

BUREAU OF INDIAN AFFAIRS
MIDWEST REGIONAL OFFICE

2017 MAR 14 AM 9:05

Oneida Nation
Division of Land Management



To: Russell Baker, Supervisory Realty Specialist
From: Lauren N. Hartman, Realty Specialist Coordinator *LNH*
Date: 3/9/2017
Re: Memorandum of Understanding Fee to Trust Consortium
Cert #: 7012 3460 0003 7006 7859

Attached is the MOU signed by the Oneida Nation Chairwoman and Resolution

MEMORANDUM OF UNDERSTANDING

between

BIA Midwest Region

and

Oneida Nation

for participation in the

Midwest Region Division of Fee-to-Trust

FY 2018-2026

This Memorandum of Understanding ("MOU") is entered into by and between the Bureau of Indian Affairs Midwest Regional Office ("Region") and the Oneida Nation (the "Tribe") (collectively referred to as the "Parties") for the Fiscal Years 2018-2026.

1. Recitals.

Congress enacted the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §§ 461-479 (2012), to undo the severe damage to Tribes and Tribal economies from the loss of millions of acres of tribal lands as a result of the policies of allotment and assimilation, and further to establish means whereby tribes would be able to assume a greater degree of economic and political self-government.

Section 5 of the IRA authorizes the Secretary of the Interior, at her discretion, to acquire any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing lands for Indians. 25 U.S.C. § 465 (2012). The Secretary has promulgated regulations to implement Section 5 of the IRA that provide a uniform approach for taking lands into trust for tribes. 25 C.F.R. Part 151.

The need of Tribes in the Midwest Region to rehabilitate their land bases remains imperative today, as many Tribes still lack enough lands for current housing, community, and economic development needs, and some tribes may lack any lands at all.

Limited budget appropriations restrict the resources available to BIA for providing trust services, including realty services and the processing of fee-to-trust applications. A growing backlog of fee-to-trust applications has resulted, creating greater demands on BIA staff and impacting the provision of other services, such as the review of lease and rights-of-way applications.

Tribal Priority Allocation funding ("TPA") is a unique part of the Federal Indian budget that relies on Tribal governments to identify spending priorities based on the most critical needs of their communities, allowing Tribes a say in deciding how scarce Federal resources should be

allocated. Through the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 *et seq.* (2012), and the reprogramming procedures adopted by the Congressional appropriations committees, Tribes have the ability to reallocate TPA from one program to another after appropriations are enacted.

TPA is the principal source of funding for Tribal government operations and the provision of services to Tribal members. Consistent with its commitment to maintain the government-to-government relationship with Tribes, Congress has authorized Tribes to prioritize funding among the various TPA programs according to their unique needs and circumstances. These programs are authorized by, and in some instances derive directly from, legislation expressly aimed at carrying out the Federal government's responsibilities and obligations to Tribes and individual Indians.

2. Purpose.

The purpose of this agreement is to facilitate the timely processing of fee-to-trust applications submitted by Region tribes; to reduce the backlog of such applications in the Region; and to improve the delivery of all BIA realty services for all Tribes in the Region. To achieve that end, Tribes entering this MOU and the BIA agree to the reprogramming of TPA for use to hire additional BIA staff devoted to processing fee-to-trust applications submitted by Tribes in the Region.

3. Authority.

The authority to enter into this MOU includes the following:

- (a). Snyder Act of 1921, Pub. L. 67-85, 42 Stat. 208, codified as 25 U.S.C. § 13.
- (b). Indian Reorganization Act of 1934, 48 Stat. 984 (June, 18, 1934), codified as 25 U.S.C. §§ 461, *et seq.*, and implementing regulations.
- (c). 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. §§ 450 *et seq.* (2012), and implementing regulations.
- (d). Tribal Self-Governance Act of 1994, Pub. L. 103-413, 108 Stat. 4271 (Oct. 25, 1994), codified as 25 U.S.C. §§ 458aa, *et seq.* (2012), and implementing regulations.
- (e). Department of the Interior, Indian Affairs Manual, Part 26, ch. 5 (Budget Reprogramming) (2009).
- (f). Department of the Interior, Departmental Manual, Part 516, ch. 10 (Managing the NEPA Process – Bureau of Indian Affairs) (2004).
- (g). Department of the Interior, Departmental Manual, Part 602, ch. 2 (Real Property Pre-Acquisition Environmental Site Assessments) (2016).

4. MOU Term.

- (a). Required Documentation: This MOU shall not take effect until the Tribe has submitted the following documentation to the Midwest Regional Director:
- i. A signed Tribal Resolution authorizing the re-programming of the Tribe's TPA funds in an agreed amount and acknowledging the commitment as a signatory to the MOU to be bound by its terms;
 - ii. A signed copy of this Agreement and any additional paperwork necessary to facilitate the re-programming of TPA funds being committed to the Division of Fee to Trust (Division) project; and
 - iii. A letter identifying the tribal representative and alternate(s) designated to represent the Tribe in the Division Advisory Council defined in Section 7 below. The Tribe may re-designate its tribal representative and alternate(s) at its discretion.
- (b). Initial Term. The term of the MOU shall be from fiscal year FY 2018 through the end of fiscal year FY 2026, beginning October 1, 2017.
- (c). Renewal. The MOU shall terminate automatically unless renewed by the Parties in writing at least six (6) months before the end of the MOU's final fiscal year.
- (d). Withdrawal. A Tribe may withdraw from the MOU by giving written notice, by Tribal Resolution, of such intent to the Midwest Regional Director at least ninety (90) days before the end of the then-current fiscal year. A timely notice of withdrawal shall not take effect until the end of the fiscal year in which it is submitted and shall not reduce the amount of TPA funds authorized by the Tribe for use within that fiscal year. To ensure fiscal stability in program operations, a notice of withdrawal submitted less than ninety (90) days before the end of the fiscal year shall not take effect until the close of the next fiscal year.

5. Scope of Participation.

- (a). The Tribe authorizes the Region to re-program the Tribe's TPA funds for use in funding Division operations. The Division budget for the term of the MOU shall be determined in advance by the Regional Director in consultation with participating tribes and shall be divided evenly among participating tribes each fiscal year.
- (b). In the event a Tribe withdraws from the MOU pursuant to Section 4(d) above, the Division Advisory Council, as defined in Section 7 below, shall meet to determine what adjustments, if any, shall be made to the Division operating budget.
- (c). The Region shall ensure that all TPA funds reprogrammed pursuant to this agreement shall only be used to fulfill the purpose and intent of this agreement.
- (d). Newly recognized Tribes that have not yet received TPA funds may participate in the Division.

6. Division Operations.

(a). Division Staff.

- i. The Parties acknowledge that the Region shall use TPA funds reprogrammed pursuant to this MOU to hire additional employees to provide the support necessary to fulfill the MOU's purpose (the "Division Staff").
- ii. The Regional Director shall consult with participating tribes in determining the number and type of staff positions that will best fulfill the MOU's purpose before making any decision with respect thereto.
- iii. The Midwest Regional Office shall retain ultimate authority for the hiring, supervision and evaluation of Division Staff.
- iv. The rights of Division Staff as federal employees shall be governed by Title 5 of the United States Code.
- v. The Regional Director shall prescribe the duties and responsibilities of Division Staff consistent with federal law and the MOU's purpose.

(b). Division Supervisory Realty Specialist. The Division shall employ a Supervisory Realty Specialist ("SRS"), who shall be responsible for supervising the work of Division Staff. The SRS shall be responsible for assigning tasks to Division Staff in aid of the administrative processing of fee-to-trust applications pursuant to 25 C.F.R. Part 151. The SRS shall report directly to the Office of the Regional Director.

(c). Scope of Work.

- i. The SRS shall be responsible for ensuring that the review of each fee-to-trust application by Division Staff complies with the administrative requirements of 25 C.F.R. Part 151. These requirements may include, but are not limited to the following:
 - A. Maintaining a master checklist for each transition consistent with the BIA's fee-to-trust tracking system;
 - B. Ensuring adequate notice is provided to any local governments that may have jurisdiction over the property that is the subject of a fee-to-trust application;
 - C. Providing technical assistance to applicants in the preparation of fee-to-trust applications and reviewing and commenting on any deficiencies in any pending fee-to-trust application;
 - D. Reviewing and providing technical assistance on documentation required under 516 DM 6 (Managing the NEPA Process) and 602

DM 2 (Real Property Pre-Acquisition Environmental Site Assessments);

- E. Assisting in preparation of documents for the preliminary title examination, including assisting in the preparation of Preliminary Title Opinions ("PTOs") as requested by the Solicitor's Office, and preparing files for submission for Final Title Opinions; assisting applicants in the procurement of title commitments and policies; and providing assistance to applicants to cure objections noted in PTOs;
- F. Preparing a record for appeal under 25 C.F.R. Part 2 when required;
- G. Assisting in preparation of notices for publication under 25 C.F.R. § 151.12(b);
- H. Performing any other administrative requirements under 25 C.F.R. Part 151 as may be added in future.

- ii. Division Staff are prohibited from exercising inherent federal functions connected with the processing of fee-to-trust applications, and the Regional Director shall be responsible for ensuring the same. The Region shall review any draft notice or correspondence prepared by Division Staff before issuance.

(d). Record Keeping.

- i. Books of Account. The SRS shall be responsible to keep and maintain complete books of account of the Project's operations at the Midwest Regional Office, and for ensuring that all application transactions are fully and accurately entered into an appropriate database.
- ii. Fiscal Records. The SRS shall be responsible to keep and maintain all financial records of the Division, including its annual budget justification. Financial statements of the Division shall be prepared in accordance with generally accepted accounting principles. The fiscal year of the Project shall be October 1st through September 30th.
- iii. Other Records. In addition to the records described above, the SRS shall be responsible for maintaining:
 - A. The current contact information for each participating Tribe and their designated Advisory Council representatives and alternate(s);
 - B. Current copies of the executed MOUs and all other operating documents, if any;
 - C. All records described herein for the six (6) preceding fiscal years.
- iv. Annual Report. The SRS shall be responsible for preparing an annual report on

the status of Division fee-to-trust applications for distribution to participating Tribes and the Regional Director.

- v. Availability. The SRS shall make all records available for inspection and copying by the Tribe on reasonable notice during regular business hours. The Tribe shall bear all costs of such inspection and copying.

7. Division Advisory Council.

- i. Advisory Council. An advisory council composed of the Regional Director (or his or her designee) and an authorized representative from each participating Tribe is hereby established (the "Advisory Council"). The purpose of the Advisory Council shall be to serve as a liaison between participating Tribes and Region officials and to permit regular consultation to assure the fulfillment of the MOU's purpose and terms.
- ii. Meetings. The Advisory Council shall hold regular meetings at least once every quarter, unless otherwise waived by a quorum. Meetings may be held at a Regional Office or Agency, and the Regional Director shall use her or his best efforts to ensure a reasonable rotation among locations throughout the Region.
- iii. Special Meetings. Special Meetings of the Advisory Council may be called by the Regional Director, the SRS, or individual participating Tribes upon written notice delivered to each Advisory Council member and the SRS no less than five (5) days in advance of the meeting, said notice to include a meeting agenda.
- iv. By-laws. The Advisory Council may adopt by-laws to govern the call and conduct of meetings (including location, notice, quorum, voting, and minutes), provided, however, that in the event of any conflict between such by-laws and this agreement, the terms of this agreement shall control.
- v. Limitations. The Advisory Council shall have no authority to direct the exercise of the Region's discretion with respect to final determinations for any fee-to-trust application or as to the hiring, supervision or evaluation of any federal employee.
- vi. Budget Adjustments. In the event a participating Tribe withdraws from the MOU pursuant Section 4(d) above, the Regional Director shall call a meeting of the Advisory Council to consider what, if any, adjustments shall be made to the operating budget for the remaining term of the MOU.

8. Disputes.

Disagreements over the interpretation or implementation of the MOU shall be reviewed by the Advisory Council. The Region and participating Tribes agree to use all diligent efforts to resolve any disagreements consistently with the purposes of this MOU. In the event they are unable to do so, the Parties shall have recourse to the services of the

Department's Alternative Dispute Resolution Office.

9. Freedom of Information Act Requests

In the event the BIA receives a request pursuant to the Freedom of Information Act to provide information relating to fee-to-trust applications of the Tribe, the BIA shall disclose the same to the Tribe in accordance with BIA policies, including details of the specific information requested, as soon as is practicable.

10. Disclaimers.

- (a). Nothing in this MOU is intended to conflict with any current directive from the Department of the Interior or any applicable federal, state, or tribal law or regulation. If any of the terms of this MOU are determined to be inconsistent with applicable law or directives then those terms shall be invalid, all remaining terms and provisions shall remain in full force and effect.
- (b). Nothing in this MOU will be construed to grant, expand, create or diminish any legally enforceable rights, benefits or responsibilities, substantive or procedural, not otherwise granted or created by existing law. Nothing in this MOU will be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty right, or other rights of any Indian tribe or preempt, modify, or limit the exercise of any such right.
- (c). The parties hereto reserve all rights, powers, and remedies now or hereafter existing at law or in equity, or by statute, treaty, or otherwise, and joinder to this MOU shall not constitute a waiver of sovereign immunity.

11. Amendment.

Amendments to the MOU may be made if approved by a majority of participating Tribes and by the Regional Director.

CERTIFICATION

This MOU for fiscal year FY 2018 through fiscal year FY 2026 is hereby entered into by and between the Oneida Nation and the BIA Midwest Region and shall take effect on October 1, 2017.

FOR THE ONEIDA NATION:

By: *Joseph W. Sanford*
Designated Tribal Representative

Dated: 3/8/17

FOR THE BIA MIDWEST REGION:

By: *Michelle R. Colburn* Acting
Regional Director

Dated: 05/24/2017

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # 02-22-17-C

Memorandum of Understanding between the Oneida Nation and the BIA Midwest Regional Office, Division of Fee to Trust

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, it is the mission of the Oneida Nation to protect and improve the resources, the standards of living, and the environment in which the Oneida people live while maintaining, enforcing, and exercising the sovereign rights of the Oneida Nation; and

WHEREAS, the Oneida Nation has determined that regaining control over the land within the original Oneida Reservation in Wisconsin is one of its highest priorities; and

WHEREAS, the Oneida Nation participated in prior Memorandums of Understanding with the BIA Midwest Regional Office, Division of Fee to Trust and found that the agreements resulted in a more responsive trust application process and has determined that continued participation is in the best interests of the Oneida Nation; and

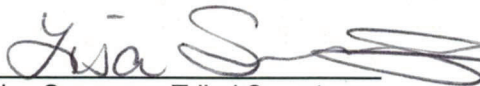
NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee approves the Memorandum of Understanding between the Oneida Nation and the BIA Midwest Regional Office, Division of Fee to Trust by the Chair of the Oneida Business Committee.

NOW THEREFORE BE IT FURTHER RESOLVED, the Oneida Business Committee authorizes the commitment of the necessary Tribal Priority Allocation (TPA) funds to carry out the activities of the Division of Fee to Trust on behalf of the Oneida Nation.

NOW THEREFORE BE IT FINALLY RESOLVED, the Oneida Business Committee authorizes the Oneida Nation Chairwoman to become the signatory of the Memorandum of Understanding between the Oneida Nation and the Bureau of Indian Affairs-Midwest Regional Office.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 22nd day of February, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 7 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

A handwritten signature in dark ink, appearing to read "Lisa Summers", is written over a horizontal line.

Lisa Summers, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."