United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
5600 West American Boulevard, Suite 500
Bloomington, Minnesota 55437

JAN 19 2017

In Reply Refer to:
Division of Fee to Trust
Hobart Parcels (Remanded Decision)

NOTICE OF DECISION

BY CERTIFIED MAIL - 9171 9690 0935 0036 0346 94

Honorable Cristina Danforth
Tribal Chairwoman
Oneida Nation
P.O. Box 365
Oneida, Wisconsin 54155

RE: Decision on Remand from Village of Hobart v. Midwest Regional Director, Bureau of Indian Affairs, 57 IBIA 4 (2013).

Dear Chairwoman Danforth:

On May 9, 2013, the Interior Board of Indian Appeals (IBIA) affirmed in part, vacated in part, and remanded, the six Notices of Decisions issued by the Midwest Regional Director to accept eight properties—consisting of 21 parcels and 499.022 acres—into trust on behalf of the Oneida Tribe of Indians of Wisconsin (Oneida Nation or Nation).[1] The IBIA affirmed the Regional Director's decisions as to: (1) her authority to accept land into trust on behalf of the Nation under the Indian Reorganization Act (IRA), 25 U.S.C. § 5108[2] (25 C.F.R. § 151.10(a)); (2) her consideration of the Nation's need for the land (25 C.F.R. § 151.10(b)); (3) the Nation's purposes for and uses of the land (25 C.F.R. § 151.10(c)); and (4) the Bureau of Indian Affairs' (BIA) ability to absorb any additional responsibilities (25 C.F.R. § 151.10(g)).[3]

The IBIA vacated and remanded the Regional Director's decisions as to loss of tax revenue (25 C.F.R. § 151.10(e)) and jurisdictional and land use conflicts (25 C.F.R. § 151.10(f)).[4] Additionally, the Regional Director, on remand, was directed to address the Village's arguments regarding environmental concerns (25 C.F.R. § 151.10(h)).[5] Finally, the Regional Director was instructed to

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[1] The official name of the tribal entity was changed from "Oneida Tribe of Indians of Wisconsin" to "Oneida Nation." Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 81 Fed. Reg. 81, 26829 (May 4, 2016).
[2] Formerly codified at 25 U.S.C. § 465.
[3] Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4, 5 (2013).
[4] Id.
[5] Id.

consider the Village of Hobart's claim of alleged bias in decision making.[6] This Notice of Decision specifically addresses the matters vacated or otherwise remanded by the IBIA.

Background

Between January 24, 2007 and September 20, 2007, the Oneida Nation submitted fee-to-trust applications for eight properties known as the Boyea, Buck, Calaway, Catlin, Cornish, DeRuyter, Gerbers, and Lahay parcels (Hobart Parcels). We have reviewed the legal description and maps and determined this acquisition qualifies for processing under the regulations found at 25 CFR § 151.10 for on-reservation acquisitions. The parcels are located in the Village of Hobart, Brown County, Wisconsin, and are described in Exhibit A (enclosed).[7]

In 2010, the Regional Director[8] issued six notices of decision of intent to accept into trust the eight properties, consisting of 21 parcels and 499.022 acres, for the Nation. Subsequently, the Village of Hobart timely appealed each decision. Through a series of Orders in 2010, the IBIA consolidated the six appeals, docketed as listed below:

Docket No.	Property Name	Date of Notice of Decision
10-091	Boyea	Mar. 17, 2010
10-092	Cornish	Mar. 17, 2010
10-107	Gerbers	May 5, 2010
10-131	Buck	July 8, 2010
11-002	Catlin	Aug. 16, 2010
11-002	Calaway	Aug. 16, 2010
11-002	DeRuyter	Aug. 16, 2010
11-045	Lahay	Nov. 23, 2010

The IBIA remanded portions of the decisions for reconsideration by the Regional Director. *Village of Hobart v. Acting Midwest Reg'l Dir., Bureau of Indian Affairs*, 57 IBIA 4, 5 (2013). Upon remand, additional comments were solicited from interested parties through the issuance of a supplemental Notice of Application.[9] Our analysis herein includes and considers the comments from the Village of Hobart contained within its replies to the original Notices of Application, its filings with the IBIA, and its reply to the supplemental Notice of Application.

Regulatory Authority

The applicable regulations are set forth in 25 C.F.R. Part 151. The regulations specify that it is the Secretary's policy to accept lands "in trust" for the benefit of Tribes when such acquisition is authorized by an Act of Congress; and (1) when such lands are within the exterior boundaries of the Tribe's reservation or adjacent thereto, or within a Tribal consolidation area; or (2) when the

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[6] Id.

[7] *See* Letter of Application for the Boyea Parcel from the Oneida Nation, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Jan. 24, 2007); Buck Parcel (Sept. 20, 2007); Calaway Parcel (Sept. 20, 2007); Catlin Parcel (Sept. 20, 2007); Cornish Parcel (Sept. 20, 2007); DeRuyter Parcel (Sept. 20, 2007); Gerbers Parcel (Feb. 8, 2007); Lahay Parcel (Sept. 20, 2007) (on file with the Midwest Regional Office).

[8] Some decisions were issued by an "Acting" Regional Director under the Regional Director's authority.

[9] Notice of (Non-Gaming) Land Acquisition Application (Aug. 6, 2013) (on file with the Midwest Regional Office).

Tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.[10]

The Buck, Gerbers, Lahay, and Cornish acquisitions facilitate Indian housing and self-determination. The Boyea, Calaway, Catlin, and DeRuyter acquisitions facilitate economic development and self-determination. Accordingly, these acquisitions fall within the purview of Department's land acquisition policy. Pursuant to 25 C.F.R. § 151.10, the Secretary is required to consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located within or contiguous to the tribe's reservation, and the acquisition is not mandated:

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

This decision addresses the issues remanded by the IBIA, including the criteria set forth in 25 C.F.R. § 151.10 (e), (f), and (h).

Village of Hobart Comments

In its reply[11] to the Notices of Application and in its Opening Briefs to IBIA,[12] the Village of Hobart provided information regarding taxes, special assessments, services provided to the parcel, zoning, and regulatory issues, along with numerous other complaints. Specifically, the Village provided the following objections:

1) The Village maintains that the Nation must restart the entire fee to trust process including the submission of a new application because "the decision relating to [these parcels] was vacated."[13]

2) The Village states that there is a substantial negative impact on the Village resulting from the removal of the subject properties from the tax rolls. The Village also alleges numerous fiscal impacts that result from the Nation's trust acquisitions, including lost development potential at commercial/industrial parks, lack of service agreements, loss

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[10] 25 C.F.R. § 151.3.

[11] Letter from Paul G. Kent, Attorney for the Vill. of Hobart, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Nov. 6, 2008) (on file with the Midwest Regional Office).

[12] Village of Hobart's Opening Brief, Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4 (2013) (Nos. 10-131 and 11-002) (Buck, Catlin, Calaway, DeRuyter); Village of Hobart's Opening Brief, Hobart, 57 IBIA 4 (Nos. 10-091 and 10-092) (Boyea, Cornish); Village of Hobart's Opening Brief, Hobart, 57 IBIA 4 (No. 10-107) (Gerbers); Village of Hobart's Opening Brief, Hobart, 57 IBIA 4 (2013) (No. 11-045) (Lahay) (on file with the Midwest Regional Office).

[13] Letter from Frank W. Kowalkowski, Attorney for the Vill. of Hobart, to Diane Rosen, Midwest Reg'l Dir., Bureau of Indian Affairs (Sept. 5, 2013) (on file with the Midwest Regional Office).

of tax income to school districts, and hypothetical future loss of tax income due to other trust acquisitions.[14]

3) The Village states that it provides numerous services to those residing within the area to be acquired, including transportation, sewer, water, parkland, firefighting, land use planning, and economic development which, if the land is taken into trust, it would have to perform with reduced funding due to removal from property tax rolls.[15]

4) The Village states that significant land use conflicts exist and that the BIA failed to properly identify the proposed uses of the properties. Specifically, the Village argues that:

   a) BIA must consider whether the proposed future uses are consistent with the Village's Comprehensive Plan.[16]

   b) The Village's zoning code will be supplanted by the Oneida Nation's land use regulations if the property is transferred into trust.[17]

   c) Fourteen parcels within the Village are zoned Limited Industrial by the Village, but Agricultural by the Nation.[18]

   d) The Nation has attempted to stymie the Village's land use plans by making land purchases that interfere with Village development projects.[19]

   e) Oneida Nation's tribal regulations permit mobile homes, while Village regulations do not.[20]

   f) The Nation has encouraged its members and other entities not to comply with Village regulations.[21]

5) The Village states that non-contiguous trust acquisitions cause checker-boarding of jurisdiction for zoning and emergency services.[22] The Village is specifically concerned with the potential for confusion and conflict between Village and Oneida Nation tribal law enforcement.[23]

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[14] Letter from Paul G. Kent, Attorney for the Vill. of Hobart, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Nov. 26, 2008) (on file with the Midwest Regional Office).
[15] Id.
[16] Village of Hobart's Opening Brief at 60, Hobart, 57 IBIA 4 (Nos. 10-091 & 10-092) (on file with the Midwest Regional Office).
[17] Id. at 61-68.
[18] Id.
[19] Id. at 61-62.
[20] Id. at 61.
[21] Id. at 63-64.
[22] Id. at 63.
[23] Id. at 67-68.

6) The Village states that the Regional Director did not adequately explain the term "jurisdictional pattern."[24]

7) The Village states that the proposed trust acquisition (and trust acquisitions in general) is detrimental to the Village's stormwater management program due to loss of fees and duplication of services.[25]

8) The Village stated that an Environmental Assessment (EA) or Environmental Impact Statement (EIS) should have been performed due to the "highly controversial effects" and "unresolved conflicts" caused by the proposed action, or because BIA failed to identify a change in land use.[26]

9) The Village states that the Phase I Environmental Site Assessments performed by BIA failed to properly categorize nearby hazardous materials and/or environmental contamination as Recognized Environmental Conditions (RECs) for the subject properties.[27] The Village further argues that the BIA failed to consult adequately with local government officials when preparing the Phase I ESA.[28]

10) The Village also states that the acquisitions did not comply with Environmental Compliance Memorandum No. ECM 10-2, which it claims is mandatory.[29]

11) The Village states that the Regional Director is biased, and the BIA is biased at an administrative level.[30]

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

The IBIA remanded the Regional Director's previous consideration of 25 C.F.R. § 151.10 (e), regarding tax loss to local governments.

In its combined reply brief,[31] the Village states that the Regional Director refused to consider the cumulative and aggregate impact of the simultaneous trust applications, which affect 133 parcels for an approximate tax loss of $36,148.88. Likewise, in its September 5, 2013, response to the supplemental August 6, 2013, Notice of Application, the Village presented recently updated calculations on the total property tax loss associated with the Nation's trust applications for approximately 142 parcels of land, totaling 3,156.070 acres located within the Village. Based on 2012 taxes and land values, the Village anticipates its property tax loss for these 142 parcels to be

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[24] Village of Hobart's Opening Brief at 65, Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4 (2013) (No.11-045) (on file with the Midwest Regional Office).
[25] Village of Hobart's Opening Br. at 65-66, Hobart, 57 IBIA 4 (Nos. 10-091 & 10-092) (on file with the Midwest Regional Office).
[26] Village of Hobart's Opening Br. at 81, Hobart, 57 IBIA 4 (No. 11-045) (on file with the Midwest Regional Office) (citing 516 DM 2, Appendix 2 at 2.3.)
[27] Id. at 84-85.
[28] Id. at 86; Village of Hobart's Opening Brief at 85, 88, Hobart, 57 IBIA 4 (Nos. IBIA 10-131 & 11-002).
[29] Letter from Frank W. Kowalkowski, Attorney for the Vill. of Hobart, to Diane Rosen, Midwest Reg'l Dir., Bureau of Indian Affairs (Sept. 5, 2013) (on file with the Midwest Regional Office)
(Village's response letter to Supplemental Notice of Application).
[30] Village of Hobart's Opening Brief at 42-48, Hobart, 57 IBIA 4 (Nos. 10-091 & 10-092).
[31] Appellant's Combined Reply Brief, Hobart, 57 IBIA 4 (Nos. IBIA 10-131 & 11-002).

approximately $29,317.54. However, in this case, the BIA need only consider the impact on the tax rolls of a specific proposed acquisition, i.e., the taxes currently assessed.[32]

For the eight applications (consisting of 21 parcels) actually under consideration here,[33] the total tax loss for the Village for 2015 (payable 2016) is an estimated $3,997.90[34]:

Parcel Name	2015 taxes (due 2016)
Boyea	$ 686.30
Buck	$ 179.40
Calaway	$ 163.30
Catlin	$ 725.70
Cornish	$ 638.00
DeRuyter	$ 162.10
Gerbers	$ 932.60
Lahay	$ 510.50
Total	**$ 3,997.90**

The Brown County tax levy for 2015 was $84,432,779.00.[35] The Village of Hobart's 2015 property tax levy was $2,770,548.00.[36] The total property tax charged on the property in 2015 was $17,457.10, of which the Village received $3,997.90.

Village Tax	Village Levy	Percentage of Levy
$3,997.90	$2,770,548.00	0.1443%

Taxes – Unpaid past due assessments and stormwater fees

The 2015 Stormwater Management fees for the subject properties are $1,328.52.[37]

In 2008, the Village stated that these proposed trust acquisitions "have an adverse impact on local revenues because the tribe has not paid over $430,000 in past due assessments and stormwater fees." On November 2, 2016, updated property tax records were retrieved for each property subject to this decision; the property tax records (which include payment information) indicate that there are currently no delinquent past due assessments or stormwater fees. Further, 25 CFR § 151.13 requires the elimination of "liens, encumbrances, or infirmities" if these would "make title to the land unmarketable." Therefore, any overdue or unpaid assessments on these parcels must be paid, or otherwise resolved, prior to acceptance into trust.

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[32] City of Eagle Butte v. Acting Great Plains Reg'l Dir., Bureau of Indian Affairs, 49 IBIA 75, 81-82 (2009).
[33] The IBIA asked the Regional Director to address whether the Administrative Record omitted the DeRuyter property tax invoices. After examining the casefile, it appears that the Nation never submitted those tax invoices. For our review on remand, we requested updated tax invoices for all 21 parcels including the DeRuyter property. The invoices have been considered in our analysis.
[34] State of Wisconsin Real Estate Property Tax Bills for 2015 (on file with the Midwest Regional Office).
[35] Bureau of Local Gov't Serv., Div. of State and Local Finance, Wis. Dep't of Revenue, Town, Village, and City Taxes-2015, Taxes Levied 2015 – Collected 2016 5-6 (n.d.).
[36] Id.
[37] State of Wisconsin Real Estate Property Tax Bills for 2015 (on file with the Midwest Regional Office).

Tax loss to school districts

The 2015 School District tax charged for the subject parcels is $8,294.50.[38] The 2015 levy for school districts within the Village of Hobart is $6,034,569.00.[39]

School Districts Tax	School Districts Levy	Percentage of Levy
$8,294.50	$6,034,569.00	0.1374497%

The Village stated that "loss of tax revenue [for schools] will not be reflected in additional federal grants."[40] While local school districts will lose revenue as a result of the trust acquisition, Congress has attempted to mitigate this effect with Impact Aid provided on a per student basis. Importantly, no school districts submitted comments or objected to the applications, and the Village has not explained how a loss of revenue to a school district would impact the Village's budget or operations.

Services provided by Village and Tribe

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

The Nation and the Village entered into a Service Agreement, effective November 16, 2004 through November 16, 2007. During the term of the agreement, the Nation compensated the Village based on a formula accounting for property values (rather than lost property tax) and the cost of services provided by the Village. The Village has asserted that the Nation has passed a tribal resolution that prohibits the Tribe from entering into a new agreement with the Village.[41] Contrary to the Village's contention, documents provided by the Oneida Nation show that it has made clear that it is open to negotiating new service agreements, which may include payments in lieu of taxes, if the Village were to recognize the Nation as a government pursuant to federal law.[42] However, the parties are not currently negotiating a new agreement, nor is the commencement of negotiations anticipated in the near future.[43]

Direct services provided by the Oneida Nation for tribal members and their families include: waste and recycling pickup, health care, elderly services, public safety, education and library services,

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[38] Id.

[39] Bureau of Local Gov't Serv., Div. of State and Local Finance, Wis. Dep't of Revenue, Town, Village, and City Taxes-2015, Taxes Levied 2015 – Collected 2016 5-6 (n.d.).

[40] Village of Hobart's Opening Brief at 56, Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4 (2013) (Nos. 10-091 & 10-092).

[41] Letter from Paul G. Kent, Attorney for the Vill. of Hobart, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Nov. 26, 2008) (on file with the Midwest Regional Office); *See* Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4, 29 (2013).

[42] Oneida Business Committee (BC) Resolution No. 10-12-11-B, Oct. 12, 2011 (on file with the Midwest Regional Office) (rescinding and replacing BC Resolution No. 2-20-08-C regarding government to government relations with the Village of Hobart).

[43] Oneida Nation, Socioeconomic Conditions within the Reservation of the Oneida Tribe of Indians of Wisconsin 17 (Mar. 18, 2015) (on file with the Midwest Regional Office) (stating that entering into a future service agreement is unlikely).

recreation programs, public works, utilities, public transportation, housing, and mortgage loans and rentals. The Nation also provides many community services to non-tribal residents of the Oneida reservation. Services provided by the Oneida Police Department include first responders, traffic violations, criminal arrests, investigations, pick-ups and transportation. The Oneida Nation does not receive any reimbursement for these services. Fines from traffic tickets issued by the Nation are given to the county and/or state. The Nation provides utility services (sewer and water) within the Oneida Sanitary District Parks and recreation areas have been constructed and maintained by the Nation for the benefit of tribal and non-tribal residents.[44]

While the Nation provides all of these services to its membership on the reservation, fire coverage is handled by the municipalities, in this case the Village of Hobart. Without an intergovernmental agreement in place there is a possibility that emergency services provided by the Village, including fire protection, could go uncompensated. However, this is similar to the situation for other tax-exempt properties within the Village, such as churches and schools. And, although fire protection is paid through property taxes, the Village has not provided specific information regarding the cost of fire protection.

In the Village's November 26, 2008 comment letter it raised the issue of the cost of repair for three roads (St. Josephs St., Shenandoah St., and Westfield Rd.) serving "mainly tribal trust or tribal fee lands" arguing that such repairs exceeded $100,000 for 2009. While these three roads service Oneida Trust land, we note that there are also a significant number of private fee parcels serviced by these roads. Further, the three roads in question do not directly service any of the proposed acquisitions currently under consideration, but are only located near the Boyea property. Similar to the Village, the BIA provides funding for maintenance of roads serving tribal lands. Many of these roads benefit tribal members and non-tribal members throughout the community. While the three specific roads are not currently eligible for this funding, several other nearby roadways (e.g. Seminary Rd, Jason Dr., and Hwy 54) are on the Indian Reservation Road Inventory (IRR), and are eligible for BIA funding. This program partially offsets the Village's financial burden for road maintenance.

Speculative Future Losses

The Village has complained that the Nation has made various efforts to thwart the Village's industrial and commercial economic development plans, thus depriving the Village of future tax revenues.[45] The Village has also expressed concern about its ability to raise taxes to offset any loss caused by fee-to-trust acquisitions, citing a Wisconsin law that it argues prohibits it from raising taxes above a 2% levy limit.[46] The Village has also provided information regarding the cumulative tax impact for 142 parcels of land, comprised of both previous and *potential future* trust acquisitions.[47]

The BIA "has no obligation to consider an appellant's speculation about what might happen in the future"[48] and the Village has not provided sufficient information to properly analyze its concerns.

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[44] Id. at 2.
[45] Village of Hobart's Opening Brief at 61, Hobart, 57 IBIA 4 (Nos. 10-091 & 10-092).
[46] Letter from Paul G. Kent, Attorney for the Vill. of Hobart, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Nov. 26, 2008) (on file with the Midwest Regional Office).
[47] Letter from Frank W. Kowalkowski, Attorney for the Vill. of Hobart, to Diane Rosen, Midwest Reg'l Dir., Bureau of Indian Affairs (Sept. 5, 2013) (on file with the Midwest Regional Office).
[48] City of Eagle Butte v. Acting Great Plains Reg'l Dir., Bureau of Indian Affairs, 49 IBIA 75, 82 (2009).

BIA need not consider speculative future tax loss, only the impact on the tax rolls of a particular proposed acquisition, i.e., the taxes currently assessed.[49]

25 CFR § 151.10 (f) – Jurisdictional and land use conflicts

Regarding land use and jurisdictional issues, IBIA stated the following:

> With respect to the Village's concerns about land use and jurisdictional issues (§ 151.10(f)), the Regional Director . . . failed to mention, much less discuss, the Village's land use concerns regarding adjacent fee and trust lands that are subject to very different uses and zoning (e.g., the Gerbers property will continue to be used and zoned by the Tribe for agricultural and residential purposes; it is located within and adjacent to land zoned by the Village for a commercial industrial park) and the Village's concerns regarding implementation of its storm water management plan, given the increasing checkerboard geography of fee and trust land within the Village's boundaries.

In addition, the Village contends that the Regional Director did not explain what she meant by a "jurisdictional pattern." The IBIA instructed that should the "Regional Director again decide to approve these trust acquisitions, she should address [land use and zoning conflict] issues in more detail to make clear they have been considered and to explain terms that the Village contends it does not understand."[50]

Zoning

Of the 21 parcels under consideration here, the Village's zoning classification and the Nation's zoning classification are in concordance for all but three, listed below. The other 18 parcels are zoned "A1 - Agricultural" by both the Village and the Nation.

For the Cornish property, parcel HB-91-1, the Village has zoned the property "R2R - Rural Residential" while the Nation has zoned the property "A1 - Agricultural." There is a low probability for conflict in land use here. The Village's zoning allows for agriculture and single family housing, as does the Nation's.

For the Lahay property, parcel HB-520-1, the Village has zoned the property "R2R - Rural Residential" while the Nation has zoned the property "R1 - Single Family." This situation also presents a low risk for conflicting land use. Both zoning districts allow low density residential development.

For the Gerbers property, parcel HB-328, the Village has zoned the property "L1 - Limited Industrial" while the Nation has zoned the property "A1 - Agricultural." The Gerbers property is located within and adjacent to land zoned by the Village for a commercial industrial park. As the Village noted in its Opening Brief,[51] there is a potential for land use conflict where industrial development and agriculture exist side by side. However, the Village failed to provide evidence to support its contention that "residential and/or agricultural purposes are completely inconsistent with urban development and light industrial development." Further, this condition is not unique to the Gerbers property. Contrary to the Village's claim that these "purposes are inconsistent," we

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[49] Id. at 81-82.
[50] Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4, 30 (2013).
[51] Village of Hobart's Opening Brief at 50-52, Hobart, 57 IBIA 4 (No. 10-107).

note on Fernando Drive, just north of the Gerbers parcel, the Village has created the same situation unilaterally by placing agricultural and industrial zoning districts immediately adjacent to one another. Further, much of the land surrounding the industrial park (albeit separated by roadways) has been zoned "A1 - Agricultural" by the Village. We note that, in this case, the Nation's zoning designation, A1 - Agricultural, is more restrictive than the Village's.

The Nation has not proposed a change in use for any of the subject properties, and the Village has not raised any material conflict between existing land uses and Village zoning.

The Village has indicated a general concern that the Nation's zoning regulations permit mobile home parks, while the Village's prohibit them.[52] However, the Nation has not proposed such a use for any of the parcels under consideration here.

The Village has stated that BIA should consider whether the proposed uses for the property are consistent with the future uses identified in the Village's comprehensive plan.[53] The Village did not provide a specific comparison of the comprehensive plan's future land uses and the Nation's proposed uses. The comprehensive plan is available on the Village website[54] including a *draft* Future Land Use Map. The relationship between the Nation's proposed uses, the Village's current zoning, and the Village's draft Future Land Use Map is as follows:

Parcel Name	Proposed use	Village Zoning (current)	Village *draft* Future Land Use Map
Buck	Residential	Agriculture	Mixed Use Commercial and Residential
Gerbers	Residential and Agriculture	Limited Industrial	Mixed Commercial / Industrial
Boyea	Agriculture	Agriculture	Mostly residential, small portion Mixed Commercial / Industrial
Catlin	Agriculture	Agriculture	Agriculture / Future Residential
DeRuyter	Agriculture	Agriculture	Split between Agriculture / Future Residential and Residential
Calaway	Agriculture	Agriculture	Residential
Cornish	Residential	Residential	Residential
Lahay	Residential	Residential	Residential

Again, the Oneida Nation has not proposed any change in land use for any of the subject parcels. The proposed uses are also generally consistent with the Village's draft future land use map.

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[52] Village of Hobart's Opening Brief at 61, Hobart, 57 IBIA 4 (Nos. 10-091 & 10-092).
[53] Id. at 59-60.
[54] *Chapter 7- Land Use*, Village of Hobart Comprehensive Plan, http://www.hobart-wi.org/vertical/sites/%7B354A483F-042E-454E-A570-720BFEDE46D9%7D/uploads/Pre-Hearing_DRAFT_Ch_7_-_Land_Use.pdf (last visited Jan. 18, 2017).

Jurisdiction - Potential disruption of stormwater management

IBIA has ordered on remand that BIA provide additional consideration of stormwater management issues that may arise with respect to § 151.10(f). The Village, in its response to the Supplemental Request for Comments dated August 6, 2013, states:

> The Village, Tribe, and United States Government are presently parties in a lawsuit involving storm water fees on trust land which is pending before the 7th Circuit Court of Appeals. The Village, as an operator of a regulated small MS4, is mandated by federal law to implement a storm water management program. The EPA issued draft NPDES permits to the Village, Tribe, and County. The Tribe has refused to pay storm water fees for trust land, and has claimed that to the extent the fees are owed, they are owed by the United States Government. Storm water does not flow according to a checkerboard pattern of trust land. Rather, this is a serious jurisdictional and land use conflict.[55]

In 2007, the Village passed an ordinance assessing stormwater management fees on all parcels of land located within the village, to include those owned by the Oneida Nation. The assessment would finance a stormwater management system. The Village stated that although the Nation "generally paid these assessments in the past," the Nation "may not be paying these fees if the property is taken into trust." The Village also expressed concern that the properties "will not be subject to state law" and the Village's "expensive and painstaking efforts to improve surface water quality may be wasted." Finally, the Village argued that the Nation "should agree to be bound by the Village's stormwater program."[56] When the Nation sought declaratory judgment that the assessment could not be lawfully imposed on it, the Village filed a third-party complaint against the United States. In *Oneida Tribe of Indians v. Village of Hobart,* the district court judge rendered summary judgment for the Nation and granted the United States' motion to dismiss the third-party claim, which the Village appealed.[57] The Seventh Circuit affirmed the court's ruling on October 18, 2013, and determined that the assessment is a tax, not a fee, and that the tribe owed no debt to the Village.[58] The Village pursued the matter by filing a *writ of certiorari* in the Supreme Court of the United States, which was denied.[59] Because the Seventh Circuit held in favor of the Oneida Nation and the Department of the Interior (DOI) on this matter, this issue is resolved.

The Seventh Circuit also stated, "Congress has authorized the EPA to delegate to states the authority to issue stormwater management permits."[60] Wisconsin, however, in applying for permitting authority, "disclaimed authority to regulate stormwater runoff on Indian Lands."[61] Therefore, in Wisconsin, it is Indian governments, as opposed to the state, that may assume

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[55] Letter from Frank W. Kowalkowski, Attorney for the Vill. of Hobart, to Diane Rosen, Midwest Reg'l Dir., Bureau of Indian Affairs (Sept. 5, 2013) (on file with the Midwest Regional Office) (Village's response letter to Supplemental Notice of Application).

[56] Letter from Paul Kent, Attorney for Vill. of Hobart, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Dec. 2, 2008) (on file with the Midwest Regional Office).

[57] Oneida Tribe of Indians v. Village of Hobart, 891 F. Supp. 2d 1058, 1059 (E.D. Wis. 2012).

[58] Oneida Tribe of Indians of Wis. v. Village of Hobart, 732 F.3d 837, 842 (7th Cir. 2013)

[59] Village of Hobart v. Oneida Tribe of Indians, 732 F.3d 837, 842 (7th Cir. 2013), *cert. denied*, 134 S. Ct. 2661 (2014).

[60] *Oneida Tribe*, 732 F.3d at 840.

[61] Id. at 841.

regulatory authority under the Clean Water Act. As a result, the Village and Oneida Nation implement separate stormwater management programs.

Jurisdiction - VOH Checkerboard Pattern

The Village has expressed concern regarding the potential for jurisdictional confusion in relation to emergency services.[62] Specifically, it notes that police dispatch calls in the Village may go to both the Village and Tribal police departments, causing potential confusion and conflict between the departments, and possibly reducing response time. The Village has also stated that the term "jurisdictional pattern" is unclear as used in the original Notices of Decision.[63]

In the *Village of Hobart* decision, the Seventh Circuit noted that 17 percent of Hobart's population is comprised of Indians of the Oneida Nation. The "Indians' homes...are scattered throughout the village and as a result the Indian and non-Indian properties form an irregular checkerboard pattern."[64] In fact, "6.6 percent of the village's total land – is held by the United States in trust for the Oneida Tribe." The court acknowledged that this checkerboard pattern of jurisdiction is an "awkward" but "familiar feature of American government." In fact, "federal facilities of all sorts, ranging from post offices to military bases, are scattered throughout the United States...a similar scatter is common in Indian country."[65] The term "jurisdictional pattern" used in our previous Notices of Decision refers specifically to this checkerboard pattern of jurisdiction.

In our view, the most feasible solution to the "checkerboard" issue is the development of cooperative service agreements with other government bodies in the area, though such agreements are not required by the BIA. It is important to note that a service agreement between the Village and Nation was in place from November 16, 2004 through November 15, 2007. As previously mentioned, this agreement expired and was not renewed. The Nation has made it clear that it is open to negotiating service agreements if the Village were to recognize the Nation as a government pursuant to federal law, with inherent authority to regulate its members and its land on the Oneida Reservation.[66] The inability of the Village and Nation to execute an intergovernmental service agreement contributes to the jurisdictional conflict that the Village complains of.

After examining each parcel's proposed land use, current zoning, and the Village's draft Future Land Use Map, we recognize that the trust acquisition of these parcels is crucial to the Nation's ability to govern its own land as a sovereign nation.

151.10 (h) – Environmental Hazards

On remand, IBIA has required BIA to consider the Village's comments with respect to environmental concerns. The IBIA stated:

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[62] Village of Hobart's Opening Brief at 67, Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4 (2013) (Nos. 10-091 & 10-092).
[63] Village of Hobart's Opening Brief at 65, Hobart, 57 IBIA 4 (No. 11-045).
[64] Oneida Tribe of Indians of Wis. v. Village of Hobart, 732 F.3d 837, 842 (7th Cir. 2013)
[65] Id. at 839.
[66] Oneida Business Committee (BC) Resolution No. 10-12-11-B, Oct. 12, 2011 (on file with the Midwest Regional Office) (rescinding and replacing BC Resolution No. 2-20-08-C regarding government to government relations with the Village of Hobart).

> Finally, and with respect to environmental issues, we note that the environmental reviews had not been completed at the time that the Village's comments on the proposed trust acquisitions were due. See, e.g., Environmental Review for Lahay Property, Aug. 9, 2010 (AR Vol. 1 Tab 18) (finalized almost 2 years after the Comment Letter was submitted). Therefore, the Village has presented its comments on the environmental reviews in the first instance to the Board. In light of our remand to the Regional Director on other issues, see supra, the Regional Director should also consider the arguments raised by the Village with respect to environmental concerns.[67]

Environmental Compliance

All fee-to-trust acquisitions require compliance with the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and 25 C.F.R. § 151.10(h), which includes compliance with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

National Historic Preservation Act (NHPA) Compliance

No further compliance with NHPA is required. The Bureau of Indian Affairs- Midwest Regional Office (BIA-MRO) determined that the Hobart Parcels trust acquisitions do not have the potential to cause effects on historic properties (36 CFR 800.3 (a) (1)). The BIA-MRO issued determinations on the following dates:

Boyea	July 7, 2015
Cornish	June 29, 2015
Gerbers	July 7, 2015
Buck	June 29, 2015
Catlin	June 29, 2015
Calaway	July 7, 2015
DeRuyter	July 7, 2015
Lahay	July 13, 2015

Endangered Species Act (ESA) Compliance

No further compliance with ESA is required. The Oneida Nation received concurrence from the U.S. Fish and Wildlife Service (USFWS) for a "No Effect" determination for Threatened and Endangered Species on March 14, 2016. The "No Effect" determination was based on the intent of the Nation to maintain current land use. The BIA-MRO issued this determination on the following dates:

Boyea	July 7, 2015
Cornish	June 29, 2015
Gerbers	July 7, 2015
Buck	June 29, 2015
Catlin	June 29, 2015
Calaway	July 7, 2015

[67] Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4, 18 (2013).

DeRuyter	July 7, 2015
Lahay	July 13, 2015

National Environmental Policy Act (NEPA)

No further compliance with NEPA is required. 25 C.F.R. § 151.10(h) requires the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, the latter of which is discussed below. 516 DM 6, appendix 4 provides for the BIA Official to determine whether or not plans for development or physical alteration are established to the point where NEPA review of the proposed activity should be done in conjunction with the land transfer. Secondly, if a proposed action belongs to a category of actions, as published by the DOI or the BIA, that have no potential for significant or cumulative environmental effects, it can be categorically excluded from further analysis and documentation in an environmental assessment or an environmental impact statement.

The BIA-MRO determined that no change in land use is anticipated; therefore, the Hobart Parcels fee-to-trust acquisitions will not have a significant effect on the quality of the human environment (individually or cumulatively), and neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) is required (40 CFR 1508.4; 43 CFR 46.205). Thus, the parcels can be categorically excluded.

BIA-MRO issued the Categorical Exclusion (CE) on the following dates:

Boyea	July 7, 2015
Cornish	June 29, 2015
Gerbers	July 7, 2015
Buck	June 29, 2015
Catlin	June 29, 2015
Calaway	July 7, 2015
DeRuyter	July 7, 2015
Lahay	July 13, 2015

The Village of Hobart's Comments

The Village's environmental concerns are centered on BIA-MRO's perceived failure to comply with 516 DM 6, appendix 4, NEPA Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

516 DM 6, appendix 4, NEPA Revised Implementing Procedures

The Village states that the Regional Director failed to comply with the requirements of NEPA as outlined in 25 C.F.R. § 151.10(h). Specifically, the Village claims that the Regional Director failed to comply with § 151.10(h) by erroneously relying on a categorical exclusion for each of the properties.[68] The Village states, in a letter dated December 2, 2008, there should be an EIS

[68] Village of Hobart's Opening Brief at 81, Hobart, 57 IBIA 4 (No. 11-045) (citing 516 DM 2, Appendix 2 at 2.3).

prepared to assess the impact of placing 2,673 acres (133 parcels) into Trust.[69] This Decision only addresses the 8 remanded decisions comprising 499.022 acres (22 parcels).

At the time of the application, the Oneida Nation proposed to: 1) maintain the existing agricultural and/or residential use for seven of the eight Hobart properties; and 2) maintain land use on the Buck property with the possibility of future residential development. However, the Nation later clarified that no construction is likely on the Buck site in the foreseeable future. Currently, the Buck property is designated rural vacant and has minimal development.[70] Therefore, all applications for the Hobart properties contemplate maintaining the current land use and a categorical exclusion is appropriate, thereby rendering an environmental impact statement unnecessary.

602 DM 2 (Phase I Environmental Site Assessment)

The Village has four claims related to 602 DM 2: (1) The Regional Director failed to comply with Part 602 of the Interior Department Manual because the DOI did not consult or coordinate with the Village on any environmentally related concerns, nor did the Department interview local government officials as part of the Phase I ESA;[71] (2) The Phase I ESA's were deficient and did not satisfy 25 CFR 151.10(h) because they identified environmental concerns nearby (e. g., an underground storage tank 0.2 miles from the Lahay property), yet no Phase II studies were completed.[72] (3) the Phase I ESAs were prepared or approved by an employee of the BIA who receives compensation from the Tribe pursuant to a side agreement between the Tribe and the BIA; (4) DOI failed to comply with Environmental Compliance Memorandum No. ECM 10-2, which the Village believes is mandatory. Each of these concerns is addressed below.

602 DM 2 prescribes Departmental policy, responsibilities, and functions regarding required determinations of the risk of exposing the Department to liability for hazardous substances or other environmental cleanup costs and damages associated with the acquisition of any real property by the Department for the United States. It requires the acquiring bureau to ascertain the nature and extent of any potential liability resulting from hazardous substances or other environmental problems associated with the subject property. Pre-acquisition Environmental Site Assessments (P1 ESA) procedures may be developed by the implementing bureau; however, these procedures must adopt current ASTM standards. P1 ESA(s) are prepared inclusive of four components: 1) Records review; 2) Site Reconnaissance; 3) Interviews; and 4) Report. It also requires the acquiring bureau to adopt current ASTM-standards to the implementing bureau's pre-acquisition environmental site assessment procedures.

The relevant ASTM requirements are as follows:

ASTM E1527-13[73] (Section 11.5.1) states interviews should occur with at least one staff member of *any one* of the following types of agencies: 1) state and/or local agency officials; 2) the local fire

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[69] Letter from Paul G. Kent, Attorney for the Vill. of Hobart, to Terrence Virden, Midwest Reg'l Dir., Bureau of Indian Affairs (Nov. 26, 2008) (on file with the Midwest Regional Office).

[70] Letter from Fred Muscavitch, Oneida Div. of Land Mgmt., to Scott Heber, Envtl. Prot. Specialist, Bureau of Indian Affairs (Mar. 6, 2009) (on file with the Midwest Regional Office).

[71] Village of Hobart's Opening Brief at 86, Hobart, 57 IBIA 4 (No. 11-045); Village of Hobart's Opening Brief at 85, 88, Hobart, 57 IBIA 4 (Nos. 10-131 & 11-002).

[72] Village of Hobart's Opening Brief at 85, Hobart, 57 IBIA 4 (No. 11-045).

[73] ASTM E1527-05 was effective until superseded by ASTM E1527-13 on November 1, 2013.

department serving the property; 3) state or local agency regulating hazardous waste; or 4) local agencies regulating building or groundwater permits.

ASTM E 1527 defines a "recognized environmental condition" as the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: 1) due to any release to the environment; 2) under conditions indicative of a release to the environment; or 3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not recognized environmental conditions. BIA-MRO uses Level I Contaminant Surveys as a resource to determine the presence or likely presence of an environmental condition on a given property, as permitted by the ASTM standards.

The ASTM standards also define an Environmental Professional as "a person meeting the education, training, and experience requirements as set forth in 40 CFR § 312.10(b)." BIA-MRO hires qualified personnel in accordance with the standardized hiring practices as established and regulated by the Office of Personnel Management. Environmental professionals performing P1 ESAs are required by ASTM E 1527 to certify that: 1) the professional meets the definition of an Environmental Professional and; 2) the study was developed and performed in conformance with the standards and practices set forth in 40 CFR Part 312.

With respect to the Village's first claim, the Oneida Nation has operational divisions tasked with the delivery of services including environmental monitoring and land management. In this case, interviews were conducted with Oneida Nation's environmental and land department staff. These Oneida Nation governmental agencies have intimate knowledge of the properties and are the best source of information regarding potential contamination on the properties. In combination with extensive site visits, these interviews serve to meet the requirements of ASTM E1527.

With respect to the Village's second claim – that environmental concerns warranted a level II study – evidence was not found on the Hobart properties that justified the issuance of notice of a recognized environmental condition as defined by the applicable ASTM standard. The BIA-MRO complied with 602 DM 2 for the Hobart properties through the development and approval of P1 ESA(s) for the subject properties. None of the P1 ESA(s) identified recognized environmental conditions in accordance with ASTM E1527. Therefore, no further environmental investigation was/is required on the subject properties.

Phase 1 Environmental Site Assessment(s) (ESA) were prepared by BIA-MRO on the following dates:

Boyea	1) 07/2009; 2) 12/2009; 3) 04/2016; 4) 09/2016
Cornish	1) 02/2010; 2) 04/2016; 3) 09/2016
Gerbers	1) 01/2010; 2) 04/2010; 3) 04/2016; 4) 09/2016
Buck	1) 03/2009; 2) 12/2009; 3) 04/2016; 4) 09/2016
Catlin	1) 02/2010; 2) 05/2010; 3) 04/2016; 4) 09/2016
Calaway	1) 02/2010; 2) 05/2010; 3) 04/2016; 4) 09/2016
DeRuyter	1) 02/2009; 2) 05/2009; 3) 04/2016; 4) 09/2016
Lahay	1) 08/2010; 2) 02/2016; 3) 09/2016

The Regional Director has approved the NEPA Coordinator Review and Phase I Environmental Site Assessment Report (Update) for the Hobart Parcels on the dates listed below.

Boyea	September 19, 2016
Cornish	September 19, 2016
Gerbers	September 19, 2016
Buck	September 19, 2016
Catlin	September 19, 2016
Calaway	September 19, 2016
DeRuyter	September 19, 2016
Lahay	September 12, 2016

The Village's third claim, which involves claims of institutional bias, is discussed in the subsequent section. Finally, with respect to the issue of compliance with ECM 10-2, compliance is not mandatory. 602 DM 2.6(a) allows bureaus to establish their own pre-acquisition environmental site assessment procedures. Interim Guidance issued by the Director of the Bureau of Indian Affairs on June 27, 2012, specifies that "non-scope considerations" discussed in ECM 10-2 should be implemented in the same manner as they were prior to April 25, 2009 and need not be analyzed in the Phase I.[74]

Therefore, the Phase I site assessments for the parcels satisfy the requirements of 602 DM 2, and we find the Village's concerns to be without merit.

Bias

On remand, the IBIA directed the Regional Director to consider in the first instance the Village's allegations of institutional bias in the decision making and also to address the following issues: the outcome of the investigation by the Inspector General of the Department (IG) referenced in a 2006 Government Accountability Office (GAO) report; the relevance, if any, of that IG investigation to the Village's allegations; and any corrective actions that may have been taken in response to the IG investigation prior to the Oneida Notices of Decision (NODs) at issue, if relevant to the Village's allegations of bias.[75]

Village Bias Allegations

The Village of Hobart did not allege actual bias by the Regional Director in issuing the Oneida NODs or by BIA employees in reviewing the Nation's applications or in preparing the records the Regional Director relied on in issuing the NODs. The Village pointed to no materials in the administrative record to show actual bias or substantive error,[76] and the Village ultimately stated it did not claim structural bias against the BIA.[77]

The Village instead alleged bias based on a FY2008-FY2010 memorandum of understanding between the Midwest Region and participating tribes in the Region (the Midwest MOU or MOU),

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[74] Memorandum from Dir., Bureau of Indian Affairs to All Reg'l Dirs."Interim Guidance - ECM 10-2" (June 27, 2012) (on file with the Midwest Regional Office).

[75] Village of Hobart v. Midwest Reg'l Dir., Bureau of Indian Affairs, 57 IBIA 4, 16 (2013).

[76] Fero v. Kerby, 39 F.3d 1462, 1478 (10th Cir. 1994); McQueen v. Acting Northwest Reg'l Dir., 63 IBIA 222, 232 (2016).

[77] Village of Hobart's Combined Reply Brief to Appellee's Brief and Oneida Tribe of Indians' Brief, Village of Hobart v. Midwest Regional Director, Dkt. Nos. IBIA 10-107, 10-91, 10-92 at 28 (Oct. 27, 2010) ("Hobart Reply") ("The Village's bias argument is not based on structural bias within the BIA").

including the Oneida Nation.[78] The Village asserted that the MOU made "clear" that the Oneida NODs "were not the product of a neutral, independent decision maker."[79] The Village alleged in particular that:

- the MOU lacked statutory authority;[80]
- the Nation paid the salaries of BIA employees directly;[81]
- BIA employees worked only on fee-to-trust applications submitted by MOU tribes;[82]
- the MOU governed BIA employees;[83]
- BIA employees were "members" of a Tribal consortium";[84]
- the Regional Director could not reasonably rely on documents prepared by BIA employees.[85]

Although the Regional Director responded to the Village's claims in briefing before the IBIA, the IBIA remanded the Village's claims to the Regional Director to consider in the first instance.

Burden of Proof for Bias Claims

The BIA's review of an application to take land into trust is subject to the Due Process clause and must be fair and unbiased.[86] Because public officers are presumed to discharge their official duties properly,[87] a party challenging an administrative decision for bias bears a heavy burden of persuasion.[88] A party must ordinarily demonstrate either actual bias by the decision-maker or circumstances such that an appearance of bias creates a conclusive presumption of actual bias.[89]

The BIA's policies of self-determination, Indian self-governance, and hiring preference for Indians are policies established by Congress in the Indian Reorganization Act,[90] ISDEAA and TSGA. Such policies are reasonable and rationally designed to further Indian self-government and do not

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[78] A description of the Midwest MOU is provided below.
[79] Hobart Reply at 30.
[80] Hobart, 57 IBIA at 15, citing Village of Hobart's Opening Brief, Dkt. Nos. IBIA 10-107, 10-91, 10-92 at 43-44 (July 29, 2010) ("Hobart Op. Br."); Hobart Reply at 29.
[81] Hobart Op. Br. at 44; Hobart Reply at 28-31 (Tribe pays large sums of money for the salaries of the BIA employees who process Tribe's fee-to-trust applications).
[82] Hobart Op. Br. at 44.
[83] Id.
[84] Id. at 48.
[85] Id. at 48.
[86] County of Charles Mix v. U.S. Dep't of the Interior, 799 F.Supp. 2d 1027, 1043 (D.S.D. 2011), citing Withrow v. Larkin, 421 U.S. 35, 46-47 (1975). See also State of South Dakota, et al. v. U.S. Dep't of the Interior, 401 F. Supp. 2d 1000, 1011 (D.S.D. 2005), aff'd, 475 F.3d 993, opinion replaced 487 F.3d 548 (8th Cir. 2007) (BIA review of fee-to-trust application subject to due process clause and must be unbiased).
[87] State of South Dakota, 401 F.Supp.2d at 1011, citing Sokaogon Chippewa Cmty. v. Babbitt, 929 F.Supp. 1165, 1176 (W.D. Wisc. 1996). See also Menard v. FAA, 548 F.3d 353, 361 (5th Cir. 2008) (administrative officers presumed objective and capable of fairly rendering decision in matter based on its own circumstances); Withrow, 421 U.S. at 47 (party alleging administrative bias must overcome presumption of honesty and integrity in those serving as adjudicators).
[88] State of South Dakota, 401 F.Sup.2d at 1011 (party alleging administrative bias bears "heavy burden" to show unfairness).
[89] Fero, 39 F.3d at 1478 ("compelling" evidence of actual bias or prejudice required for disqualification). See also DCP Farms v. Yeutter, 957 F.2d 1183, 1188 (5th Cir. 1992); Menard, 548 F.3d at 360.
[90] State of South Dakota, 401 F.Supp. at 1011.

violate due process,[91] and following Congress' statutory policies does not establish structural bias warranting reversal of a BIA official's decision.[92] The federal courts and the IBIA have rejected claims challenging decisions by BIA officials to acquire land in trust under the IRA based on structural bias.[93] Lacking allegations of actual bias, the Regional Director interprets the Village's claim of "blatant bias"[94] as alleging the circumstances that create a conclusive presumption of actual bias[95] sufficient to override the presumption of honesty and integrity of BIA employees.[96]

The 2006 IG Investigation and Its Relevance

The Village's claims of bias relied on a reference to an investigation by the Department's Inspector General contained in report of the Government Accountability Office on the processing of fee-to-trust applications by the BIA.[97] The IG investigation concluded its investigation two months after publication of the 2006 GAO Report.[98]

The IG Report, titled "California Fee to Trust Consortium MOU," examined a fee-to-trust memorandum of understanding utilized by the BIA Pacific Region since 2000 (the Pacific MOU). The purpose of the IG's investigation was to consider whether the use of such MOUs raised potential conflicts of interest or improperly augmented appropriations. In issuing its Report and closing its investigation in September 2006, the IG agreed that the MOUs did not violate government-wide ethics rules, were not inconsistent with ISDEAA, and their use of Tribal Priority Allocation funds did not constitute an unlawful augmentation of appropriations. The IG found no instances of a lack of impartiality in the processing of fee-to-trust applications. However the IG concluded that the terms of the Pacific MOU as written could be interpreted as giving MOU tribes authority over funding and staffing of the Pacific Region fee-to-trust consortium and thus give rise

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[91] South Dakota, 401 F.Supp. at 1011, citing Morton v. Mancari, 417 U.S. 535, 555 (1974).

[92] South Dakota, 401 F.Supp.2d at 1011, citing Brooks v. N.H. Sup. Ct., 80 F.3d 633, 640 (1st Cir. 1996); see also Doolin Security Savs. Bank v. FDIC, 53 F.3d 1395, 1407 (4th Cir. 1995), cert. denied, 516 U.S. 973.

[93] See South Dakota v. United States DOI, 775 F.Supp.2d 1129, 1141 (D.S.D. 2011); Roberts County, S.D. v. Acting Great Plains Reg'l Dir., 51 IBIA 35, 48 (2009) (argument that structural bias disqualifies BIA as decision-maker squarely rejected by the courts); Starkey v. Pacific Reg'l Dir., 63 IBIA 254, 270 (2016).

[94] Hobart Op. Br. at 48.

[95] Fero v. Kerby, 39 F.3d 1462, 1478 (10th Cir. 1994) ("compelling" evidence of actual bias or prejudice required for disqualification). See also DCP Farms v. Yeutter, 957 F.2d 1183, 1188 (5th Cir. 1992); Menard v. FAA, 548 F.3d 353, 360 (5th Cir. 2008).

[96] Fero, 39 F.3d at 1478. The Village appears to assert that it failed to raise the issue of bias earlier because it learned of the Midwest MOU after the Regional Director rendered her decisions. Hobart Reply at 28-29.

[97] Hobart Op. Br. at 43-45, citing U.S. Government Accountability Office, GAO-06-781: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications at 20 (July 2006) ("2006 GAO Report"). See also Hobart, 57 IBIA at 15-16.

[98] U.S. Dept. of the Interior, Office of Inspector General, "Report of Investigation: California Fee to Trust Consortiums MOU," Case No. PI-PI-06-0091-I (Sept. 20, 2006) ("IG Report") (on file at BIA Midwest Regional Office). When issued, the Office of the Inspector General stated that further disclosure of the IG Report could only be made with the express written consent of the IG Office of General Counsel. In 2013, the IG provided a redacted version of the IG Report in response to a request made under the Freedom of Information Act, 5 U.S.C. § 552. See Appellants No More Slots Opening Brief, Ex. I, Kramer, et al. v. Pacific Reg'l Dir. (AS-IA) (Dec. 31, 2015). All references to the IG Report herein are to the redacted FOIA version.

to the appearance of bias, for which reason the IG Report recommended that the MOU as then structured be discontinued.

The IG Report focused on the structure and implementation of the Pacific MOU as it then existed. However it included a brief discussion of the Midwest MOU as it then existed. The IG Report noted that the Midwest MOU had been reviewed by the Department's Office of the Solicitor prior to its utilization in 2004. The terms of the Midwest MOU differed the Pacific MOU's terms, including, among other things, provisions making clear that BIA staff who processed fee-to-trust applications pursuant to the Midwest MOUs were federal employees governed by Title 5 of the United States Code.

I conclude that the 2006 IG investigation has no bearing on the Village's current bias claim. First, contrary to the Village's claims, the IG investigation found no instances of actual bias in the BIA's processing of fee-to-trust applications under either the Pacific or Midwest MOU. The IG agreed that the consortiums did not violate government-wide ethics rules, were not inconsistent with ISDEAA and that the reprogramming of TPA funds (described below) did not constitute an unlawful augmentation of appropriations. Second, the IG investigation centered on the terms of the Pacific MOU then in use, not the Midwest MOU. As both the IG and the 2006 GAO Report pointed out, the Midwest MOU was implemented in 2004 after review by the Office of the Solicitor.[99] Finally, the MOUs in effect at the time of the IG investigation have both long since expired and been replaced by restructured MOUs. The 2004 Midwest MOU was replaced by the FY2008-FY2010 MOU, which was in effect when the Oneida NODs issued.

Based on these circumstances, we conclude that the IG investigation and its subsequent Report do not create a conclusive presumption of actual bias[100] sufficient to override the presumption of honesty and integrity of BIA employees. For the reasons that follow, we conclude that the FY2008-FY2010 Midwest MOU does not show a conclusive presumption of actual bias sufficient to override the presumption of honesty and integrity of BIA employees.

The Midwest MOU

As explained in the prior proceedings,[101] authority for the Midwest MOU derives from the Indian Self-Determination and Education Assistance Act (ISDEAA)[102] and the Tribal Self-Governance Act of 1994 (TSGA),[103] whose policies of tribal self-determination the Midwest MOU is intended to further. ISDEAA and TSGA permit tribes to contract with BIA to perform some or all of the realty functions that BIA would perform, other than those deemed inherently federal.[104] The Midwest MOU makes clear that the BIA retains control over all inherent federal functions in the trust acquisition process and that staff of the Midwest Region Division of Fee-to-Trust (described below) remain BIA employees with rights and obligations governed by Title 5 of the United States

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[99] *Id.* at 11. *See also* 2006 GAO Report at 20.

[100] Fero, 39 F.3d at 1478 ("compelling" evidence of actual bias or prejudice required for disqualification). See also DCP Farms v. Yeutter, 957 F.2d 1183, 1188 (5th Cir. 1992); Menard, 548 F.3d at 360.

[101] See Appellee's Brief, Village of Hobart v. Midwest Regional Director, Dkt. No. IBIA No. 10-107, 10-91, 10-92 at 29-31 (Sept. 27, 2010) ("RD Resp. Br.").

[102] Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638, 88 Stat.2203 (Jan.4,1975), as amended, codified as 25 U.S.C. § 5301 et seq. (2012), and implementing regulations.

[103] Tribal Self-Governance Act of 1994, Pub. L. 103-413, 108 Stat. 4271 (Oct. 25, 1994), codified as 25 U.S.C. § 5361 et. seq., and implementing regulations.

[104] Id. at 29-30.

Code.[105] The Regional Director alone approves all environmental documents and makes all final decisions with respect to applications submitted pursuant to the Midwest MOU, and her decisions remain subject to review by the IBIA.[106] As the courts and the IBIA have noted, BIA decision-making is not institutionally biased when it complies with applicable statutes and congressional policy toward Indians.[107]

Relying on the statutory authority of ISDEAA and the TSGA, the Midwest Region implemented the Midwest MOU in 2004 to address a growing backlog of fee-to-trust applications caused by limited BIA funding. Under the Midwest MOU, each participating tribe agrees to the reprogramming of federal Tribal Priority Allocation (TPA) funds for use by the Midwest Region to increase the number of BIA employees available to process fee-to-trust application packages.

The use of TPA funding for Midwest Region realty operations is consistent with the congressional policies and purposes behind ISDEAA. TPA funds are federal appropriations earmarked for use for tribal government operations and service provision.[108] TPA funds may be allocated among eight general categories, including Trust Services, a sub-activity that encompasses the processing of fee-to-trust applications.[109] Tribes may access TPA funds directly through contracts to operate tribal programs, or they may leave TPA funds with BIA for use in BIA-provided services[110] and for BIA management and administrative costs.[111] A Regional Director has the authority to approve reprogramming within his or her Region's TPA base.[112] In reprogramming TPA funds, BIA reallocates funds within the Department of the Interior's Indian Affairs accounting system from one program class to another.[113] Though reprogrammed for use by the Midwest Region, TPA funds are and remain federal funds appropriated by Congress for use in delivering tribal programs and services.

The Village's claims of bias relied in part on a misreading of a 1998 GAO report on TPA funds.[114] The report did not "call[] into question" TPA funds, as the County asserted, but raised concerns for how TPA funds were distributed among tribes. Far from suggesting the Regional Director's

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[105] Id. at 30.
[106] Id.
[107] Id. at 30-31, citing State of South Dakota, 401 F.Supp.2d at 1011.
[108] Harvard Project on American Indian Economic Development, California Fee-to-Trust Consortium at 2 (2010). Available at: http://hpaied.org/sites/default/files/publications/california%20fee-to-trust.pdf.
[109] U.S. Dept. of Interior, Bureau of Indian Affairs, Report on Tribal Priority Allocations 14 (July 1999) ("DOI TPA Rpt.") at 48, 140-42.
[110] U.S. Government Accountability Office, GAO/RCED-98-181: Tribal Priority Allocations Do Not Target the Neediest Tribes 4 (July 1998) ("GAO 98-181") at 3; Samish Indian Nation, 657 at 1336 (Fed. Cir. 2011); see also 25 C.F.R. part 1000.
[111] U.S. Government Accountability Office, GAO/T-RCED-98-168: BIA's Distribution of Tribal Priority Allocations 1 (April 21, 1998). *See also* U.S. Commission on Civil Rights, A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country 25 (July 2003). Funding agreements under the TSGA permit tribes to administer services and activities provided through BIA and to specify the functions and responsibilities of the tribe and Secretary pursuant to such agreement. 25 U.S.C. § 458cc (now codified as 25 U.S.C. § 5363). Under such agreements, tribes may elect to allow BIA to retain TPA funds for BIA to carry out functions that a Tribe could have assumed but chose not to. See also 25 C.F.R. § 1000.101 (tribal shares may be left, in whole or part, with BIA for certain programs); 25 C.F.R. § 1000.82(c).
[112] 26 IAM § 5.5.B(3).
[113] Indian Affairs Manual (IAM), ch. 26, § 5.3.A.
[114] Hobart Reply at 30, n. 90, citing GAO 98-181 at 1, 3.

reprogramming of TPA funds was improper, the GAO noted that tribes may receive TPA funds *either* through contracts for operating tribal programs *or* "through BIA-provided programs."[115]

Tribes that participate in the Midwest MOU do not "contribute" or otherwise "return" federal funds to the BIA.[116] The BIA reprograms the funds it already holds within its TPA base for use in providing trust services, which includes the processing of fee-to-trust applications. Such reprogramming is consistent with the purpose behind TPA, which is to "further Indian self-determination by giving the tribes the opportunity to establish their own priorities and to move funds among programs accordingly, in consultation with BIA."[117] By relying on Tribal governments to identify their own spending priorities based on their needs,[118] TPA allows tribes to decide how scarce federal funds should be allocated for tribes' needs.[119]

Midwest Region Division of Fee-to-Trust

The Midwest MOU establishes the Division of Fee-to-Trust (Division) within the Midwest Regional Office to process fee-to-trust application submitted by participating tribes. The staff of the Division, who are all BIA employees with rights governed by Title 5 of the United States Code, consist of a Supervisory Realty Specialist (SRS), a Program Analyst and five Realty Specialists, as well as an Environmental Protection Specialist position committed to providing services under the Division of Environmental, Cultural Resources Management and Safety (DECRMS). The SRS supervises the Division and reports directly to the Deputy and Regional Director outside the Division. Division employees have no supervisory authority over BIA staff outside the Division. None of the TPA funds reprogrammed for the Division's operations fund staff outside the Division.

The Village made the following allegations about BIA employees of the Division: that they work only on fee-to-trust applications submitted by participating tribes; that records they prepared were biased, inaccurate, and not to be relied on; that they were "members" of a tribal consortium; and that they were regulated by the Midwest MOU. The Village's claims rely solely on the terms of the Midwest MOU, and the Village pointed to no other evidence in the administrative record to support its claims.

As noted above, BIA employees within the Division are federal employees with rights and responsibilities governed by Title 5 of the United States Code. BIA employees in the Division are not required to work "solely" on applications from MOU tribes,[120] and may process fee-to-trust applications for non-MOU tribes as their workload allows. By focusing their efforts on the fee-to-trust applications of MOU tribes, BIA staff in the Division free BIA realty specialists outside the Division to tend to realty matters for non-MOU tribes. BIA employees of the Division play no

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[115] GAO 98-181 at 3.
[116] Hobart Op. Br. at 45; Hobart Reply at 29.
[117] GAO 98-181 at 4.
[118] DOI TPA Rpt. at 14. See, e.g., 25 C.F.R. § 46.2 (defining TPA as BIA budget formulation process allowing direct tribal government involvement in the setting of relative priorities for local operating programs); 25 C.F.R. § 1000.101 (Tribal shares may be left in whole or in part with BIA for certain programs at the discretion of a Tribe or Tribal consortium); 25 C.F.R. § 1000.82 (requiring ISDEAA annual funding agreements to specify funding to be retained by BIA to carry out functions that a Tribe or Tribal consortium could have assumed but elected to leave with BIA).
[119] DOI TPA Rpt. at 14. See, e.g., Mountain Community College v. Acting Aberdeen Area Dir., 34 IBIA 131 (1999) (Tribal challenge to BIA reprogramming of TPA funds).
[120] Hobart Op. Br. at 44.

role in preparing fee-to-trust applications for submission, and their role is limited to the review and processing of submitted applications.

The Midwest MOU does not provide or change the standards by which fee-to-trust applications must be reviewed. In reviewing fee-to-trust applications, all BIA employees must fulfill completely the requirements of 25 C.F.R. Part 151 and the BIA's standard procedures for processing fee-to-trust applications set forth in the BIA's *Fee-to-Trust Handbook.*[121] BIA employees in the Division evaluate each fee-to-trust application according to the factors set forth in 25 C.F.R. Part 151, document their case analysis, and prepare draft decision documents based only on the facts in the record.[122] The Deputy Regional Director-Trust Services, a BIA employee outside the Division, reviews all application recommendations by Division staff before forwarding them to the decision maker for final determination. Final determinations are then made by the Regional Director.

As explained above, the Midwest MOU is consistent with ISDEAA and TSGA. Division employees do not perform any inherently federal functions, which are instead exercised only by authorized Region officials, whose decisions remain subject to review by the IBIA or Assistant Secretary – Indian Affairs pursuant to 25 C.F.R. Part 2. Division staff are limited to performing the same administrative requirements for processing fee-to-trust applications under 25 C.F.R. Part 151 as non-Division staff. The fact that ISDEAA already prohibits consortium employees from exercising inherent federal functions eliminates the need for the Midwest MOU to state this expressly.[123]

The structure of the Midwest MOU and the operation of the Division of Fee-to-Trust are consistent with the policy and provisions of ISDEAA and with the purposes that motivated its enactment by Congress. Congress declared that the purpose of ISDEAA was to assure "maximum Indian participation in the direction of...Federal services...so as to render such services more responsive to the needs and desires of those communities."[124] Congress further declared its commitment to "effective and meaningful participation by the Indian people in the planning, conduct and administration" of such programs and services.[125]

Corrective Actions

The 2006 IG Report did not specifically identify corrective actions to be taken beyond recommending that BIA restructure the MOUs to prevent the appearance of bias or a conflict of interest. The IG found no actual instances of a lack of impartiality in the processing of fee-to-trust applications in the Midwest or Pacific Regions. As noted by the IG, the original 2004 Midwest MOU was reviewed by the Field Solicitor prior to implementation. As noted above, the original 2004 Midwest MOU was subsequently revised and replaced by the FY2008-FY2010 MOU, which was in effect when the Oneida NODs issued. As noted above, the Midwest MOU ensures against the appearance of bias or conflict of interest by relying on the statutory authority of ISDEAA and TSGA and the use of federally appropriated TPA funds; clarifying that Division staff are BIA federal employees subject to Title 5 of the United States Code and supervised by BIA staff outside

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[121] U.S. Dept. of the Interior, Bureau of Indian Affairs, Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook) (2014) ("FTT Handbook").

[122] FTT Handbook at 16.

[123] See U.S. Dept. of the Interior, Office of the Solicitor, "Inherently Federal Functions Under the Tribal Self-Governance Act" (May 17, 1996).

[124] 25 U.S.C. § 5302(a).

[125] 25 U.S.C. § 5302(b).

the Division; stating that Division staff must comply with all requirements of 25 C.F.R. Part 151; and making clear that only BIA officials with the delegated authority may exercise inherent federal functions.

Carcieri

The Village further claimed that the Midwest MOU is contrary to law because it does not address Carcieri v. Salazar, 555 U.S. 379 (2009).[126]

In Carcieri, the Supreme Court considered whether the United States could acquire land under Section 5 of the IRA for the Narragansett Tribe of Rhode Island. Section 5 gives the Secretary of the Interior the authority to acquire land in trust for "Indians."[127] Section 19 defines the term "Indians" as meaning, in relevant part, "all persons of Indian descent who are members of any recognized tribe now under federal jurisdiction."[128] Applying a strict statutory construction analysis, Justice Thomas for the Court held that the phrase "now under federal jurisdiction" unambiguously referred to tribes that were under federal jurisdiction in 1934 when Congress enacted the IRA. The parties had not disputed that the Narragansett Tribe was not under federal jurisdiction in 1934.

There is no reason for the Midwest MOU to expressly address Carcieri. The Midwest MOU provides that fee-to-trust applications shall be evaluated under 25 C.F.R. Part 151, section 151.10(a) of which already requires the Secretary to consider the statutory authority for each application "and any limitations contained in such authority." The Supreme Court's determination in Carcieri that "now" in Section 19 unambiguously means "1934" necessarily controls the Secretary's interpretation of the first definition of "Indian" in the IRA.[129]

Moreover, after the decision in Carcieri (and the start of this litigation), the Solicitor issued an M-Opinion interpreting the meaning of "under federal jurisdiction" as used in Section 19 of the IRA.[130] The analysis laid out in the M-opinion further supports our determination that the Tribe is "under federal jurisdiction" under *Carcieri*, as does the Board's prior ruling in this matter.[131]

No Bias Shown

The Village's claims of "blatant bias" do not satisfy the "difficult burden" of overcoming the presumption that the Regional Director discharged her duties properly in approving the Nation's applications.[132] The Village did not allege or show actual bias on the part of the Regional Director

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[126] Hobart Op. Br. at 49.
[127] 25 U.S.C. § 5108.
[128] 25 U.S.C. § 5129.
[129] Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 984 (2005), citing Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 131 (1990); Lechmere, Inc. v. NLRB, 502 U.S. 527, 536-537 (1992).
[130] U.S. Dept. of the Interior, Office of the Solicitor, The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, Op. M-37029 (March 12, 2014).
[131] Hobart, 57 IBIA at 17 (rejecting Village's claim that Oneida Nation was not under federal jurisdiction in 1934 and concluding "[i]t is evident the Tribe was").
[132] State of South Dakota, 401 F.Supp.2d at 1011, citing Sokaogon Chippewa Cmty. v. Babbitt, 929 F.Supp. 1165, 1176 (W.D. Wisc. 1996). See also Menard, 548 F.3d at 361 (administrative officers presumed objective and capable of fairly rendering decision in matter based on its own circumstances); Withrow, 421 U.S. at 47 (party alleging administrative bias must overcome presumption of honesty and integrity in those serving as adjudicators).

or any strong, direct interest by the Regional Director in the outcome of the Oneida NODs.[133] The Village did not show that the Regional Director rendered her decisions based on anything other than the record before her, or that she had any incentive to do otherwise.[134] The Village has not shown that the Regional Director failed to review the materials prepared by the Division in anything other than an objective manner. Even if the Village had provided evidence to show possible bias by BIA employees of the Division, the Village provided no basis to conclude that the Regional Director's independent review of the materials did not cure any such bias.[135] Indeed, the Village challenged no part of the administrative record for bias.[136] Moreover, the Midwest MOU ensures against the appearance of bias or conflict of interest by relying on the statutory authority of ISDEAA and TSGA and the use of federally appropriated TPA funds. It clarifies that Division staff are BIA employees subject to Title 5 of the United States Code who are supervised by BIA staff outside the Division. It makes clear that Division staff must comply with all requirements of 25 C.F.R. Part 151 and that only BIA officials with delegated authority may exercise inherent federal functions.

Based on the above, we conclude that the Village has provided no evidence to suggest the appearance of bias sufficient to create a conclusive presumption of actual bias.[137] Though it claims otherwise, the Village relies on the Midwest MOU to raise a claim of structural rather than actual bias. The IBIA and the federal courts have held, however, that following Congress' statutory policies does not establish structural bias warranting reversal of the Regional Director's decisions.

Conclusion

Based on the foregoing, we issue notice of our intent to accept the Hobart Parcels into trust status. Title will vest in the United States of America in trust for the Oneida Nation, in accordance with Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 5108,[138]provided the Nation delivers marketable title to the property in a manner as required in 25 CFR Part 151, Land Acquisition Regulations. In accordance with 25 CFR Part 151.13, we have requested an examination of the title evidence by the Office of the Field Solicitor, Bloomington, Minnesota, to determine whether title to the parcels is marketable. The parcels will not be accepted in trust until all identified title objections have been met.

Appeal Rights

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with 43 CFR § 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and **must be mailed within 30 days of the date that you receive this decision.** It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) Assistant Secretary – Indian Affairs, 1849 C Street N.W., Washington, D.C. 20240, (2) each

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[133] Fero, 39 F.3d at 1479.
[134] Id.
[135] Roberts County, S.D. v. Acting Great Plains Reg'l Dir., 51 IBIA 35, 49 (2009)
[136] Menard, 548 F.3d at 361.
[137] Fero v. Kerby, 39 F.3d 1462, 1478 (10th Cir. 1994) ("compelling" evidence of actual bias or prejudice required for disqualification). See also DCP Farms v. Yeutter, 957 F.2d 1183, 1188 (5th Cir. 1992); Menard v. FAA, 548 F.3d 353, 360 (5th Cir. 2008).
[138] Formerly § 465.

interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. If you file a notice of appeal, the Interior Board of Indian Appeals (IBIA) will notify you of further procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

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

Sincerely,

Acting Regional Director

CC BY CERTIFIED MAIL:

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

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Office of the Executive
Brown County
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Hobart Village President
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Patrick Pelky, (acting) Director
Division of Land Management
Oneida Tribe of Indians of Wisconsin
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Oneida, Wisconsin 54155

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

EXHIBIT A – LEGAL DESCRIPTIONS

Boyea

All that part of Indian Claims 153, 154, 171, and 172; all of Indian Claims 170; Section 34, Township 24 North, Range 19 East of the Fourth Principal Meridian, and Section 3, Township 23 North, Range 19 East of the Fourth Principal Meridian, Town of Hobart, Brown County, Wisconsin, containing a combined total of 80.11 acres more or less. Tax Parcel Nos. HB-1327-3, HB-1331, HB-1366, HB-1367 and HB-1371-1, which is more fully described as follows:

Commencing at SW corner of said Section 34; thence N 84°37'54"E, 178.64 feet to the Point of Beginning; thence N 31° 06'08"E, 467.36 feet; thence along the arc of a curve to the left, 644.51 feet (chord bearing N 50°18'32" E, 643.21 feet); thence N 58°28'28" W, 277.11 feet; thence along the arc of a curve to the right, 16.38 feet (chord bearing S 43°51'38"W, 16.38 feet); thence S 58°28'58"E, 174.38 feet; thence along the arc of a curve to the left, 16.43 feet (chord bearing N 44°36'59"E, 16.43 feet); thence S 58°28'58"E, 102.51 feet; thence along the arc of a curve to the left, 427.70 feet (chord bearing N 39°48'52"E, 427.31 feet); thence N 35°37'42"E, 910.20 feet; thence N 86°46'26"E, 133.79 feet; thence N 78°48'40"E, 774.87 feet; thence S 70°06'21"E, 371 feet more or less to the center of Duck Creek; thence South to Southwesterly along said center, 3470 feet more or less; thence N 62°27'32"W, 1246 feet more or less; thence S 31°26'03"W, 580.24 feet; thence N 55°46'17"W, 684.91 feet to the Point of Beginning, excepting therefrom those parts used for roads purposes.

AND

Part of Lot 2, Volume 37, Certified Survey Maps, Page 374, as Document No. 1636330, Brown County Records, being part of Indian Claim 171, Section 34, T24N-R19E, of the 4th Principal Meridian, Town of Hobart, Brown County, Wisconsin, more fully described as follows:

Beginning at the Southeast corner of Lot 2, Volume 37, Certified Survey Maps, Page 374, as Document No. 1636330, Brown County Records, thence N58°28'58"W, 174.61 feet along the South line of said Lot 2 to the Easterly right-of-way of Riverdale Drive, also known as C.T.H. "J"; thence 20.44 feet along the arc of a 1949.86-foot radius curve to the left whose long chord bears N43°22'59"E, 20.44 feet; thence S58°28'58"E, 174.92 feet to the West right-of-way of the Kewaunee, Green Bay and Western Railroad; thence 20.50 feet along the arc of a 2826.92-foot radius curve to the right whose long chord bears S44°13'57"W, 20.50 feet to the Southeast corner of said Lot 2, Volume 37, Certified Survey Maps, page 374, Document No. 1636330, and the point of beginning.

Cornish

The North 1 acre of the South 9 acres of Government Lot C, Section 2, Township 23 North, Range 19 East, containing 0.852 acres, more or less, Fourth Principle Meridian, Brown County, Hobart, Wisconsin, excepting therefrom part described in Vol. 812 Records, page 241. Tax Parcel HB-91-3

Gerbers

Part of the Northwest Quarter of the Southwest Quarter (NW ¼ of SW ¼), and part of the Northeast Quarter of the Southwest Quarter (NE ¼ of SW ¼), and part of the Southeast Quarter of the Southwest

Quarter (SE ¼ of SW ¼), and all of the Southwest Quarter of the Southwest Quarter (SW ¼ of SW ¼), and part of Lot Eleven (11), all in Section Twenty-four (24), Township Twenty-three (23) North, Range Nineteen (19) East, of the Fourth Principal Meridian, in the Village of Hobart, Brown County, Wisconsin, described as follows:

Beginning at the Southwest corner, Section 24, Township 23 North, Range 19 East; thence North 00 deg. 41 min. 21 sec. East, 854.02 feet along the West line of the SW ¼; thence South 89 deg. 23 min. 36 sec. East, 771.91 feet; thence North 00 deg. 41 min. 58 sec. East, 600.00 feet; thence North 89 deg. 23 min. 36 sec. West, 772.02 feet; thence North 00 deg. 41 min. 21 sec. East, 580.90 feet; thence North 89 deg. 03 min. 30 sec. East, 1,026.23 feet; thence South 38 deg. 30 min. 02 sec. East, 377.27 feet; thence North 01 deg. 30 min. 21 sec. East, 959.80 feet; thence South 75 deg. 26 min. 13 sec. East, 1,137.26 feet; thence North 02 deg. 20 min. 04 sec. East, 16.84 feet; thence South 71 deg. 14 min. 01 sec. East, 169.86 feet; thence South 72 deg. 40 min. 25 sec. East, 385.20 feet; thence South 01 deg. 14 min. 10 sec. West, 411.55.feet; thence 57.39 feet along the arc of a 220.00 foot radius curve to the right whose chord bears South 08 deg. 42 min. 35 sec. West, 57.23 feet; thence South 16 deg. 11 min. 00 sec. West, 153.90 feet; thence 18.85 feet along the arc of a 12.00 foot radius curve to the right whose chord bears South 61 deg. 07 min. 04 sec. West, 17.00 feet; thence 66.07 feet along the arc of a 180.00 foot radius curve to the left whose chord bears North 84 deg. 28 min. 13 sec. West, 65.70 feet; thence South 85 deg. 01 min. 03 sec. West, 1,463.66 feet; thence 33.68 feet along the arc of a 20.00 foot radius

curve to the right whose chord bears North 46 deg. 44 min. 17 sec. West, 29.84 feet; thence North 01 deg. 30 min. 23 sec. East, 4.48 feet; thence North 88 deg. 29 min. 45 sec. West, 80.00 feet; thence South 01 deg. 30 min. 23 sec. West, 17.92 feet; thence 29.76 feet along the arc of a 20.00 foot radius curve to the right whose chord bears South 44 deg. 08 min. 18 sec. West, 27.09 feet; thence 30.81 feet along the arc of a 460.00 foot radius curve to the right whose chord bears South 88 deg. 41 min. 22 sec. West, 30.80 feet; thence South 00 deg. 36 min. 24 sec. West, 80.00 feet; thence 52.69 feet along the arc of a 540.00 foot radius curve to the left whose chord bears North 87 deg. 48 min. 45 sec. East, 52.67 feet; thence North 85 deg. 01 min. 03 sec. East, 776.80 feet; thence South 04 deg. 58 min. 57 sec. East, 400.00 feet; thence South 85 deg. 01 min. 03 sec. West, 458.09 feet; thence South 04 deg. 00 min. 56 sec. East, 463.37 feet; thence South 85 deg. 01 min. 07 sec. West, 310.00 feet; thence South 04 deg. 00 min. 56 sec. East, 467.00 feet; thence South 85 deg. 01 min. 07 sec. West, 1,355.52 feet to the point of beginning.

AND

Part of the Northwest Quarter of the Southwest Quarter (NW ¼ of SW ¼), and part of the Southwest Quarter of the Southwest Quarter (SW ¼ of SW ¼), Section Twenty-four (24), Township Twenty-three (23) North Range Nineteen (19) East, of the Fourth Principal Meridian, in the Village of Hobart, Brown County, Wisconsin, described as follows:

Commencing at the Southwest comer, Section 24, Township 23 North, Range 19 East; thence North 00 deg. 41 min. 21 sec. East, 854.02 feet along the West line of the SW ¼ of SW ¼, to the point of beginning; thence North 00 deg. 41 min. 21 sec. East, 600.00 feet; thence South 89 deg. 23 min. 36 sec. East, 772.02 feet; thence South 00 deg. 41 min. 58 sec. West, 600.00 feet; thence North 89 deg. 23 min. 36 sec. West, 771.91 feet to the point of beginning.

AND

Part of Lot One (I), Vol. 37 Certified Survey Maps, Page 359, Map No. 5724; said Map being part of the Southeast Quarter of the Southwest Quarter (SE ¼ of SW ¼), Section Twenty-four, (24), Township Twenty-three (23) North, Range Nineteen (19) East, of the Fourth Principal Meridian, in the Village of Hobart, Brown County, Wisconsin, described as follows:

Commencing at the South Quarter corner of Section 24, Township 23 North, Range 19 East; thence South 83 deg. 36 min. 46 sec. West, 545.92 feet; thence North 05 deg. 25 min. 18 sec. West, 680.37 feet to the point of beginning; thence South 83 deg. 36 min. 46 sec. West, 324.71 feet; thence North 05 deg. 25 min. 18 sec. West, 250.04 feet to the North line of Lot I, Vol. 37 Certified Survey Maps, Page 359, Map No. 5724; thence North 83 deg. 36 min. 46 sec. East, 324.71 feet to the East line of said Certified Survey Map; thence South 05 deg. 25 min. 18 sec. East, 250.04 feet along said line to the point of beginning. Combined, the total acreage is 103.85 acres more or less, Tax Parcel No. HB-328.

Buck

That part of Government Lot 6, Section 10, Township 24 North, Range 19 East, of the Fourth Principal Meridian, in the Village of Hobart, Brown County, Wisconsin, containing 10.01 acres, more or less, and described as follows:

Commencing at the West quarter section corner of Section 10; thence North 0 deg. 02 min. East along the West line of said Section 429.00 feet to the point of beginning; thence continuing North 0 deg. 02 min. East along said West line 890.66 feet to the Northwest corner of said Lot 6; thence North 87 deg. 54 min. 30 sec. East 495.00 feet to the Northeast corner of said Lot; thence South 0 deg. 2 min. West along the East line of said lot 893.00 feet; thence South 88 deg. 10 min. 30 sec. West 495.00 feet to the point of beginning, excepting therefrom that part used for road purposes. Tax Parcel No. HB-496

ALSO DESCRIBED AS:

A parcel of land located in part of Government Lot 6 of Section l0, Township 24 North, Range 19 East, of the Fourth Principal Meridian, in the Village of Hobart, Brown County, Wisconsin, containing 10.01 acres, more or less, and described as follows:

Commencing at the West quarter corner of Section 10; thence North 1 deg. 30 min. 10 sec. East along the West line of said Section 10 a distance of 429.00 feet to the point of beginning; thence continuing North 1 deg. 30 min. 10 sec. East along said line 890.77 feet to the Northwest corner of Government Lot 6; thence North 89 deg. 22 min. 40 sec. East along the North line of said Government Lot 6 490.12 feet to the Northeast corner of said Government Lot 6; thence South 1 deg. 36 min. 34 sec. West along the East line of said Government Lot 6 a distance of 892.44 feet; thence South 89 deg. 33 min. 58 sec. West 488.40 feet to the point of beginning, excepting therefrom that part used for road purposes.

Catlin

Part of the Southeast Quarter of the Northeast Quarter and part of the Northeast Quarter of the Southeast Quarter, all of Lot 3, Section 23, Township 23 North, Range 19 East, containing 80.15 acres more or less, Fourth Principal Meridian, Brown County, Hobart, WI, described as follows:

Commencing at the East quarter of Section 23, Township 23 North, Range 19 East, Fourth Principal Meridian; thence S89°25'17" W, a distance of 44.53 feet to the Point of Beginning; thence S00°41'59"W along the West right-of-way line South Pine Tree Road (C.T.H. "GE") a distance of 1313.39 feet; thence S89°59'53" W along the South line of the Northeast quarter of the Southeast quarter of Section 23 a distance of 1282.25 feet; thence N00°44'32" E along the West line of the Northeast quarter of the Southeast quarter of Section 23 a distance of 516.84 feet; thence S89°51'09" W along the South Line of Lot 3 a distance of 1313.03 feet; thence N01°14'31" E along the West line of Lot 3 a distance of 788.37 feet; thence S89°56'48" E along the North line of Lot 3 a distance of 1306.09 feet; thence N00°46'15" E along the West line of the Southeast quarter of the Northeast quarter of Section 23 a distance of 1080.41 feet; thence S53°11'38" E a distance of 971.88 feet; thence S59°33'31" E a distance of 569.69 feet; thence S00°41'59" W along the West right-of-way line of South Pine Tree Road (C.T.H. "GE") a distance of 196.49 feet to the Point of Beginning. Tax Parcel Nos. HB-316, HB-294 and HB 308.

Calaway

Part of Lots C, D, E and Lots 17, 18, 19, 23, 24, 25, 26 and 27 all in the Southeast 1/4, Section 26, Township 23 North, Range 19 East of the containing 104.34 acres more or less, Fourth Principal Meridian, Town of Hobart, Brown County, Wisconsin, more fully described as follows:

Commencing at the South 1/4 corner, Section 26, Township 23 North, Range 19 East of the Fourth Principal Meridian; thence N00 deg 06'28"E, 475.93 feet along the West line of the SW 1/4 of the SE 1/4 of said Section 26 to the point of beginning; thence N00 deg 06'28"E, 864.22 feet along said West line; thence N00 deg 09'31"E, 1,329.46 feet along the West line of the NW 1/4 of SE 1/4 of said Section 26 to the NW corner of NW 1/4 of the SE 1/4; thence N89 deg 54'53"E, 1,290.59 feet along the North line of the NW 1/4 of SE 1/4; thence S03 deg 02'10"E, 47.58 feet; thence N89 deg 17'54"E, 293.17 feet; thence S00 deg 13'31"W, 454.33 feet; thence N89 deg 27'05"E, 486.61 feet; thence S00 deg 21'44"W, 1,124.78 feet; thence S00 deg 08'36"E, 416.16 feet ; thence S00 deg 13'31"W, 342.41 feet to the centerline of Nathan Road; thence S68 deg 53'51"W, 638.55 feet along said centerline; thence 167.16 feet along the arc of a 800.00 foot radius curve to the right whose chord bears S74 deg 53'00"W, 166.86 feet to the East line of the SW 1/4 of the SE 1/4 of said Section 26; thence S00 deg 21'14"W, 9.00 feet to the South line of the SW 1/4 of the SE 1/4 of said Section 26; thence S89 deg 28'03"W, 35.01 feet along the South line of the SW 1/4 of the SE 1/4; thence N00 deg 21'18"E, 475.96 feet; thence S89 deg 28'02"W, 1,280.08 feet to the point of beginning. Tax Parcel Nos. HB-390-2, HB-380, HB-394 & pt of HB-386 (NKA HB-386-3).

DeRuyter

All of Government Lots 4, 5, 6, 10, and 11, part of Lot 12, and part of the Southeast 1/4 of the Southeast 1/4 of Section 23, Township 23 North, Range 19 East, containing 117.78 acres, more or less, Fourth Principal Meridian, Town of Hobart, Brown County, Wisconsin, more fully described as follows:

Commencing at the South 1/4 corner of Section 23, T23N-R19E; thence N00 deg 30'07"E, 46.28 feet along the West line of Lot 12 to the point of beginning; thence continuing N00 deg 30'07"E, 1267.48 feet along the West line of said Lot 12 and Lots 10 and 11 to the Northwest corner of said Lot 10; thence S89 deg 44'42"W, 991.14 feet along the South line of Lots 5 and 6, Section 23; thence N00 deg 28'21"E, 1323.63 feet along the West line of said Lot 6; thence S89 deg 41'08"E, 1008.71 feet along the North line of said Lots 5 and 6; thence S01 deg 14'31"W, 788.37 feet along the East line of said Lot 5; thence N89

deg 51'09"E, 1313.03 feet along the North line of Lot 4, said Section; thence S00 deg 44'32"W, 516.84 feet along the East line of said Lot 4; thence N89 deg 59'53"E, 1282.69 feet along the North line of the Southeast 1/4 of the Southeast 1/4 of said Section 23; thence S00 deg 41'26"W, 1200.31 feet along the Westerly right of way of C.T.H. "GE", also known as South Pine Tree Road; thence S44 deg 20'10"W, 87.62 feet to the Northerly right of way of C.T.H. "EE", also known as Orlando Drive; thence 374.29 feet along said right of way being the arc of a 11,414.20 foot radius curve to the right whose long chord bears S88 deg 49'26"W, 374.27 feet; thence S89 deg 45'48"W, 565.08 feet along said right of way; thence N00 deg 14'12"W, 282.91 feet; thence S89 deg 45'48"W, 611.12 feet; thence S00 deg 14'12"E, 282.91 feet; thence S89 deg 45'48"W, 984.93 feet along said right of way; thence S89 deg 40'48"W, 0.51 feet along said right of way to the point of beginning. Tax Parcels HB-295, HB-296, HB-317

And

All of Government Lots 3 and 13 and part of Lots 1 and 2, Section 26, Township 23 North, Range 19 East, containing 66.755 acres, more or less, Fourth Principal Meridian, Town of Hobart, Brown County, Wisconsin, more fully described as follows:

Commencing at the North 1/4 corner of Section 26, T23N-R19E; thence S00 deg 11'28"W, 43.72 feet along the West line of Lot 1, Section 26 to the point of beginning; thence N89 deg 40'48"E, 1.50 feet along the Southerly right of way of C.T.H. "EE", also known as Orlando Drive; thence N89 deg 45'48"E, 897.70 feet along said right of way; thence S00 deg 12'28"W, 140.00 feet along with West line of Parcel A, Volume 2, Certified Survey Maps, page 447, Brown County Records; thence N89 deg 45'48"E, 320.01 feet along the South line of said Parcel A; thence S00 deg 12'28"W, 117.00 feet; thence N89 deg 45'48"E, 101.00 feet; thence S00 deg 12'28"W, 1014.58 feet along the East lines of Lots 2 and 3, Section 26; thence S89 deg 49'36"W, 329.96 feet along the South line of said Lot 3; thence S00 deg 12'15"W, 1315.38 feet along the East line of Lot 13, Section 26; thence S89 deg 54'53"W, 989.58 feet along the South line of said Lot 13; thence N00 deg 11'31"E, 1313.86 feet along the West line of said Lot 13; thence N00 deg 11'28"E, 1270.12 feet along the West line of said Lots 1, 2, and 3, to the point of beginning. Tax Parcels: HB-363 and HB-375

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The South 14 rods (231 feet) of the West 22 Rods (363 feet) of the East 40 Rods (660 feet) of the Southeast Quarter of the Southeast Quarter of Section 10, Township 24 North, Range 19 East of the Fourth Principal Meridian, in the Town of Hobart, Brown County, Wisconsin, excepting therefrom that part being used for road purposes. The subject parcel contains 1.93 acres, more or less, and is also identified as Brown County Tax Parcel No. HB-520-1.