



MEMORANDUM

TO: Oneida Business Committee

FROM: Krystal L. John, Staff Attorney

DATE: May 19, 2023

SUBJECT: Opinion – Petition – Kestell – Addressing Housing Issues

This memorandum serves as the legal review for the petition submitted by Connor Kestell to “address housing issues.” The Enrollment Department has verified at least 50 signatures on each petition. The petitions contain the following requests.

Petition: Address Housing Issues

1. Direct the OBC to direct Finance to fund the Veteran’s Home Loan Program within 60 days.
2. Direct the OBC to direct the GM and Finance to work with Bay Bank to establish the lending requirements for the Veteran’s Home Loan Program and to have Bay Bank administer the Veteran’s Home Loan Program within 60 days.
3. Direct the OBC to direct the GM to direct Comprehensive Housing Division to work with the Land Commission to make the necessary adjustments to the HIIP that would allow the program to work with and compliment the Veteran’s Home Loan Program within 60 days.
4. Direct the OBC to direct the GM to direct Comprehensive Housing Division to provide the listing of vacant homes that are in Comprehensive Housing Division home inventory, on the Comprehensive Housing Division fixed asset register and any homes that are vacant where a decision has not been made if the home will be for sale or rental that are not currently on either the inventory listing or the fixed asset register with 30 days.
5. Direct the OBC to direct the GM to direct Comprehensive Housing Division to work with Finance and Bay Bank to develop a Home Rehabilitation Loan Program including the lending requirements for the homes owned by the Oneida Nation that are needing rehabilitation that are either on the inventory listing or the fixed asset register of Comprehensive Housing and to have these homes advertised for sale within 30 days.

The General Tribal Council approved a directive to bring petitions before the General Tribal Council within 180 days of receipt of the petition in resolution # GTC-01-21-19-A, *Amending the 120-Day Petition Timeline Adopted by the General Tribal Council*. The petition was submitted on March 18, 2024, and the petition must be presented at a meeting held before the end of September 2024.

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, the administrative information provided by Comprehensive Housing Division and various other resources. Members are encouraged to review the petition, Statement of Effect, Legal Review, and Fiscal Impact Statement provided for the petition.

NOTE – Timing of Legal Opinion

This legal opinion is drafted based on the submitted petition. A petitioner has an opportunity to include a petitioner’s statement in the meeting materials. This is not available when the legal review is being conducted. Further, based on the 180-day timeline adopted by resolution # GTC-01-21-19-A, once the petitioner’s statement is received, there is no time to review and amend the legal opinion. Members should be aware of this limitation.

Background

Limited Home Financing Options Available on the Reservation

There are 4 different types of land ownership within the Oneida Nation Reservation and the financing options for purchasing, building or remodeling a home depend on the land’s status.

The types of land statuses are largely self-defining, but for the sake of clarity, the definitions of each from the Nation’s Real Property law are excerpted below:

“Individual fee land” means real property held in fee status by an individual or group of individuals. 6 O.C. 601 § 601.3-1(h)

“Individual trust land” means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member. 6 O.C. 601 § 601.3-1(i)

“Tribal fee land” means land held in fee status by the Nation. 6 O.C. 601 § 601.3-1(w)

“Tribal trust land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq. 6 O.C. 601 § 601.3-1(z)

The table below summarizes the opportunities currently available to Tribal members within the Reservation boundaries.

Land Status	Home Financing Options Available
Individual Fee Land	Any residential lender qualified to do business in the State of WI.
Individual Trust Land	Bay Bank in-house loans; HUD Section 184 Loans offered through Bay Bank; and any other residential lender qualified to do business in the State of WI and willing to lend on trust land.

Tribal Fee Land	Bay Bank in-house loans. ¹
Tribal Trust Land	Bay Bank in-house loans; HUD Section 184 Loans offered through Bay Bank.

The Current Housing Market

Nationwide, U.S. home prices climbed 0.5% from a month earlier in April 2024 on a seasonally adjusted basis and rose 7.3% from a year earlier. Lily Katz, *U.S. Home Prices Continue Their Ascent, Even as High Costs Deter Homebuyer*, Redfin News (May 21, 2024). While high mortgage rates are decreasing homebuyer demand, prices continue to rise because there just are not enough homes for sale. *Id.* In the first quarter, of all single-family homes for sale in the U.S., 33.4% were newly built, essentially unchanged from last year, but down from a record-high 34.5% two years earlier. Dana Anderson, *One-Third of Houses for Sale are Newly Built, Just Shy of Record the High*, Redfin News (May 20, 2024). The newly built housing supply is roughly double pre-pandemic levels. *Id.*

According to Forbes’ Rothstein, “despite ongoing affordability hurdles, Fannie Mae forecasts an increase in home sales transactions compared to last year. Experts also anticipate a slower increase in home prices over the course of 2024 compared to recent years. However, price fluctuations will continue to vary regionally and depend strongly on local market supply.” Robin Rothstein, *Housing Market Predictions for 2024: When Will Home Prices Be Affordable Again?*, *Forbes* (May 16, 2024). Rothstein goes on to indicate that for the housing market to improve the supply of homes for sale needs to greatly increase and mortgage rates need to come down at a metered pace so as to avoid a surge in demand wiping away inventory gains. *Id.* The experts forecast getting to a more “normal” upper 4% to lower 5% interest rates but predict it could be a while before we return there. *Id.* Further, litigation settlements with the National Association of Realtors have resulted in new rules impacting the buying and selling process with significant impact on transactional costs. *Id.*

Specific to Wisconsin, in April 2024, home prices were up 10.4% compared to last year, selling for a median price of \$315,000, which has been trending upward year over year. Wisconsin Housing Market, REDFIN, <https://www.redfin.com/state/Wisconsin/housing-market> (May 20, 2024).

Supply

On average, the number of homes sold increased by 23.5% from 4,312 homes sold in April 2023 to 5,327 homes sold in April 2024. *Id.* In April 2024, there were 18,308 homes for sale in Wisconsin, which was an increase of 11.8% from last year, and the number of newly listed homes was 6,943, which was an increase of 12.6% from last year. *Id.* The average months of available housing supply is 2 months, which has been trending downward year over year. *Id.*

Demand

In April 2024, 47.8% of homes in Wisconsin sold above the listed price, which represents a decrease from last year. *Id.* Only 14.5% of homes had price drops, which is up from 9%

¹ Typically, HUD Section 184 Loans offered through Bay Bank would also be available for Tribal fee land, but HUD placed a hold on tribal fee land mortgages earlier in 2024.



in April of last year. *Id.* The sale-to-list price ratio in Wisconsin is 101%, which supports that buyers are paying more than listing. *Id.* The sale-to-list price ratio is the average sale price divided by average list price and it reflects how much above or below the seller's asking price buyers are paying. *See Id.*

Even more regionally specific, the Green Bay housing market is very competitive. Green Bay, WI Housing Market, REDFIN, <https://www.redfin.com/city/7928/WI/Green-Bay/housing-market> (May 23, 2024). The median sale price of a home in Green Bay in April 2024 is \$250K, which represents an increase of 13.6% compared to last year. *Id.* The median sale price per square foot in Green Bay is \$157, which represents an increase of 4.0% compared to last year. *Id.* Homes in Green Bay typically sell in 39 days earning Green Bay a Redfin Compete Score of 71, which indicates many homes get multiple offers, some with waived contingencies and that the average home sells for about 3% above list price with high demand homes selling at about 9% above list price. *Id.*

The Nation does not have figures specific to the housing market on the reservation except to note that there is increased demand for Tribal members to remain within the Reservation boundaries which presents hard geographical limitations on supply.

Veteran Loan Opportunities, in General

In addition to the loans that are available to the general public, veterans are eligible for a separate pool of federally funded mortgages from the U.S. Department of Veteran Affairs. Veteran Affairs loans are a type of government loan that helps active service members, veterans and their surviving spouses become homeowners by providing up to 100% financing on the value of a home. *See* VA-backed Veterans home loans, <https://www.va.gov/housing-assistance/home-loans/> (May 23, 2024). The VA offers specific guarantees to private lenders that handle VA loans, which allows lenders to offer loans with favorable terms such as no down payment, lower interest rates and/or less stringent loan terms. *Id.* The VA loans can be used to buy, build, improve or refinance a home. *Id.* In addition to providing favorable lending terms, VA loans may also include additional resources to avoid foreclosure in the event of a borrower default. *Id.* VA loans are available regardless of the homeowner's location within the continental United States except that there are limits to how VA loans are applied for on trust land. Currently, VA loans are available on trust land through the VA Native American Direct Loans Department, <https://www.va.gov/housing-assistance/home-loans/loan-types/native-american-directloan/#:~:text=If%20you're%20a%20Veteran,and%20reduce%20your%20interest%20rate,> but are not currently available on Tribal fee or trust land through Bay Bank.

Oneida Nation Veteran Loan Program

Until as recently as March 2024, Comprehensive Housing Division (hereinafter "CHD") was operating a veteran home loan program pursuant to the Nation's Mortgage and Foreclosure law and associated rules. Operationally, the Nation's veteran loan balance was accounted for separately from the non-veteran loans offered by the Nation and the veteran loans were the only loans funded by the Nation to acquire homes not owned by the Nation since the development of the Mortgage and Foreclosure law.² Recently, CHD was notified by the Finance Department that

² When CHD sells a home from its residential sales inventory, the purchase of the home may be funded by CHD or Bay Bank.

there was a zero dollar (\$0) balance in the loan account as the funds had been absorbed by the General Fund throughout the COVID-19 financial response. Prior to CHD offering veteran loans, the veteran loans were offered through Land Management. CHD currently administers sixty-four (64) veteran loans, which includes loans originally entered by Land Management and transferred to CHD for administration and the newer veteran loans entered by CHD since 2017 as summarized below:

Demand for Oneida Nation Veteran Loans (2017-2024)	
Veteran Loan Applications Received	Veteran Loan Closings
22	18

Michelle Hill, Memorandum to OBC Re: Oneida Veteran Loan Program administered by CHD (March 4, 2024).

The March 4, 2024 Memorandum from CHD to the OBC indicates that of the six (6) loan inquiries that did not result in loan closings, the reasons were as follows:

- Three (3) of the applications were for homes to be located on land owned by the Tribal member and not the Nation and therefore were not eligible for financing pursuant to the Mortgage and Foreclosure law and associated rules which limits available financing to improvements on land owned by the Nation.³ See Mortgage and Foreclosure Rule No. 1 § 1.10-1;
- One (1) of the requestors did not qualify and was provided loan counseling so they can qualify in the future; and
- Two (2) Tribal members requested information regarding use of the veteran loan with the HIP program and did not return.

Analysis

The subject petition presents five (5) requests to the General Tribal Council; as such, this analysis will address each request separately.

1. Direct the OBC to direct Finance to fund the Veteran’s Home Loan Program within 60 days.

For the purpose of this analysis, the first and second request to the General Tribal Council are read together to ensure the analysis appears to meet the petitioner’s intent that Bay Bank administer the veteran loan program the petitioner is asking General Tribal Council to fund. The petitioner asks the General Tribal Council to direct that a veteran home loan program be funded but does not provide any funding levels or responsible parties or indicate whether this is an annual funding requirement or a one-time request.

³ Prior to the development of the Mortgage and Foreclosure law, veteran loans were the only loans offered by Land Management off the reservation on fee simple land. During development of the law, the veteran groups were consulted and agreed to align the veteran loans with the rest of the Nation’s loan programs, provided that soliciting veteran groups feedback regarding veteran interest rates continues to be written into the process.

According to the Enrollment Department, there are 7,726 Tribal members in total residing within Brown and Outagamie Counties, of which the veteran population is less than 4%; the petitioner estimates there are currently 250-300 Tribal member veterans residing within Brown and Outagamie Counties.⁴

Based on the demand levels for the Oneida Nation Veteran Loan in the seven (7) year period from 2017-2024, there was an average of 3.14 requests for home loans. Further, according to Redfin, the median sale price for homes in Green Bay is \$250K. That means at the high end of the average with a median cost of \$250K a home, the program would need approximately \$1,000,000 in annual funding to satisfy 100% of demand from veteran homebuyers.

CHD is presenting and the OBC will consider a proposal for a loan program for the membership at large. Under CHD's proposal, veterans would be eligible for loans the same as all Tribal members, provided that veterans would receive a preferential interest rate, which aligns with the Mortgage and Foreclosure law and corresponding rules. Things that remain undetermined at the time of this opinion are the amount of funding CHD will request, the funding source for said funds, and which parts of the program CHD will administer and which parts, if any, CHD will assist Bay Bank in administering.

When considering the petition, General Tribal Council will have to determine if it wishes a fund a separate loan program to serve the housing needs of such a small group of the Nation's local population, wherein the veterans have increased financing opportunities in comparison to the general population and there are significant housing needs for *all* Tribal members. If the General Tribal Council approves funding a specific veteran loan program, it will also have to determine the level of funding, or who will determine the level of funding, and the frequency with which General Tribal Council wishes to fund said program.

Due to the requirement to fund the loan program within sixty (60) days, which could likely arrive before the 2025 budget begins, any changes to the 2024 budget must comply with the Oneida Nation Budget Management and Control law. In addition, the Finance Department will have to advise as to funding source once funding levels are determined and whether the sixty (60) days funding timelines can feasibly be met.

2. Direct the OBC to direct the GM and Finance to work with Bay Bank to establish the lending requirements for the Veteran's Home Loan Program and to have Bay Bank administer the Veteran's Home Loan Program within 60 days.

For the purpose of this analysis, the first and second request to the General Tribal Council are read together to ensure the analysis meets the petitioner's intent that the Bay Bank administer the veteran loan program the petitioner is asking General Tribal Council to fund.

As part of the preparation to submit its proposal to the OBC, CHD met with representatives from Bay Bank, and the Oneida Nation Finance and Law Offices to discuss if and how Bay Bank could assist with administering a newly funded loan program. During the meeting,

⁴ The Petitioner noted the difficulty in maintaining accurate number of Oneida Nation veteran in the surrounding areas as all residence reporting is elective self-reporting.

representatives from Bay Bank confirmed that they could administer a loan program funded by the Nation wherein the Nation creates the lending terms and conditions, similar to the Home Improvement Loan Program and the Oneida Small Business Loan Programs which are administered by Bay Bank pursuant to terms created by the Nation. Bay Bank representatives indicated they could administer a portion of the loans, for example construction loans only, or all loans, with on-going support and assistance from CHD loan and leasing officers. Accordingly, in concept, the Petitioner's second request is feasible.

If the General Tribal Council decides to fund a loan program to specifically serve veterans, it will have to decide if there is a reason why Bay Bank should administer the loans under regulations/requirements that will have to be newly developed or if it makes sense to re-fund a loan program internally to be administered by CHD under the already existing Mortgage and Foreclosure law and corresponding rules.

In the event that a mortgage program is created wherein Bay Bank is administering mortgages using the Nation's funds, the Mortgage and Foreclosure law would need to be amended because it only allows the Comprehensive Housing Division to administer mortgages on behalf of the Nation. *See* Mortgage and Foreclosure, 6 O.C. 612 § 612.3-1(e) and (j); 612.4-1. Legislative amendments are required to comply with the Legislative Procedures Act. The process dictated in the Legislative Procedures Act requires holding a public meeting for soliciting comments which requires minimum advanced notices such that a law could not be amended within the 60 day timeframe provided in the Petitioner's second request. Because it would not be possible to complete the action requested by the petitioner within the timeframe provided, 60 days, the petitioner's second request is out of order.

3. Direct the OBC to direct the GM to direct Comprehensive Housing Division to work with the Land Commission to make the necessary adjustments to the HIIP that would allow the program to work with and compliment the Veteran's Home Loan Program within 60 days.

For the purpose of this analysis, I am assuming that the petitioner intended "HIPP" which is short for Homeownership by Independent Purchase Program instead of "HIIP". HIPP is a program that makes homeownership more affordable for Tribal members by reducing the costs of homeownership by taking the cost of the land out of the equation for the homeowner. To do so, under HIPP a Tribal member may initiate an offer to purchase a home located on individual fee land (owned by a Tribal member or not) wherein the Tribal member pays for the home (the improvements) and the Nation pays for the tax assessed value of the land. HIPP is governed by the Leasing Law Rule No. 6 and the corresponding Land Management Standard Operating Procedure related to the Nation's acquisition of the fee land. Both the Leasing Law Rule No. 6 and the corresponding Land Management Standard Operating Procedure related to the Nation's acquisition of the fee land permit for either the Nation or Bay Bank to be the lender providing the financing for the purchase of the improvements. Accordingly, no adjustments are needed to the HIPP governing documents to allow any veteran loan program created by the petitioner's request to work with and compliment HIPP.

- 4. Direct the OBC to direct the GM to direct Comprehensive Housing Division to provide the listing of vacant homes that are in Comprehensive Housing Division home inventory, on the Comprehensive Housing Division fixed asset register and any homes that are vacant where a decision has not been made if the home will be for sale or rental that are not currently on either the inventory listing or the fixed asset register with 30 days.**

Pursuant to the fourth request, the petitioner is asking the General Tribal Council to demand a CHD provide a listing of all vacant homes in its possession. CHD also notes that in an effort to keep the community informed, CHD and the General Manager, Mark Powless, hosted a community meeting on the topic of CHD's vacant homes in September of 2023.

During the community meeting, CHD explained that it operates multiple housing programs. Rental programs include an income-based rental program, elder rentals and general rentals. When someone moves out of one of the CHD's rental units, CHD starts the process to prepare the unit for the next tenant as soon as possible. Absent extenuating circumstances, there is no re-evaluation completed to determine if the asset should remain with said program, CHD just works to re-fill the unit from the applicable program's waitlist. There is no consideration to remove inventory from the rental programs to place those homes for sale to Tribal members because there is a high demand for the rental units on the reservation. As of May 23, 2024, CHD administers 387 units in the income-based rental program; 71 units in the general rental program; and 29 units in the elder rental program and each program has an extensive waitlist.

CHD also offers home for sale by means of the residential sales program, where the Nation sells the home it owns to a Tribal member and enters a Residential lease with them, and the rent-to-own program, where tenants enter a rental agreement and remain renters until the balance of improvements are paid and then a residential lease is entered with the homeowner for the land.

As part of its administrative response to this petition, CHD has provided its vacancy listing effective as of the date of their administrative response, April 12, 2024. *See* CHD Administrative Impact, C. Kestell Petition Request #4 (attached). As stated above, CHD does not transfer temporarily vacant rental units into its residential sales program to offer them for sale due to high demand for rental units and for the same reason would not recommend considering the transfer of any rental inventory to residential sales inventory. In addition, units in the income-based rental program are maintained using federal funds from the Nation's U.S. Housing and Urban Development (HUD) grants, so CHD would have to find Tribal contribution for the maintenance/rehabilitation of any units transferred from the income-based rental program to any other program. For these reasons, CHD has provided vacant properties for which the use has not yet been determined and vacant properties that are part of the Residential Sales inventory but has not included vacant rental units.

Unless the General Tribal Council is for any reason unsatisfied with the information provided by CHD in its administrative response to this petition, then there is nothing for General Tribal Council to consider in the petitioner's fourth request. Should the General Tribal Council seek additional information from CHD, the specific information requested should be identified.

- 5. Direct the OBC to direct the GM to direct Comprehensive Housing Division to work with Finance and Bay Bank to develop a Home Rehabilitation Loan Program including the lending requirements for the homes owned by the Oneida Nation that are needing rehabilitation that are either on the inventory listing or the fixed asset register of Comprehensive Housing and to have these homes advertised for sale within 30 days.**

In the fifth request, the petitioner asks General Tribal Council to direct the OBC to direct the creation of a home rehabilitation loan program using CHD's vacant units as the inventory for the program with the program operational within 30 days. There are several considerations for General Tribal Council to work through before any such program should be created.

First, General Tribal Council will need to consider if it wants to invest the time and resources into developing a home rehabilitation loan program with such limited inventory to work with. As noted in CHD's administrative information provided in response to the petition, CHD has only ten (10) vacant properties that are not part of the rental program. This includes properties CHD intends to sell as part of the Residential Sales program and properties for which CHD has not yet decided which program is the best fit. Of those ten (10) vacant properties, four (4) are approximately seventy percent (70%) complete or more, such that they would be ready to be sold without any needed rehabilitation once the amendments to the Residential Sales Rule are complete.⁵ Of the remaining six (6) vacant units, CHD is holding two (2) rental units for use as temporary rental units for household needing temporary relocation while their rental unit undergoes large scale renovations by CHD. Of the remaining four (4) vacant units, 1 unit is slated for demolition and conversion to an HBO site to be offered through the Home Building Opportunities Residential Leasing program and 1 unit is a large unit being considered by the Nation for use as a transitional housing site. That means of the ten (10) vacant units currently under CHD's control, only two (2) would be practical consideration to offer as inventory for a Home Rehabilitation Loan Program.

As explained above, CHD, generally speaking, does not move units out of its rental programs once they have been assigned to a rental program. This means that the only way additional inventory can be added to any potential home rehabilitation loan program would be through a foreclosure, lease enforcement resulting in lease termination, right of first refusal (residential lease termination to avoid Bay Bank foreclosure) or acquisition of new homes through the Nation's acquisition process. In the past 2 years, CHD has had no foreclosures, has not exercised any rights of first refusal, and has not terminated any residential leases, though there is currently a foreclosure pending. In the past 2 years, the Nation has acquired nine (9) new homes through its acquisition process (this includes where the home is incidental to the sale and where the home is a main feature of the sale), of which six (6) have been (or will be) transferred to CHD.⁶ Accordingly, the inventory for the program would be minimal without many opportunities for expansion.

⁵ CHD has placed an administrative hold on all CHD Residential Sales pending updates to the Residential Sales Rule that takes the offers out of a market competition model and into a lottery model where the house is always sold at or below the appraised value. CHD is looking to make this change in light of how high the demand for homeownership on the reservation is, which has driven market offers to exceed the listed price by over 10%.

⁶ Houses not transferred to CHD are either scheduled to be demolished based on their condition or their use has not yet been determined based on the non-residential zoning of the property.

Secondly, the Nation has considered offering homes for sale in an “as-is” condition and acknowledging the need for renovations in the past but has always decided against selling homes before they are ready for occupancy due to the health and safety risks it creates for the Tribal members and potential liability risks it creates for the Nation. Some of the considerations that the Nation has considered in the past that led to the decision to only offer homes that are ready for safe and healthy occupancy were the following:

- How would the Nation determine which homes are eligible for this program? Are there any base health and safety conditions that would make a home ineligible for such a program?
- Who is eligible to participate in such a program? Generally, a licensed contractor would be required, can Tribal members self-perform the renovations if they are not a licensed contractor?
- If there is no loan for the renovations, will there be any oversight over the renovations aside from the permitting process similar to how a title company would verify work is complete before issuing the next draw on a loan?
- Would a home renovation loan program present a savings to the end customer? It is likely it would only save Tribal members money if they are self-performing the renovations because the end customer cannot access the Nation’s bulk pricing opportunities and not all renovations will create a dollar for dollar increase in value. This is seen in the examples in CHD’s attached spreadsheet where CHD has completed repairs for which the actual cost plus the pre-renovation appraisal value are far more than the new appraised value (asking price) of the home. Specifically, for W882 Bain Road, the appraised value before the renovations was \$325,030, CHD’s actual renovation costs were \$80,888, and the appraised value after renovations was \$390,000. If this example were flipped and the Tribal member bought the home at the appraised value before renovations and completed the renovations themselves (even at CHD’s estimated lower costs), the Tribal member would be all in at \$405,918 whereas if they bought through the Residential Sales program after CHD completed the renovations, the Tribal member would have paid only \$390,000. In this specific case, waiting and buying the home after CHD safely completes all repairs saves the Tribal member \$15,918.
- What happens when the scope of the renovations explodes and the Tribal member can no longer afford to complete the renovations to bring the property to a occupiable health and safety standard: the house is not repairs and the Tribal member still has no housing? How long does a Tribal member get to complete the renovations? If the renovations are not completed, is the Tribal member able to recover any of his or investment in the property? If we want to allow the Tribal member to recover any or all of his/her investment, how would the Tribal member’s investment be calculated – actual costs, comparative appraisals, subject to appraisal less the cost of completion?
- How does CHD manage financial liability for recovering properties in various states of repair with unknown workmanship and materials? Does CHD start over to make sure it meets standards? Is it safe on a case-by-case basis to pick up the project where the homeowner left off? How much would CHD need to budget for recovery of homes from this program?
- Even with a waiver of liability, there would still be litigation defense costs if a Tribal member purchased a home in need of renovations and subsequently sued the Nation for

any alleged damages including but not limited to injury at the property arising from the property's condition or known or unknown conditions of the property at the time of sale.

Again the Nation has considered development of a home rehabilitation loan program in the past and each time the Nation's subject matter experts in housing and law have provided feedback that led the Nation to determine that the potential risks to developing such a program outweigh the benefits wherein the main and very real risk is that a Tribal member incurs debt and still has not secured safe and healthy housing and the possible benefit is that CHD could get homes to the market faster without incurring renovation costs. Each time faced with these considerations, the Nation has decided it was in both the Tribal members' and the Nation's best interests to wait for the repairs to be completed by the Nation. This way, the Nation can ensure it is turning over a home CHD knows meets the Nation's health and safety standards such that the Tribal member has safe and reliable housing immediately at closing. None of the considerations have changed since the Nation last considered a home renovation loan program and management continues to advise it is in both the Tribal members' and the Nation's best interests to wait for the repairs to be completed by the Nation for sale in the Residential Sales program.

Finally, even if the General Tribal Council provided guidance related to the considerations outlined above and directed the program to be created, there is no way the program could be operational with home advertised for sale within thirty (30) days. Thirty (30) days from the date of the General Tribal Council meeting is not sufficient time to develop regulations for a program, develop all supporting forms and literature for said program, train staff on said program and have an advertisement ready. Because it would not be possible to complete the action requested by the petitioner within the timeframe provided, 30 days, the petitioner's fifth request is out of order.

Conclusion

This opinion explains that the third and fourth requests are not necessary. This is because no changes would be needed to the current language of the Homeownership by Independent Purchase (HIP) Program governing documents to allow members to use a veteran loan from the program established in the petitioner's second request within the HIP Program and because the information called for in the fourth request was already provided by CHD as part of its administrative response to the petition. In addition, the opinion explains that the petitioner's second and fifth request are out of order for providing an unattainable timeline for completion. Accordingly, although a veteran loan program may duplicate federal lending efforts available to veterans, as written, the General Tribal Council may consider the petitioner first request provided that, based on the timing of when the General Tribal Council hears the petition, there may be implications to the Budget Management and Control law for the petitioner's request to fund a veteran loan program.

As always, Tribal members should refer to prior opinions regarding the tax consequences of acceptance or rejection of a stipend payment for attendance at a General Tribal Council meeting on the individual.

If you have further questions, please contact me.

MEMO

To: Mark Powless, General Manager
From: Lisa Rauschenbach, Division Director - Comprehensive Housing
Subject: Administrative Impact Statements
Date: April 12, 2024

Petition Connor Kestell #1

Comprehensive Housing – Residential Sales & Realty

- **Is the area's overall budget impacted by the petition, if so, how?**
 - a. If directive one is read by itself, the directive would imply that the Veteran Loan Program already in existence at CHD operated by Residential Sales & Realty is the program that would be funded. If that is the intent, then the budget would be increased.
 - b. If directive one is read together with directive two the directive would imply that the petitioner intends to create a new program that does not currently exist to be administered by Bay Bank. If that is the intent then CHD would be negatively impacted because, while the current loan program is not currently funded, CHD is currently presenting proposals to the Business Committee to fund home loans to the membership at large. If funding this program, the pool of available funds for CHD would be diminished. The extent is hard to estimate because the funding levels are not provided by the petitioner.

- **Are there any grants impacted by the petition?**
 - a. No

- **Are there any programs impacted by the petition?**
 - a. This petition wouldn't impact the various homeownership programs because up until April 1st, 2024 Comprehensive Housing was under the impression that CHD's Veteran's Loans Program was funded and was making Veteran's loans available as application were received (see Veteran Loan Assessment dated April 4th, 2024) to include loans to support the following programs HBO, HIPP, Residential Sales, and For Sale by Owner Activity.

- **Are there any employees impacted by the petition?**
 - a. This petition wouldn't impact employees because up until April 1st, 2024

Comprehensive Housing was under the impression that CHD's Veteran's Loans Program was funded and was making Veteran's loans available as application were received (see Veteran Loan Assessment dated April 4th, 2024) to include loans to support the following programs HBO, HIPP, Residential Sales, and For Sale by Owner Activity.

- **Are there any contracts impacted by the petition?**
 - a. No for the same reasons listed above.
- **Is there a governing law, rule, resolution, SOP, impacted by this petition?**
 - a. If this is read to fund the CHD operated Veteran's Loan Program, that program is operated pursuant to the Mortgage and Foreclosure Law and corresponding rule, no amendments to the law would be required to fund the program.
 - b. If this is read for Bay Bank to be the lender, then the Mortgage and Foreclosure Law and corresponding rule would need to be amended.



To: Oneida Business Committee
From: Michelle Rae Hill, CHD Residential Sales and Realty Area Manager
RE: Oneida Veteran Loan Program administered by CHD
Date: March 4, 2023

The Loan Department became a component of the Comprehensive Housing Division (CHD) in 2017, when several areas formerly organized under Land Management transferred to CHD to create a central location for residential transactions throughout the Nation. CHD physically moved over to the CHD building in Site 1 in November 2017.

The Veteran Loan program began with the loans being administered by Land Management staff and when the residential loan program transferred to CHD, the administration of veteran loans also transferred. All of the Nation's residential mortgages are administered pursuant to the Mortgage and Foreclosure law and corresponding rule, this includes the Veteran Loan Program.¹

Accordingly, the guidelines for veteran loans are the same as our loan program. They are governed by our Mortgage and Foreclosure Law, Mortgage and Foreclosure Rule No.1 Mortgage Programs, Guidelines and Requirements. The application process, the terms and the interest rate are all addressed in these rules. Per the rule CHD brings a recommendation of interest rate to Land Commission and Land Commission determines the rate.

Since CHD has assumed responsibility for administering the Veteran loans. There have been twenty-two (22) Veteran Loan inquiries, resulting in eighteen (18) Veteran loan closings since 2017.

- There were six inquiries that did not result in loan closings as follows: Three (3) requests were to purchase a home on land that would be owned in fee simple status by the tribal member and due to demand to meet housing needs on land owned by the Nation, the Nation only offers loans to tribal members buying improvements on land owned by the Nation. *See* Mortgage and Foreclosure Rule No. 1 § 1.10-1.
- One of the requestors was provided loan counseling by CHD loan officers and is now working to improve their credit and consolidate their debt so they can qualify for a Veteran Loan in the future.
- Two (2) tribal members recently requested information on the Veteran Loan program and the HIP program who appeared to be trying to purchase a home together

¹ The veteran loan program does not need to be identified separately in the law because the veteran loans fund the purposes and programs as listed in the law and the veteran loan funds have merely been tracked with separate accounts. The Veterans were apprised that the veteran loan program would be administered pursuant to the Mortgage and Foreclosure law for consistency across the board.

combining the Veteran Loan program and the HIP Program. Both parties prequalified and CHD has not heard from the requestors since prequalification.

Currently, CHD has a total of sixty-four (64) Veteran loans. Based on the above information it is unclear how anyone was ever under the impression that CHD or the Nation were not offering Veteran loans. CHD has not had any issues with the Veteran Loan program and feels that it has run successfully, provided that CHD could increase the marketing of the program. That being said, it now appears unclear as to whether the program is funded at all because CHD now understands that all loan funds previously held by Bay Bank for the CHD loan programs (both regular and veteran loans) have been reallocated to the General Fund as carryover.

CHD requests confirmation that the veteran loan funds will continue to be tracked separately and that the funds originally allocated to the Veteran Loan fund, remain with the Veteran Loan fund for its continued operation at CHD.

MEMO

To: Mark Powless, General Manager
From: Lisa Rauschenbach, Division Director - Comprehensive Housing
Subject: Administrative Impact Statements
Date: April 12, 2024

Connor Kestell #4

Comprehensive Housing – Residential Sales & Realty

- **Is the area's overall budget impacted by the petition, if so, how?**
 - a. No
- **Are there any grants impacted by the petition?**
 - a. No
- **Are there any programs impacted by the petition?**
 - a. No
- **Are there any employees impacted by the petition?**
 - a. No, CHD has had a vacant homes community meeting and have spoken at length with the petitioner on the topic of CHD vacant properties. CHD has been communicating about our vacancies and will continue to as this is a priority. Vacancy information is reported out to the Business Committee in open session meetings. See attached for vacancies as the date of this submittal.
- **Are there any contracts impacted by the petition?**
 - a. No
- **Is there a governing law, rule, resolution, SOP, impacted by this petition?**
 - a. No

MEMO

To: Mark Powless, General Manager
From: Lisa Rauschenbach, Division Director - Comprehensive Housing
Subject: Administrative Impact Statements
Date: April 12, 2024

Connor Kestell #5

Comprehensive Housing – Residential Sales & Realty

- **Is the area's overall budget impacted by the petition, if so, how?**
 - a. No. This area is already responsible for advertising, showing and selling the Nation's residential sale inventory, and they would continue to do that under the proposal. The only change to current operations is that the Petitioner proposes CHD sells homes in its residential sales program *before* rehabilitating them. This area does not perform the rehabilitations so there is no financial impact because the inventory available for residential sales advertising and sales does not change based on this petition.

- **Are there any grants impacted by the petition?**
 - a. No.

- **Are there any programs impacted by the petition?**
 - a. Yes, the Residential Sales program. Currently, the program receives new inventory in the following ways: (1) new acquisitions from Land Management; (2) required home buy-backs based on old residential lease provisions; (3) required acquisitions based on CHD lease enforcement actions; (4) mortgage foreclosure on a mortgage held by CHD; or (5) CHD right of first refusal due to a tribal member's default on a Bay Bank mortgage subject to a residential lease.

In the past 2 years, this program's total inventory has fluctuated between 8 and 12 homes. During those 2 years, CHD had 6 houses added to its inventory, 3 each year and all from Land Commission acquisitions where the house was incidental to a land purchase. The program currently has 6 homes in its inventory and has sold 6 homes in the past 2 years. All of the homes in the current inventory have rehabilitation assessments, contracting, and supply ordering underway and carpenter teams have already deployed to all homes on rotating schedules except one.

There are no other homes in CHD's possession to pull into this program. As shown on the CHD Vacant Homes spreadsheet, the only other vacant homes in CHD's possession that have not been allocated to a rental program (4) are being held for various reasons. One property is slated for demolition *and* has title holds because of a pending individual trust probate and foreclosure we are working to get onto title with the BIA. One property is on hold for the Nation's use because it is being evaluated by the GM as a potential site for transitional living. The other 2 properties are being used by CHD as temporary housing for CHD tenants that need to vacate their rental properties while CHD makes significant renovations to the unit based on CHD's comprehensive rental maintenance and rehabilitation plan.

Based on this information, implementing the program proposed by the petitioner would reduce the inventory for the Nation's residential sales program where homes are sold move in ready, which serves the ALL of the Nation's citizens, in order to create the inventory for this new program, which will only serve tribal members capable of taking on (often times massive) home renovations.

Further, the proposed program is inherently high risk for CHD. Any such program developed would have to:

1. Be able to determine which tribal members are capable to oversee a home renovation on their own, what metrics are used, how is it verified?
2. Determine whether the property is habitable in its sold condition and how to address situations where it is not habitable in its sold condition?
3. Determine how the lessee will communicate progress at the lease site to CHD?
4. Determine how the Nation will communicate all permitting requirements to the lessee?
5. Determine what to do if the homeowner runs out of money for the renovations?
6. Determine what to do if the homeowner does not complete the renovations?
7. Determine how CHD will respond when a tribal member discovers unknown conditions at the site that explode the scope of the renovation beyond the tribal members financial means – the optics would not be good for CHD and CHD would have to require the homeowner to walk away from their investment, refund their acquisition price or a portion thereof, or have funds available to lend to these lessees in emergency situations?
8. Assess how likely CHD is to receive these properties back incomplete. As the Nation is the underlying property owner, CHD will always have to take the improvements back in whatever conditions the homeowner walks from them.
9. Ensure the tribal member is making a knowing waiver of Nation's

liability and knowing choice to buy the property in its as-is condition.

- **Are there any employees impacted by the petition?**
 - a. No.

- **Are there any contracts impacted by the petition?**
 - a. No.

- **Is there a governing law, rule, resolution, SOP, impacted by this petition?**
 - a. Yes, the Real Property law, Residential Sales Rule. Note – CHD is currently amending this rule to change the Residential Sales structure from the highest qualified bidder acceptance system to a lottery of qualified and interested buyers system.

CHD Vacant Homes - (Current as of 04/12/24)

Property Address	CHD Program Assigned	Ready for Occupancy	% Complete of Renovation	Notes
3140 Jonas Circle	For Sale - Residential Sales	NO	70%	-
2821 Ferndale Drive	For Sale - Residential Sales	NO	95%	The offering of this property for sale is on hold for the updates to the Residential Sales rule changing the offer acceptance process from highest qualified offer to a lottery of qualified and interested buyers.
718 Airport Drive	For Sale - Residential Sales	NO	85%	The offering of this property for sale is on hold for the updates to the Residential Sales rule changing the offer acceptance process from highest qualified offer to a lottery of qualified and interested buyers.
4530 Hillcrest Drive	For Sale - Residential Sales	NO	10%	-
920 Trout Creek	For Sale - Residential Sales	NO	70%	-
243 Trout Creek Road	For Sale - Residential Sales	NO	0%	This home will transfer to CHD on April 15th, 2024.
431 Hillcrest	TBD - Government Use Hold	NO	-	Currently being assessed by the GM for the Nation's use as a transitional housing site.
W386 Crook Road	On Hold for HBO	NO	-	This property has an title hold preventing any assignment or transfer due to pending individual trust probate & a CHD foreclosure CHD is working to get on title with BIA. Once title is clean, CHD will demo and offer through HBO.
1208 Crestwood Drive	General Rentals - Temporary Relocation Program	NO	95%	Rental family scheduled to be temporarily transferred to this unit before June 2024.
2860 W. Mason Street	General Rentals - Temporary Relocation Program	NO	95%	Rental family scheduled to be temporarily transferred to this unit before June 2024.

*Note that CHD does not include vacant rentals in any vacancy lists except for administering wait lists and calculating occupancy rental rates. This is because all these properties are allocated to rental programs so any vacancy is short-term in nature while CHD prepares the unit for a new tenant to be selected from a waitlist. All CHD rental programs maintain waitlists of applicants waiting for an opportunity to rent housing from the Nation. As of today's date, there are 153 households on income-based rentals waitlist, 97 households on the general rentals waitlist, and 46 households on the elder rentals waitlist. Due to these waitlists, CHD typically does not transfer homes out of its rental inventory unless the property is somehow deemed a total loss and slated for demolition.

CHD Residential Sales Sold Since 2021

Residential Sales Sold Homes	Appraised Value Before Renovations	CHD Renovation Costs	Appraised Value After Renovations
W788 County VV	\$ 125,000.00	\$ 56,861.36	\$ 200,000.00
W882 Bain Road	\$ 325,030.00	\$ 80,887.70	\$ 390,000.00
W223 Crook Road	\$ 147,000.00	\$ 65,634.73	\$ 200,000.00
1329 On N Sla Way	\$ 96,910.94	\$ 154,420.04	\$ 210,000.00
602 Florist Drive	\$ 161,374.03	\$ 83,438.00	\$ 225,000.00
1071 Riverdale	\$ 215,000.00	\$ 13,177.65	\$ 260,000.00