developed and implemented in 1994. The structure is based on logical groups of related activities. However, regardless of how the activities (programs, services, and business) of the Tribe are organized, some are unique such that they support the entire organization. This resulted in the development of the Internal Services Department. The department is made up of Grants, Kaliwhisaks, Management Information Systems, Print Shop and Mail Center, Tsyunhehkwa (the educational farm), Tourism, and Legal Resources.

The structure was consistent with the 1982 action of the General Tribal Council to have the organization of the Tribe managed through a General Manager. There was no General Tribal Council action which created or approved the 1994 reorganization of the Tribe or the changes that have occurred since that date.

In 2000, the General Tribal Council reviewed a petition presented regarding the organizational structure, including at least two options presented by the Oneida Business Committee. After a series of meetings the General Tribal Council adopted "Plan B." During that meeting the Chairman identified that the motion was out of order because "Plan B" was not presented and the information was not delivered to the membership in accordance with the Ten Day Notice Policy. However, the motion was eventually acted upon and approved by a majority vote. Following this meeting, the Oneida Business Committee adopted resolution # BC-08-02-00-B which declared that the action of the General Tribal Council was in violation of the rules and processes of that body and could not be carried out by the Oneida Business Committee without violating their oath of office and responsibilities. In 2011, the Oneida Business Committee adopted resolution # BC-09-28-11-D which rescinded the prior resolution and began implementing the 2000 directive of the General Tribal Council regarding "Plan B."

However, the Oneida Business Committee stated that after the passage of 11 years, "Plan B" was no longer effective and given the changes in the organization could not be implemented. The Oneida Business Committee reported to the General Tribal Council on at least three occasions their efforts to finalize a reorganization of the Tribal operations which was not completed during that term of office. The current Oneida Business Committee has committed to reviewing and completing a reorganization of the Tribal operations to present to the General Tribal Council and has assigned personnel to complete this project.

Analysis

The proposed resolution requests the General Tribal Council to consider directing the Open Records and Open Meetings law to be approved by the General Tribal Council. In support of this request, the resolution presents seven Whereas sections.

As identified above, some of those Whereas sections are correct, however they do not support the request regarding the Open Records and Open Meetings law. For example, yes, the Records

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Management Office denied research requests presented by Yvonne Metivier for lacking specificity on which records were being requested. However, where information was given such that specific records could be identified, the requests have been fulfilled. In light of the number of requests for research and not specific documents and the increasing availability of records on-line and at the Oneida Community Library, the Records Management Office is no longer providing research services. Further, the office has not had a responsibility to conduct research services, but to manage the records of the Tribe and has begun focusing on that responsibility with its limited staffing.

It is also true in some respects that a request for "General Manager boxes" was denied. As identified above, the documents requested from those boxes did not exist. Further. A general request to review documents is insufficient to make documents available. Finally, the response on file indicated that some of the "General Manager boxes" had been transferred to the Internal Services Division Director to review. As identified above, that request was regarding economic development projects. The response to the requestor the did not identify that "she was told that Internal Services Director could have access to those boxes but tribal members could not[.]" It appears that she was told the boxes had been transferred, that the Records Management Office would not be receiving the boxes back, and that there were no records of the type she had requested in the content lists for those boxes.

Finally, the Whereas sections in the proposed resolution identifies that the Ombudsman position "has been radically changed[.]" Based on the research, it appears that in late 2013 and early 2014, the Oneida Business Committee began exploring expansion of the Ombudsman position to provide services across the entire Tribal organization. The current Oneida Business Committee has not approved such expansion of duties. However, as identified by the motion creating the Ombudsman position, that position does "listen to the concerns of…tribal community members." It appears that members have brought concerns to the Ombudsman position and since the quarterly reporting to the Oneida Business Committee has occurred, the Ombudsman has routinely reported contacts with members who brought issues forward outside of the Health Center area.

The Open Records and Open Meetings law was adopted in 2005 and has been substantially similar since that date. The amendments in 2014 were made to remove "Oneida Appeals Commission" and replace that with "the Judiciary." No other amendments were made at that time. All amendments to the law were subject to either Public Comment periods under the Administrative Procedures Act, and any new amendments will be subject to Public Meetings under the Legislative Procedures Act.

The Resolve section asks that the Open Records and Open Meetings law be adopted by the General Tribal Council. There are no pending amendments to the law, and the law has already been properly processed and adopted through the authority set forth in the Administrative Procedures Act and, as applicable, the Legislative Procedures Act. No further approvals are necessary.

However, it is consistent with past practices of the General Tribal Council, to ratify actions properly taken by the Oneida Business Committee. For example, the Administrative Procedures

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Act was one such law that was originally adopted by the Oneida Business Committee and then ratified by the General Tribal Council.

Conclusion

There are no prohibitions regarding the General Tribal Council ratifying the adoption of the Open Records and Open Meetings law which has been adopted in conformance and under authority delegated in the Administrative Procedures Act and under the Legislative Procedures Act. It is recommended that the resolution be changed to reflect such ratification and restricting future action to be taken only by the General Tribal Council.

> Now Therefore Be It Resolved that the General Tribal Council does ratify the adoption of the Open Records and Open Meetings law and restricts amendment to this law by the General Tribal Council only.

If amended, the resolution would require only a simple majority vote as it does not change or amend any prior action of the General Tribal Council.

As presented, the intent of the resolution is not clear. Some of the interpretations, such as the law is invalid until such approval, would be in violation of existing actions and delegated authority by the General Tribal Council. As a result, the proposed language must be interpreted to\be forward acting, I.e., that any changes to the law must be approved by the General Tribal Council. If this is the intent, it would be a simple majority vote to adopt.

The Whereas sections of this resolution contain some errors which should be addressed prior to adoption. Specifically, Whereas sections 6 and 7 should be deleted as they contain erroneous information. In addition, Whereas sections 1-3 should be amended to reflect that a "research" request was made, not a request for specific records.

If you have further questions, please contact me.

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Oneida Tribe of Indians of Wisconsin
Legislative Reference Office

Lynn A. Franzmeier, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst

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Oneida, WI 54155
(920) 869-4376
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https://oneida-nsn.gov/Laws

Statement of Effect
Petition Resolution 3: Open Records Law

Summary

On March 30, 2015, the Tribal Secretary's Office received a petition which states "we the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required Public hearings and bring these resolutions to the GTC intact." The petition further requests that the OBC coordinate with the petitioner on the time of the meeting.

The Petition was verified by the Enrollment Project Specialist on March 31, 2015, and on April 22, 2015, the Oneida Business Committee (OBC) directed the Legislative Reference Office to complete a legislative analysis on the petition. This Statement of Effect focuses on Resolution 3, pertaining to the Open Records Open Meetings Law.

Submitted by: Candice E. Skenandore, Legislative Analyst, Legislative Reference Office

Legislative Analysis

This Resolution claims that a Tribal member made a request to the Oneida Records Management Department on March 25, 2015 to research 1) minutes and audio for General Tribal Council meetings where by a motion was made to create the Ombudsperson position; and 2) General Tribal Council action to create the Internal Services position. According to this Resolution, this request was refused citing section 7.7-7 of the Open Records Open Meetings Law which requires a request to be sufficient in that it "reasonably describes the record or the information sought." This section goes on to state that "a request for a record without reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request" *[See Open Records Open Meetings Law 7.7-7]*.

The Resolution states that past requests have been approved and that members of the General Tribal Council need to access Tribal records in order to hold the OBC and management accountable. In addition, the Resolution claims that a Tribal member requested information regarding the General Manager's content; however, was told that Tribal members did not have access to this information.

This Resolution is ordering that the General Tribal Council approve the Open Records and Open Meetings Law. The Open Records and Open Meetings Law (Law) was adopted and amended by the OBC pursuant to the following resolutions: BC 1-12-05-B, BC 04-12-06-KK and BC 10-14-09-B. This Law gives either the OBC or the General Tribal Council the authority to amend the Law *[See 7.2-2]*. If the intent of the Resolution is to only allow the General Tribal Council to amend this Law or to adopt laws pertaining to open records and open meetings, then the current

Law will need to be amended or repealed pursuant to the Legislative Procedures Act. The Resolution itself, if adopted, would not result in any amendments to the Law.

Please consult the legal and fiscal analyses to determine if this Resolution has any legal or fiscal impacts.

Conclusion

Adoption of this Resolution would require future amendments to or the repeal of the Open Records and Open Meetings Law.

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ONEIDA FINANCE OFFICE
Office: (920) 869-4325 η Toll Free: 1-800-236-2214
FAX # (920) 869-4024

MEMORANDUM

DATE: January 20, 2016

FROM: Larry Barton, Chief Financial Officer

TO: Patricia King, Treasurer
Oneida Business Committee

RE: **Financial Impact of Resolution– Open Records Law**

I. Background

Under consideration is a petition which contains a proposed Resolution titled, "Resolution Regarding the Open Records Law." There are seven "whereas" paragraphs in this resolution that address several citations or instances of requests for records, as well as addressing the Ombudsman position within the Tribe and addressing research into audio and minutes of past General Tribal Council meetings. There is one resolved section that states "the General Tribal Council orders that the General Tribal Council must approve the Open Records and Open Meetings Law in its entirety."

II. Executive Summary of Findings

The Tribe already has an Open Records and Open Meetings Law. This Law was approved and amended by various BC resolutions, as cited in both the Legislative Review and the Legal Analysis. The proposed Resolution is unclear if any changes to the Law are being recommended. But, it is clear that the proposed Resolution calls for an approval of this Law by the General Tribal Council.

III. Financial Impact

There is no direct financial impact of adopting the draft resolution as it is written. However, since it is clear the proposed Resolution calls for an approval by the General Tribal Council, it can be inferred that a meeting to consider must be convened. For the time frame January 19, 2015 to January 6, 2016 we held ten (10) General Tribal Council meetings. The average cost of these meetings was $191,264.

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TOTAL ESTIMATED FINANCIAL IMPACT: $191,264 per meeting held to consider Resolution

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.

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To: General Tribal Council
From: Madelyn (Cornelius) Genskow

Madelyn Genskow

May 2, 2016
Re: Resolution Open Records Law

1) Under the open records law section 7.4 Limitations upon access and **exceptions and 7.4.1 sub B: Contracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties.**

   The General Tribal Council would be the "third party."

2) Section 7.18 Enforcement
   "The Judiciary shall have the power, in it's discretion and upon good cause shown, **to issue** an appropriate order, injunction, **or prohibition and to declare any action taken in violation of this law void in whole or in part." This statement gives the Judiciary TOTAL POWER and the tribal member is left with no recourse.**

3) After I requested information on the sale of the King Dome to the Oneida tribe. Records Management told me that **they would no longer do any research of any records for any tribal members other that management or the Business Committee. This prevents individual members of the tribe, who are attempting to investigate how tribal funds are spent or whether tribal laws are followed, from access to contracts or previous General Tribal Council and Business Committee directives.**

See attachments.

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(General Tribal Council Resolution 11-15-08-C)

Treasurer's Report to include all Receipts and Expenditures and the Amount and Nature of all Funds in the Treasurer's Possession and Custody

Whereas, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin, and

Whereas, the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and

Whereas, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and

Whereas, Article I, Section 4 of the bylaws of the Tribe establishes that the Treasurer of the Oneida General Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Oneida General Tribal Council, whether such funds be Tribal funds or special funds for which the Oneida General Tribal Council is acting as trustee or custodian, and

Whereas, aforementioned article and section of the bylaws of the Tribe further establishes that the Treasurer of the Oneida General Tribal Council shall deposit all funds in such depository as the Oneida General Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her possession and custody at each regular meeting of the Oneida General Tribal Council and at such other times as requested by the Oneida General Tribal Council or the Oneida Business Committee, and

Whereas, while in session, the Oneida General Tribal Council in the past has been denied information regarding all receipts and expenditures of the Tribe including receipts and expenditures of all and including, but not limited to, component units (tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) in the semi-annual and

(FLIP PAGE TO SEE THE FULL DISCLOSURE RESOLVE.)

annual reports provided to the Oneida General Tribal Council at regularly scheduled Oneida General Tribal Council meetings, and

Now Therefore Be It Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer reports hereinafter include an independently audited annual statement that provides the status or conclusion of all the receipts and debits in possession of the Treasurer of the Tribe including, but not limited to, all corporations owned in full or in part by the Tribe, and

Be It Further Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer's reports to the Oneida General Tribal Council at the semi- annual and annual Oneida General Tribal Council meetings hereinafter include an independently audited annual financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer of the Tribe and including, but not limited to component units (Tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) owned in full or in part by the Tribe, and

Be It Further Resolved, that no "agent" of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures and the nature of such funds) and that such an agreement is not binding to the Tribe, and

Be It Finally Resolved, that the Oneida General Tribal Council hereby directs implementation of this resolution at the next regular Oneida General Tribal Council meeting or at such special meeting of the Oneida General Tribal Council whereby a Treasurer's report is requested.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council in session with a quorum of 1,254 members present at a meeting duly called, noticed and held on the 15th day of November 2008, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in any way.

Patricia Hoeft, Tribal Secretary
ONEIDA BUSINESS COMMITTEE

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General Tribal Council Meeting
November 15, 2008
Nine Resolutions
10:00 a.m.

Present: Rick Hill – Chair, Kathy Hughes – Vice Chair, Tina Danforth – Treasurer, Patty Hoeft – Secretary, Ed Delgado, Trish King, Melinda J. Danforth, Brandon Stevens, Tehassi Hill

Opening: Tehassi Hill

Quorum: 1,280

Agenda: Motion by Madelyn Genskow to adopt the agenda with one amendment that the Business Committee gave a five minute presentation followed by Madelyn Genskow's five minute presentation and go into Robert's Rules of Order after each set of presentations for each resolution and all voting will be by hand vote, seconded by Corrine Zhuckkahosee. Motion carried.

Motion by Brandon Stevens to amend the main motion to allow Seven Generation's ten minutes and a short video, seconded by Loretta V. Metoxen. Motion carried.

1. Non-confidentiality Information

Ed Delgado: The current practice allows mandates that members of boards, committees and commissions have to swear that they don't provide almost any information. It's overdrawn and subjects people to removal. The Business Committee agrees that it is overdrawn. There is no problem passing this resolution.

Madelyn Genskow: Read the non-confidentiality resolution. Stated General Tribal Council (GTC) could work to make things better for ourselves. The Business Committee has agreed that some things need to be changed. We need to make sure nobody can take away our freedom of speech in the future. Please vote to adopt the freedom of speech resolution.

This is page 1 of GTC Nov. 15, 2008. FLIP PAGE OVER
This is page page 12. SEE THE BUSINESS COMMITTEE ATTEMPT TO BLOCK FULL DISCLOSURE . PAGE 14, GTC MADELYN GENSKOW'S RESOLUTION FOR FULL DISCLOSURE APPROVED.

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Vote: Motion by Loretta V. Metoxen to support resolution 10-08-08-A recommended by the Business Committee on page 114, seconded by Christine Klimmek. Motion carried.

8. Treasurer's Report Requirements

Kathy Hughes: Business Committee recommends not adopting the petitioner's resolution, but rather the alternate resolution located on page 139. The petitioner is asking for two audits. The cost would be doubled for two annual audits. The alternate resolution meets the goal of reporting out to GTC. There are past actions that needed to be removed for the Treasurer to come forward to report to GTC.

Madelyn Genskow: The intention wasn't to request a second audit, but for audits to be reported to GTC. The constitution requires the Treasurer give a report on all receipts and debits at the annual and semi-annual meetings. All receipts and debits could be requested by GTC on who spent those funds, who received those funds. Currently, information on our money is not reported out according to the constitution. This resolution will make the work of GTC possible for the benefit of our people. It will mean that you will never again be told that the Business Committee cannot tell you.

Motion by Kathy Hughes to adopt resolution on page 139 clarifying confidentiality regarding Tribal finances, setting the Treasurer's reporting minimum requirements and directing amendments to the Audit Law to allow audits to be presented, seconded Loretta Webster.

Discussion:

Ed Delgado: Stated he didn't support the Business Committee recommendation.

Sandy Dennet: Supported Madelyn Genskow's resolution. The information we receive isn't clear nor provides justification. Felt the Business Committee resolution doesn't increase communication.

Hugh Danforth: Supported the Business Committer resolution because it publishes more information, not prohibits more information being published to our membership.

Trish King: Supports the Business Committee resolution. The petitioner's resolution doesn't clearly identify a process where changes would have to be made. The resolution would have to go back through the LRO process, etc. The Business Committee identifies the process, utilizing our procedures; we would be able to amend that law.

Motion by Kathy Hughes to adopt resolution on page 139 clarifying confidentiality regarding Tribal finances, setting the Treasurer's reporting minimum requirements and directing amendments to the Audit Law to allow audits to be presented, seconded Loretta Webster. Total Vote: 729 2/3 needed: Hand count: For: 275 Opposed: 454 Abstained: 8 Motion failed.

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Motion by Madelyn Genskow to adopt resolution 11-15-08-C on page 126, seconded by Linda Dallas.

Discussion:

Trish King: Questioned the legality of the resolution that calls for documents to be open and public. There is an audit law that would have to be changed first. Asked if it was appropriate to adopt this resolution understanding that there are tribal laws in place?

Parliamentarian ruling: The resolution doesn't require an audit to be conducted outside of existing audit processes as clarified in discussion on the floor and as a result does not violate existing tribal law.

Motion by Madelyn Genskow to adopt resolution 11-15-08-C on page 126, seconded by Linda Dallas. Total vote: 782 2/3 needed: For: 660 Opposed: 123 Abstained: 2 Motion carried.

General Tribal Council Resolution 11-15-08-C
Treasurer's Report to include all Receipts and Expenditures and the Amount and Nature of all Funds in the Treasurer's Possession and Custody

Whereas, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin, and

Whereas, the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and

Whereas, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and

Whereas, Article I, Section 4 of the bylaws of the Tribe establishes that the Treasurer of the Oneida General Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Oneida General Tribal Council, whether such funds be Tribal funds or special funds for which the Oneida General Tribal Council is acting as trustee or custodian, and

Whereas, aforementioned article and section of the bylaws of the Tribe further establishes that the Treasurer of the Oneida General Tribal Council shall deposit all funds in such depository as the Oneida General Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her possession and custody at each regular meeting of the Oneida General Tribal Council and at such other times as requested by

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the Oneida General Tribal Council or the Oneida Business Committee, and

Whereas, while in session, the Oneida General Tribal Council in the past has been denied information regarding all receipts and expenditures of the Tribe including receipts and expenditures of all and including, but not limited to, component units (tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) in the semi-annual and annual reports provided to the Oneida General Tribal Council at regularly scheduled Oneida General Tribal Council meetings, and

Now Therefore Be It Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer reports hereinafter include an independently audited annual statement that provides the status or conclusion of all the receipts and debits in possession of the Treasurer of the Tribe including, but not limited to, all corporations owned in full or in part by the Tribe, and

Be It Further Resolved, that the Oneida General Tribal Council hereby directs that all Treasurer's reports to the Oneida General Tribal Council at the semi- annual and annual Oneida General Tribal Council meetings hereinafter include an independently audited annual financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer of the Tribe and including, but not limited to component units (Tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) owned in full or in part by the Tribe, and

Be It Further Resolved, that no "agent" of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures and the nature of such funds) and that such an agreement is not binding to the Tribe, and

Be It Finally Resolved, that the Oneida General Tribal Council hereby directs implementation of this resolution at the next regular Oneida General Tribal Council meeting or at such special meeting of the Oneida General Tribal Council whereby a Treasurer's report is requested.

9. Prior GTC Directives

Patty Hoeft: Felt this was a good item put in front of us. It results in formal reporting to the GTC and the Business Committee. This will start in the Annual with a listing similar to what is in the book. The Business Committee recommends not adopting the resolution.

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MEMORANDUM

To: General Tribal Council

From: Oneida Business Committee

Date: May 11, 2016

RE: Oneida Business Committee Recommended Action
Genskow Resolution – Open Records and Open Meetings Law

We have received and reviewed the petition, legislative analysis, legal analysis and financial analysis, and the petitioner's statements regarding the above resolution.

The petition calls for the General Tribal Council to act on something that was adopted in accordance with the laws of the Nation and has been in effect since 2005. The purpose of the law is to give access to Tribal records to provide for an open and transparent government. The Records Management Office was created as a central location for records of the Nation. It has a document management and storage responsibilities.

As a part of those document management responsibilities, the Records Management Office is making records more available through on-line resources available on the Member's-Only website as well as a public research computer set up in the program offices. The large quantity of records limits the program services to provide records that are requested and not available on-line or through the accessible public research computer. There are insufficient resources for the department to act as a research tool under the Open Records and Open Meetings law.

The Open Records and Open Meetings law balances the needs of the members to know the actions of their government with the need of government officials to be able to act in confidence when needed. The law recognizes that Oneida Business Committee members and government employees must have a way to protect the assets and resources of the Tribe as required under the Constitution and the Nation's laws. This

law recognizes the historical directives of the General Tribal Council regarding certain records such as finances (directives in July 1983 and 1993), participation in meetings (motions required to allow non-members to attend), and personnel records (Oneida Personnel Policies and Procedures).

Adoption of this resolution would result on no additional actions, no amendments to existing laws, and no changes to the requirements of Public Meetings to accept comments on proposed amendments to the law.

Recommended Action: Motion to reject the resolution.

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RE: Open Records and Open Meetings Law
Business Committee Recommendation

(Multimedia Presentation)

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TOPIC:
PETITIONER
MADELYN GENSKOW

REVIEW AND CONSIDER ONE (1) RESOLUTION REGARDING FEE-TO-TRUST PROCESS

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MEMORANDUM

To: General Tribal Council

From: Oneida Business Committee

Date: May 11, 2016

RE: Oneida Business Committee Recommended Action
Genskow Resolution – Fee-to-Trust Process

We have received and reviewed the petition, legislative analysis, legal analysis and financial analysis, and the petitioner's statements regarding the above proposed resolution.

This item originally appeared on the agenda of the April 11, 2016, Special General Tribal Council meeting. At that time, we notified the General Tribal Council that the proposed resolution was unconstitutional and in violation of Tribal laws and could not be presented unless amended. The General Tribal Council, after the presentation and brief discussion adopted the following motion.

"Motion by Sherrole Benton that we take no action as this resolution will appear on the June 13, 2016, Special General Tribal Council meeting agenda. Seconded by Wes Martin. Motion carried by a show of hands."

The petitioner submitted a supporting memo for the original proposed resolution, but did not submit an amended resolution which addressed the constitutional issues. The petitioner also did not contact the Oneida Business Committee to schedule a meeting to attempt to address this issue.

The Oneida Business Committee discussed amending the proposed resolution to remove the constitutional issues. However, we felt that would be inappropriate given the resolution was submitted with a petition and subject to the request of the signatories on

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the petition. We do not recall when the Oneida Business Committee had taken that type of action in the past and did not feel it was within our ability to do so now.

We are recommending that the General Tribal Council reject the presentation of this resolution as the petitioner has failed to provide a corrected resolution. This would not prohibit the petitioner from filing another petition with a resolution that did not contain unconstitutional provisions.

Recommended Action: Motion to deny presenting the resolution because of the unconstitutional actions requested in the resolution.

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TOPIC:
UPDATE ON FEE-TO-TRUST

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MEMORANDUM

To: General Tribal Council

From: Oneida Business Committee

Date: May 11, 2016

RE: Fee-To-Trust Presentation – Update on Status of Application Process

We have included a summary of prior litigation and brief explanation of the fee-to-trust process in this packet.

The Oneida Business Committee will be presenting a multi-media presentation regarding the fee-to-trust process. This will include the most recent information regarding the Bureau of Indian Affairs processes and steps toward completing the Nation's applications.

Thank you.

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JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER, PHD
SENIOR STAFF ATTORNEY

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PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS
MICHELLE L. MAYS

MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: May 6, 2016

SUBJECT: Hobart Litigation Summaries; Fee-to-Trust Process

Hobart Litigation Summaries

The following summaries are regarding cases in which the Village of Hobart is either the plaintiff or defendant. The outcome favored the Tribe in five of the six cases. The cases are described more fully below.

- Railroad right of way - the Village had no interest in the railroad right of way and could not bring suit to determine the status of the land.
- 911 dispatching - the County could arrange dispatching through its systems as it determined was appropriate.
- Stormwater charges - the Village could not tax trust land.
- Restrictive covenants - the Tribe was not successful in clearing restrictions in the deed however we were able to purchase the land at a substantial discount in the bankruptcy proceedings.
- Fee-to-Trust appeals - the Interior Board of Indian Appeals has returned several fee-to-trust appeals to the Bureau of Indian Affairs directing the Bureau to address fully consider missing issues in regards to their decision and to address an allegation of bias; the decision was clear that there were no errors in the applications submitted and there was no question regarding the ability to take land into trust on behalf of the Tribe.
- Condemnation and special assessments - the Tribe was not successful in prohibiting the Village of Hobart from condemning or levying special assessments on fee land.

Condemnation and Special Assessments

Hobart v. Danforth et al. Brown County Circuit Court Case No. 03-CV-75
Oneida Tribe v. Hobart, 542 F.Supp.2d 908 (E.D. Wis. 2008)

In 2003, Hobart filed a lawsuit in the circuit court for Brown County against former Chairwoman Christine Danforth, former Division of Land Management Director Christine Doxtator, and former Division of Land Management Attorney Loretta Webster seeking a declaration that tribal fee land is subject to Hobart's condemnation authority. Hobart claimed that these tribal officials acted outside the scope of their authority by denying that tribal fee land is subject to state condemnation procedures. The Tribe argued that the tribal officials were immune from suit, and that the state court lacked jurisdiction over the controversy. In 2006, the Tribe filed a lawsuit in federal court, Tribe v. Hobart, to resolve the issues raised in this state court case that Hobart filed. Hobart filed a counterclaim seeking a declaration that tribal fee land is subject to Hobart's

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condemnation authority and special assessments. In 2008 the Court ruled in favor of Hobart and determined that Hobart may condemn and levy special assessments against previously allotted fee land owned by the Tribe, unless and until the land is placed into trust. The ruling is limited to these two issues, and the court otherwise agreed with the Tribe's position that all land within the Reservation is "Indian country", as that term is defined under federal law, and that this status places limits on Hobart's jurisdiction. Also in 2008, the Brown County Court dismissed the state case, Hobart v. Danforth et al. due to resolution of the issues in the federal court decision in Tribe v. Hobart.

Railroad Right of Way

Hobart v. Tribe and Wisconsin Central, Ltd. Brown County Circuit Court Case No. 06-CV-480, aff'd, 303 Wis.2d 761, 736 N.W.2d 896 (Wis. App. 2007)

In 2006, Hobart filed action in the circuit court for Brown County seeking a declaration of its "interests" in the former railroad right-of-way running through the Oneida Reservation. The Tribe maintained that the former railroad right-of-way is restricted treaty land, i.e. the land was reserved for the use and occupancy of the Tribe by the 1838 Treaty with the Oneida, and was not thereafter allotted. Hobart contended that it had an interest in the land because if the court determines that the land is owned in fee by the Tribe, Hobart would possess the right to tax, condemn, and zone the land. The circuit court dismissed Hobart's lawsuit on the grounds that Hobart does not possess an interest in the land. Hobart filed an appeal of the circuit court's decision. In 2007, the Wisconsin Court of Appeals affirmed the circuit court's decision dismissing Hobart's lawsuit.

911 Dispatch

Hobart v. Tribe and Brown County Brown County Circuit Court Case No. 08-CV-1313, aff'd 336 Wis.2d 474, 801 N.W.2d 348 (Wis. App. 2011)

In 2008, Hobart filed an action in the circuit court for Brown County against Brown County and the Tribe concerning the ability of Brown County to dispatch 911 calls to Oneida police officers without Hobart's consent. Hobart claims it has the authority to decide how law enforcement services are provided in Hobart. Hobart also claims the provision of the Service Agreement between the Tribe and Brown County concerning Brown County's dispatch of 911 calls originating from "downtown Oneida" to Oneida police officers should be found void. The court dismissed the Tribe as a party based on sovereign immunity grounds and awarded the Tribe statutory attorney's fees. The court later granted summary judgment in favor of the County. Hobart asked the court to reconsider its decision, claiming the Tribe was not a public agency under state law eligible to receive 911 calls. The court denied Hobart's motion for reconsideration. Hobart appealed to the Wisconsin Court of Appeals. The Wisconsin Court of Appeals affirmed the Circuit Court's decision. Hobart asked the Wisconsin Supreme Court to review the decision. The Supreme Court denied Hobart's request.

Restrictive Covenants

Hobart v. TCGC, LLC, Baylake Bank and Oneida Tribe, 08-MC-59 (E. Dis. Wis. 2008)

In 2008, TCGC, the owner of a golf course and a debtor bankruptcy proceedings, agreed with its secured creditor and the Tribe that the Tribe would purchase the golf course under the bankruptcy plan. Prior to the bankruptcy proceedings, Hobart was an owner of the property and placed a set of restrictive covenants that required Hobart's approval of a transfer in the event a

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proposed transfer would cause: 1) the removal of the property from the tax rolls, 2) diminishment of the tax value, or 3) the removal of the property from Hobart's zoning authority and zoning jurisdiction. The Tribe asked the court to invalidate these restrictive covenants on the grounds they were inconsistent with federal law. The court rejected the Tribe's arguments. In order to remove any grounds for Hobart to object to the transfer, the Tribe passed a resolution and signed an acknowledgment to be bound by Hobart's zoning authority and zoning jurisdiction for that property. Despite the Tribe's efforts, Hobart objected to the transfer. The bankruptcy court denied Hobart's objection. Hobart appealed to the Eastern District of Wisconsin. The court, denied Hobart's appeal. The Tribe purchased the property shortly thereafter.

Stormwater Charges on Trust Land

Tribe v. Hobart 891 F.Supp.2d 1058 (E.D. Wis. 2012); aff'd 732 F.3d 837, (7th Cir. 2013)
In 2010, the Tribe initiated its first lawsuit against Hobart, asking the court to declare that Hobart does not have the authority to impose storm water charges against the Tribe's trust property. The Tribe's complaint set forth three claims for relief: 1) Hobart's storm water charges are a tax on trust land, and federal law provides that trust land is not subject to taxation; 2) even if the charge is deemed to be a fee, the charges are still impermissible because the Tribe's trust land is subject to comprehensive federal regulations and Hobart's storm water charges interfere with those federal regulations; and 3) the Tribe has the inherent right to self-government and Hobart's storm water charges interfere with the Tribe's right to self-government. In response to the Tribe's lawsuit, Hobart filed a third-party complaint against the United States. The Tribe moved for Summary Judgment on its first two claims for relief and the United States moved for dismissal of the third-party complaint. In 2012, the court ruled that the charges are taxes and are precluded by federal law. Hobart appealed. In 2013, the 7th Circuit Court of Appeals upheld the decision. Hobart appealed the decision to the United States Supreme Court. The Supreme Court denied cert.

Fee-to-trust Appeals

Hobart v. Midwest Regional Director, Bureau of Indian Affairs, 57 IBIA 4 (2013)
In 2010 and 2011, Hobart filed a total of five consolidated appeals with the Interior Board of Indian Appeals (IBIA), appealing several Notices of Decision (NODs) to accept a total of approximately 578 acres of land located in Hobart into trust for the Tribe. In its appeals, Hobart suggested the Tribe and its members were not under federal jurisdiction in 1934 and are not under federal jurisdiction today because the Oneida Reservation did not exist in 1934 and does not exist today. As a result, Hobart asserted the Secretary of the Interior never had the authority to take land into trust for the Tribe under federal law. Hobart also asserted a wide array of general legal challenges to the fee-to-trust process, many of which have already been addressed and rejected by the courts. The IBIA issued a decision determining that the Tribe was under federal jurisdiction in 1934 and the Secretary therefore had the authority to take land into trust for the Tribe. The IBIA also affirmed the BIA's assessment of the Tribe's need for land, the Tribe's use for the land, and the BIA's ability to handle additional responsibilities. However, the IBIA remanded the case back to the BIA for further consideration of the loss of tax revenue, jurisdictional and land use conflicts, environmental concerns, and potential bias in the fee-to-trust consortium. More specific discussion of these cases is set forth in the following section.

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Fee-to-Trust Process

General

When the Tribe buys land on the open market, the Tribe purchases the land in "fee." This means the land is taxable and the Tribe holds the title to the land. When the federal government takes land into "trust" status, the Tribe gives ownership of the land to the United States. The land is no longer taxable and the United States holds the title to the land in trust for the Tribe. The Bureau of Indian Affairs utilizes the *Acquisition of Title to Land Held in Fee or Restricted Fee Status*, or the "Fee-to-Trust Handbook". This manual is located on the Bureau of Indian Affairs website. In addition, the Division of Land Management has an approved Standard Operating Procedure which defines the fee-to-trust process, *Fee-to-Trust Process*, SOP # 67.3.3.1.

The Fee-to-Trust Handbook requires two sets of documents or information to be submitted with a fee-to-trust application. *PP 8-12.* This may be in the form of a single written correspondence, or multiple documents. The first set of information must include the following.

- A request for approval of a trust acquisition
- Identification of the applicant
- Legal land descriptions
- Need for the property – economic development, self-determination, Indian housing
- Use of the property
- Deed or other document verifying ownership
- Name of the Tribe as it appears in the Federal Register
- Statutory authority for taking land into trust

The second set of information is as follows.

- Map depicting the boundaries
- Commitment or binder of title insurance
- Legal Description Review
- Warranty deed

All fee-to-trust applications contain an Oneida Business Committee resolution authorizing the land to be transferred into trust status, a warranty deed prepared for the Secretary of the Interior's signature, a title commitment, maps/surveys of the property, the statutory authority to take the land into trust, the reason the Tribe is requesting to have the land taken into trust, the historical and proposed use of the land, tax information relating to the impact of removing the property from the tax rolls, identification of jurisdictional problems which may arise from the trust acquisition and proposed resolutions to any conflicts, identification of the additional responsibilities the BIA will incur as a result of the acquisition, and background environmental data. The applications also contain a socio-economic report the Tribe compiles detailing demographic, housing, and economic focusing on tribal members on the Reservation.

The Tribe also sends out a consultation letter to the municipality, county and state government in which the property is located. This letter provides the location of the property and the current use of the property. The letter also asks the governments to send information directly to the BIA with a copy to the Tribe pertaining to annual property taxes levied, impact resulting from removal of the property from the tax rolls, any special assessments levied against the property, any government services provided by the municipal, county or state government, and any potential

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land use conflicts which may arise. The letter asks the governments to provide this information to the BIA with a copy to the Tribe within 30 days.

The Secretary (or the Regional Director acting as the Secretary's designee) considers the information provided in the Tribe's fee-to-trust application and the information and comments provided by the municipality, the county and the state. The Secretary also considers any concerns noted on the title commitment or surveys.

The Secretary must also comply with the requirements of the National Environmental Protection Act in making a determination to accept land into trust. The level of analysis required is generally dependent on whether the land acquisition could significantly affect the environment. The levels of analysis include a categorical exclusion determination, an environmental assessment, and/or an environmental impact statement. The Secretary will not accept any property in trust if there are environmental concerns associated with the acquisition.

After all comments have been received and reviewed, after all title and survey issues have been addressed, and after the Secretary determines there are no environmental concerns associated with the trust acquisition, the Secretary is in a position to issue a decision on whether to take the land into trust.

If the Secretary decides to take the land into trust, and once the time line for an appeal has run or if the Secretary's determination to take land into trust is upheld on appeal, the Secretary signs the warranty deed and the property is placed into trust.

Service Agreements

A service agreement sets forth the government-to-government relationship between the Tribe and a local government. The Tribe began entering into service agreements many years ago as a way of creating partnerships and more efficiently and effectively using resources and identifying responsibilities of each government. The current service agreements are recognized in the Tribe-State Gaming Compact. The Tribe negotiated to keep $1.5 million in Tribe-State Gaming Compact fees local. In other words, the service agreements allow the Tribe to pay fees directly to affected local governments that would have gone to the state.

Seven local governments are located either partially or entirely within the Oneida Reservation boundaries. These governments are: Outagamie County, Brown County, Town of Oneida, Town of Pittsfield, Village of Hobart, City of Green Bay, and Village of Ashwaubenon. The Tribe has intergovernmental agreements with all of these governments except the Village of Hobart and the Town of Pittsfield. All of these agreements contain assurances from the local governments that they will not object when the Tribe submits fee-to-trust applications as long as the Tribe meets certain requirements, such as owning the land for a period of three years before applying to have it taken into trust status. For example, the following is an excerpt from the Service Agreement between the Tribe and the Village of Ashwaubenon:

> The Village will not oppose the Tribe's applications to place Tribal Fee Land located on the Oneida Reservation into trust during the term of this Agreement if the Tribal Fee Land meets either of the following criteria: 1) the Tribe has held fee title to the land for a period of three (3) years or more prior to the date of the application; or 2) prior to the Tribe's acquisition, a tax exempt entity held title to the property for a period of five (5)

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years or more. If a parcel of land does not meet either of the above-listed criteria, the Village may comment on or object to an application to place the parcel in trust as provided for in 25 C.F.R. Part 151.

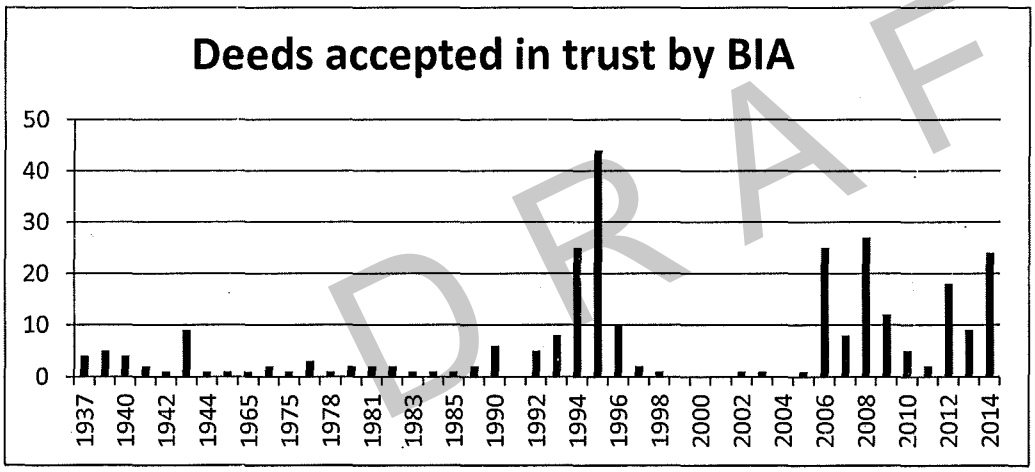
The following table depicts agreements with the local governments that contain provisions where the local governments agree not to object to the Tribe's fee-to-trust applications.

	Term
Ashwaubenon	01/01/14 – 12/31/18
Green Bay	03/09/09 – 12/31/24[1]
Brown County	06/30/08 – 10/31/23
Village of Hobart	Expired 11/16/07
Town of Oneida	08/01/12 – 07/30/15
Outagamie County	01/01/06 – 12/31/16

Midwest Fee-to-Trust Consortium

The Tribe's Self Governance Compact with the United States Department of the Interior allows the Tribe to reallocate funding from the federal government with the approval of the Secretary of the Department of the Interior. In 2004, the Business Committee passed Resolution #10-06-04-B to redirect a portion of these Self-Governance funds to pay for Bureau of Indian Affairs staff to process the Tribe's fee-to-trust applications. Pursuant to this resolution, the Oneida Tribe, along with the Shakopee Mdewakanton Sioux Community, entered into the Midwest Fee-to-Trust Consortium. In 2006, the Milles Lacs Band of Ojibwe joined the Consortium and in 2007, the Ho-Chunk Nation joined the Consortium. All four tribes redirect their Self-Governance funds to pay for BIA staff to process fee-to-trust applications from the tribes. The BIA staff does not make any policy decisions on whether the BIA should ultimately accept the land into trust; rather, the BIA staff compiles the relevant information required under the Code of Federal Regulations and forwards this information on to the BIA Regional Director to make a decision.

Historically, there was a period of time between 1990 and 1996 that the Tribe was successful in having land taken into trust. However, between 1996 and 2006, the Tribe had little success in its fee-to-trust efforts. Below is a chart depicting number of properties placed into trust status since 1937.



[1] The City of Green Bay has issued notice of termination of the Service Agreement.

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As a result of the Consortium, the Tribe has been able to increase its success rate in fee-to-trust applications. During 2005, the BIA began to process the fee-to-trust applications, and in 2006, the Tribe began to see results. Below is a table depicting the number of BIA decisions to take land into trust and acres placed into trust each year separated for the years 2001 to 2005 and then after joining the Consortium, the years 2006 to 2015.

Fiscal Year	Decisions	Acres
2001	10	0.25
2002	1	306
2003	0	0
2004	0	0
2005	1	26.41

Fiscal Year	Decisions	Acres
2006	**24**	**521.597**
2007	**9**	**641.262**
2008	**13**	**726.98**
2009	**24**	**1760.369**
2010	**6**	**646.45**
2011	**2**	**315.67**
2012	**19**	**206.491**
2013	**9**	**441.906**
2014	**21**	**1110.56**
2015	**3**	**1643.51**

Hobart Fee-to-Trust Appeals

As identified in the litigation summary above, in 2010 and 2011, Hobart filed appeals with the Interior Board of Indian Appeals, appealing several Notices of Decision to accept land located in Hobart into trust for the Tribe. *Hobart v. Midwest Regional Director, Bureau of Indian Affairs,* 57 IBIA 4 (2013). The Interior Board of Indian Appeals issued a decision determining that the Tribe was under federal jurisdiction in 1934 and the Secretary therefore had the authority to take land into trust for the Tribe, affirmed the Bureau of Indian Affairs' assessment of the Tribe's need for land, the Tribe's use for the land, and the Bureau of Indian Affairs' ability to handle additional responsibilities. However, the Interior Board of Indian Appeals remanded the case back to the Bureau of Indian Affairs for further consideration of the loss of tax revenue, jurisdictional and land use conflicts, environmental concerns, and potential bias in the fee-to-trust consortium.

With respect to the bias issue, the Interior Board of Indian Appeals decision found that the Bureau of Indian Affairs Regional Director did not fully consider the Village's allegations that a potential bias existed in the Midwest Fee-to-Trust Consortium. The Village essentially claimed that the Tribe paid for Bureau of Indian Affairs staff to approve the Tribe's applications. While the Village failed to recognize the nature of the Consortium, the Interior Board of Indian Appeals determined that the Regional Director should give this issue further consideration and explanation. An excerpt from the Interior Board of Indian Appeals decision regarding this bias issue, with accompanying footnotes, states:

> The Village argues that the BIA staff members who processed the Tribe's fee-to-trust applications were tainted by "blatant bias." Opening Br. at 48. The claim of bias stems from a "consortium agreement," whereby a group of tribes apparently directed Federal funding back to BIA specifically to fill staff positions to process the tribes' fee-to-trust applications.[17] According to a 2006 Government Accountability Office (GAO) report, *Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*, GAO-06-781 at 20, two such agreements, including one involving BIA's Midwest Regional Office, were then under

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> investigation by the Inspector General of the Department (IG). *Id.*;[18] *see also* Memorandum of Understanding Between Tribe and Midwest Regional Office for FY 2008-2010 (Opening Br., App. at 37). The outcome of the investigation is not made clear in the briefs or in the Administrative Records. On remand, the Regional Director should specifically address the Village's allegations of bias as well as the outcome of the IG investigation and its relevance, if any, to the Village's allegations. The Regional Director should also discuss any corrective actions that may have been taken in response to the IG investigation prior to the NODs at issue, if relevant to the Village's allegations of bias.[19] *57 IBIA 15-16.*
>
> 17. The tribes apparently received the funding from BIA as part of their Tribal Priority Allocation funding pursuant to Indian Self-Determination and Education Act contracts or Tribal Self-Governance compacts with BIA.
>
> 18. The Village cited to but did not provide a copy of the GAO report. A copy was found online at www.gao.gov/assets/260/250940.pdf. This document is one of many cited by the Village in its briefs to the Board for which no copy appears in the administrative records or in the appendices to the Village's briefs. In addition to citing the GAO report, the Village also cited to a BIA publication, *Acquisition of Title to Land Held in Fee or Restricted Fee*, and to an NOD for the Shakopee Mdewakanton Sioux Community, June 7, 2007. See Opening Br. at 49, 59. Neither of these documents appear in the record nor did the Village provide a copy. The Board is not part of BIA, see *In re Shingle Spring Band of Miwok Indians*, 54 IBIA 339, 340 (2012), and does not have ready access to documents that may be in BIA's possession. Any party that wishes to have the Board consider such documents, or arguments based on such documents, must provide copies of them to the Board and to the parties on the distribution list.
>
> 19. We note that the IG investigation apparently was underway in 2006 prior to the NODs at issue in this appeal and prior to the consortium agreement in effect at the time of NODs.

To date, the Tribe has not received revised Notices of Decisions for any of the properties subject to these appeals.

With respect to allegations that the Tribe's applications were somehow faulty, the Interior Board of Indian Appeals rejected that allegation and found no fault with the tribe's applications. In this regard, the Interior Board of Indian Appeals decision states:

> The Village contends that the Tribe's fee-to-trust applications were insufficient. We reject this argument. The application process is not meant to be onerous but simply must set out the "identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part." 25 C.F.R. § 151.9. If additional information is required for a decision on the application, BIA may request the applicant to provide the information needed. *Id.* § 151.12. We do not find fault with the Tribe's applications in these proposed fee-to-trust acquisitions. *57 IBIA 17.*

Brown County Residents Fee-to-Trust Appeals

In 2014, two Brown County resident filed appeals with the Interior Board of Indian Appeals, appealing several Notices of Decision to accept a total of approximately eleven residential properties located in the City of Green Bay into trust for the Tribe. The two appellants are David Dillenburg, a Trustee for the Village of Hobart, and Thomas Sladek, an Alderman for the City of

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Green Bay.[2] In the appeals, the residents hired Attorneys Frank Kowalkowski and Jenna Clevers. These two attorneys represented the Village of Hobart in the Hobart fee-to-trust appeals, as well as a number of other lawsuits involving the Tribe and Hobart. In this set of appeals, the residents raised many of the same issues that Hobart raised in its appeals. In addition to these issues, the residents also set forth a number of allegations related to how taking the land into trust would injure them, including allegations that the Tribe would unfairly compete with Dillenburg's business as a landlord. The Tribe filed affidavits demonstrating that the appellants lack standing to challenge the decision to take the land into trust. The Tribe and the Bureau of Indian Affairs also filed briefs responding to the appellants other arguments. This case is still pending.

Prioritization and Savings – Fee-to-Trust

The service agreements and the Midwest Fee-to-Trust Consortium were intended, in part, to provide a process by which fee land would be taken into trust. As identified above, this has resulted in an increase of land taken into trust. The Division of Land Management, in conjunction with the Oneida Business Committee and as may be directed by the General Tribal Council, prioritizes both land acquisition and fee-to-trust applications. Recently, that prioritization has moved from large acreage parcels to maximize value and impact to residential properties to provide additional options for housing to Tribal members.

The majority of fee-to-trust applications were submitted between 2005 and 2007 when the Tribe entered the Midwest Fee-to-Trust Consortium. There remain lands which are eligible under the Service Agreements that being processed for fee-to-trust applications which were not submitted between 2005 and 2007. In addition, new lands have been acquired which may now fall outside of the restricted application period in service agreements for which fee-to-trust applications may be developed. All new applications will be prioritized as set out above. Of the initial 250 or more filings occurring between 2005 and 2007, it is estimated that half remain in the processing backlog at the Bureau of Indian Affairs.

As a result of the increase in accepting land into trust, the Tribe has realized a cost savings. This is identified in the table below.

	# Apps	Acres	Taxes	Accumulated Taxes
2006	24	521.597	$327,489.25	$3,274,892.50
2007	9	641.262	$15,439.74	$138,957.66
2008	13	726.98	$18,961.02	$151,688.16
2009	24	1760.369	$20,349.48	$142,446.36
2010	6	646.45	$5,918.84	$35,513.04
2011	2	315.67	$1,469.28	$7,346.40
2012	19	206.491	$66,208.04	$264,832.16
2013	9	441.906	$45,359.10	$136,077.30
2014	21	1110.56	$177,158.97	$354,317.94
2015	3	1643.51	$12,517.93	$12,517.93
				$4,518,589.45

[2] Both Mr. Dillenberg and Mr. Sladek filed their appeals in their individual, not official, capacities.

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Errors/Requests for Additional Information

As identified above, the fee-to-trust process allows for additional information and clarifications to be requested by the Bureau of Indian Affairs during the decision making process. The Fee-to-Trust Handbook specifically identifies steps during the process for this purpose.

Step 2. Review of Written Request to Initiate Application Process.

6. Identify all missing information or documentation that is required, or materials submitted, that do not have appropriate signatures, dates or other deficiencies that would prevent a complete review of the application and result in incomplete status. Refer to Step 3[.]

Step 3. Responding to an Incomplete Case.

1(a) Prepare a written notice to the applicant including the following information is incomplete[.]

1) A statement that the application is incomplete.

2) Specify what information or documentation was omitted or required and explain why the requested information is necessary.

3) Request the applicant provide the omitted or required documentation or information to the BIA within 30 days of the applicant's receipt of the written notice or the application will be inactivated and returned.

Step 4. Conducting Site Inspection and Completing Initial Certificate of Inspection.

3. Prepare a written notice to applicant advising of any inconsistencies that require an explanation and/or correction. Advise applicant that unless the inconsistencies are addressed, applicant may be prohibited from taking land into trust. See Step 3[.]

Errors and requests for additional information can result in formal action by the Oneida Business Committee through adoption of a resolution, or a simple correspondence and response from the Division of Land Management. The following chart reviews the 375 fee-to-trust applications from 2003-2014 and identifies corrective resolutions.

Year	New	Corrections
2014	0	1
2013	4	
2012	8	
2011	3	
2010	9	
2009	1	

Year	New	Corrections
2008	13	1
2007	6	7
2006	275	
2005	55	
2004	0	
2003	3	

The nine corrective resolutions involve the following types of corrections.

Correcting Resolution	Prior Resolution	Correction
BC-11-12-14-A	BC-06-21-06-I	Withdrew application for 2522 West Mason Street
BC-06-11-08-A	Unknown	Parcel #
BC-01-31-07-B	BC-04-12-06-M	Parcel #
BC-01-31-07-C	BC-04-12-06-R	Land use
BC-01-31-07-D	BC-04-12-06-T	Land use
BC-01-31-07-E	BC-04-26-06-A	Land use
BC-08-29-07-C	Unknown	Property location and land use
BC-10-24-07-B	Unknown	Names of former owners
BC-10-24-07-C	Unknown	Legal description

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A discussion with the Division of Land Management staff identifies that there are approximately 250 outstanding fee-to-trust applications with the Bureau of Indian Affairs.[3] Of the 319 filings made since 2006, the nine resolutions above constitute less than 3% of the total filings, and about 8% of the filings in which the Tribe has received a decision.

The Division of Land Management identified two applications which were outside of the scope of the Consortium and for which the Tribe has been notified that the applications would not be processed. However, no fee-to-trust application has been denied. One involved a gaming related property and the other involved property owned by the Tribe in New York. In this last application, the Midwest regional office stated that the property was not within the regional area and that it would not consider the application. Finally, one application was closed under the determination it was incomplete as a result of failing to respond to requests for additional information. That application was resubmitted with the proper information the following year.

Many of the 2006 applications are in the communication processes of Step 3 identified in the Fee-to-Trust Handbook. This involves updating the information presented in 2006. Further, there are ongoing questions regarding clarifying survey or land descriptions to meet the requirements of the Land Description Review by the Bureau of Indian Affairs. These are generally minor issues of which only one required a correction deed which required additional Oneida Business Committee action. Finally, there are encumbrances which require additional explanation, or if not acceptable by the Bureau of Indian Affairs require the Division of Land Management to correct.

If you have further questions, please contact me.

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[3] In large part, these stem from the filings which occurred in 2006. Between 2006 and 2014, there have been 319 applications filed and 110 decisions regarding those applications. The difference may be accounted for by the 55 filings made in 2005.

RE: UPDATE ON FEE-TO-TRUST

(MULTIMEDIA PRESENTATION)

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tsiʔ niyukwalihó·tʌ

Jeet nee yoon gwea lee hoe' duh

"Our ways" includes our beliefs, our customs, and how we view things (past, present, and future). It also includes our history, language, and things in our environment (man-made and natural) that make us distinct from others as a people.

Vision

A Nation of strong families built on Tsiʔ niyukwalihó·tʌ and a strong economy.

Mission

To strengthen and protect our people, reclaim our land, and enhance the environment by exercising our sovereignty.

Values

To establish positive behaviors upon which we will conduct our daily activities. The extent to which we dedicate ourselves to the implementation of these values will determine our success.

Kahletsyalúsla
gah lay ja loose' la
The heart felt encouragement of the best in each of us

Kanolukhwásla
ga no loonk wass' la
Compassion, caring, identity and joy of being

Kaʔnikuhlí·yo
gat knee goo leee' (yo)
The openness of the good spirit and mind

Twahwahtsilayʌ́
dwah wah jee lie (uh')
All of us are Family

Kalihwi·yʌ́
gally we' (yo)
The use of good words about ourselves, our Nation and our future

Yukwatsístayʌ
yoon gwa jeesta' (yuh)
Our fire, our spirit within each one of us

Kaʔtshatstʌ́sla
gat chot stews' la
The strength of belief and vision as a people

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