



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 12 2022

The Honorable Marlon WhiteEagle
President, Ho-Chunk Nation
Post Office Box 667
Black River Falls, Wisconsin 54615-0667

Dear President WhiteEagle:

In 2012, the Ho-Chunk Nation of Wisconsin (Nation) submitted an application to the Bureau of Indian Affairs (BIA), requesting that the United States acquire in trust approximately 32 acres of land known as the Beloit Site in the City of Beloit, Rock County, Wisconsin, for gaming and other purposes.¹ The Nation also requested a determination whether it is eligible to conduct gaming on the Beloit Site pursuant to the Indian Gaming Regulatory Act (IGRA).

The Nation proposes to develop a casino-resort on the Beloit Site that would include a casino, hotel, restaurants, convention center, and a waterpark. In addition, the Nation would develop retail outlets and parking on the adjacent fee parcel, which is approximately 40 acres.

We have completed our review of the Nation's request, the Regional Director's Findings of Fact², comments received, and documentation in the record. As discussed below, I determine that the Beloit Site will be acquired in trust for the benefit of the Nation for gaming and other purposes pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108. Once acquired in trust, the Nation is eligible to conduct gaming on the Beloit Site pursuant to Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719.

BACKGROUND

The Nation, then known by its former name, the Winnebago Tribe,³ once held title to at least 7.8 million acres of land in southern Wisconsin and northern Illinois.⁴ The identity of the Winnebago as a tribe can be traced back to 1634 when a Frenchman recorded his contact with the Tribe.⁵ At that time, the Tribe was living around the Green Bay area in Wisconsin. Due to intertribal warfare, the Tribe split in approximately

¹ See Letter from Greg Blackdeer, Vice President, Ho-Chunk Nation, to Diane Rosen, Midwest Regional Director, Bureau of Indian Affairs (March 29, 2012) (hereinafter Nation's Application). On February 19, 2019, the Ho-Chunk Nation Legislature approved Resolution No. 02-19-19F to adopt a corrected deed description, which reduced the overall acreage of the Nation's application request from 32.7 acres to 31.87 acres.

² Memorandum to Director, Office of Indian Gaming, from Regional Director, Midwest Region, Findings of Midwest Region pursuant to 25 CFR § 151 –Ho-Chunk Nation of Wisconsin, Keecak Casino Project (November 26, 2019) (hereinafter Regional Director's Part 151 Findings of Fact)

³ In 1993, the Wisconsin Winnebago Nation formally changed its name to the Ho-Chunk Nation of Wisconsin. See *Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 86 Fed. Reg. 7554 (Jan. 29, 2021).

⁴ *Winnebago Tribe et al. v. United States*, 16 Ind. Cl. Com. 81 (1965); *Winnebago Tribe, et al. v. United States*, 8 Ind. Cl. Com. 78, 81-82 (1959).

⁵ *Winnebago Tribe*, 8 Ind. Cl. Com. at 80.

1730. One group remained in Green Bay while the other eventually moved south to the Rock River area. Spanish reports from 1777 confirmed the presence of members of the Winnebago Tribe near the Rock River in Wisconsin, which flows through Beloit.⁶ See Enclosure I which contains maps of the Beloit Site, the region, and historic villages of the Ho-Chunk Nation.

In 1816, the Winnebago Tribe entered into a treaty of peace and friendship with the United States.⁷ Between 1825 and 1858, the Winnebago Tribe entered into numerous treaties with the United States in which the Tribe ceded all of its lands east of the Mississippi River.⁸ After these cessions, the United States removed the Tribe to a reservation set aside for them in Nebraska. While many Winnebago people relocated to Nebraska, others refused to leave their ancestral homelands in Wisconsin. After a final unsuccessful removal attempt in 1873, the United States made no further attempts to relocate the Wisconsin Winnebago people. Because of the United States' pattern of unsuccessful and uneven removal and relocation attempts, and with no reservation in Wisconsin, the Winnebago people resettled on lands scattered throughout Wisconsin and neighboring states. See Enclosure I.

DESCRIPTION OF THE PROPERTY

The Beloit Site is located within the boundaries of the City of Beloit, in southern Rock County, Wisconsin.⁹ The Nation purchased the Beloit Site in fee simple in 2009 as shown by the Warranty Deed of Conveyance between Beloit Properties, LLC, and the Ho-Chunk Nation.¹⁰ Maps of the Beloit Site are included in Enclosure I. The legal description of the Beloit Site is included as Enclosure II.

PROPOSED PROJECT

The Nation proposes to develop a casino-resort on the Beloit Site. The casino would feature 2,200 class III gaming machines and 50 table games on an approximately 139,700-square foot (sf) gaming floor.¹¹ The casino-resort would also feature food and beverage space of approximately 45,580 sf. The hotel would consist of 300 rooms and include a convention center with approximately 45,190 sf for meetings and entertainment. The casino-resort would also feature an indoor waterpark of approximately 40,000 sf and parking for 5,000 vehicles. In addition, the Nation would develop retail outlet space of approximately 175,000 sf and parking on the adjacent 40-acre fee parcel. A site plan is included in Enclosure I.

PRIOR DETERMINATIONS

The Indian Gaming Regulatory Act

Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988, subject to several exceptions. One exception, known as the "Secretarial Determination" or "two-part determination" permits a tribe to conduct gaming on lands acquired after October 17, 1988, where the Secretary of the Interior (Secretary),

⁶ *Winnebago Tribe*, 8 Ind. Cl. Com. at 80.

⁷ Treaty with the Winnebago, 7 Stat. 144 (1816).

⁸ *Winnebago Tribe*, 8 Ind. Cl. Com. at 81-82 (1959) (list of treaties).

⁹ Final Environmental Impact Statement, Beloit Fee-to-Trust and Casino Project (May 2019) (hereinafter FEIS), Volume II, § 2.2, available at <https://www.ho-chunkbeloiteis.com>.

¹⁰ See Nation's Application, Tab 4.

¹¹ See FEIS, § 2.3.1.

after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that:

1. A gaming establishment on the trust lands would be in the best interest of the tribe and its members; and
2. The Secretary also determines that gaming on the trust lands would not be detrimental to the surrounding community.

The Governor of the State in which the gaming activity is to be conducted must concur in the Secretarial Determination before the applicant tribe may conduct gaming on the proposed site.

On April 16, 2020, the Secretary issued a positive Secretarial Determination finding the Nation's proposed gaming establishment on trust land in Beloit would be in the best interest of the Nation and its members, and that gaming on the trust lands would not be detrimental to the surrounding community. The Secretarial Determination is included as Enclosure III.

On March 24, 2021, Governor Evers concurred with the Secretarial Determination.¹² Governor Evers announced his concurrence and stated:¹³

“As we work to bounce back from this pandemic, we must do everything we can to support economic development in communities across our state. The Ho-Chunk Nation and local officials in Beloit and Rock County have been working together toward providing jobs and long-term economic support in the region, and this is an important step forward in making the Beloit casino a reality.”

Governor Evers' concurrence letter highlighted that the State and the Nation are negotiating amendments to the Nation's gaming compact which is necessary for the Nation to conduct class III gaming at the Beloit Site.¹⁴ We hope the parties utilize the compact amendment process to remove outdated language and provisions which are unenforceable under IGRA because they are beyond IGRA's narrow scope of permissible topics.¹⁵ Accordingly, once acquired in trust, the Nation is eligible to conduct gaming on the Beloit Site pursuant to Section 20 of IGRA.

The National Environmental Policy Act

The Department of the Interior's (Department) regulations require that issuance of a Secretarial Determination and approval of a tribe's trust acquisition application comply with the National Environmental Policy Act (NEPA), 42 U.S.C § 4321 *et seq.*¹⁶ As discussed in detail in Section 151.10(h) below, the Assistant Secretary – Indian Affairs issued a Record of Decision for the Beloit Site on April 16,

¹² See letter from Tony Evers, Governor of Wisconsin, to Secretary Deb Haaland (March 24, 2021), included as Enclosure IV.

¹³ See Press Release from the State of Wisconsin, Office of the Governor, dated March 24, 2021, *available at* <https://content.govdelivery.com/accounts/WIGOV/bulletins/2c94967>

¹⁴ Enclosure IV.

¹⁵ See *e.g.* letter from the Assistant Secretary Indian Affairs to Troy Swallow, President Ho-Chunk Nation, dated August 15, 2003, acknowledging the Nation's compact amendment was approved by operation of law, but only to the extent amendment was consistent with IGRA, and noting a provision which sought to prevent other Tribes pursuing the very path the Nation has now successfully navigated was “repugnant to the spirit of IGRA.”

¹⁶ See 25 C.F.R. § 292.18(a) (requiring NEPA compliance for a Secretarial Determination) and § 151.10(h) (requiring NEPA compliance for a trust acquisition determination).

2020. The Record of Decision determined that the issuance of the Secretarial Determination, acquisition of the Beloit Site in trust, and subsequent development of the Proposed Project will have no significant impact on the quality of the human environment. The Record of Decision is included as Enclosure V.

TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA).¹⁷ The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA.

25 C.F.R. § 151.3 – Land acquisition policy.

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The acquisition of the Beloit Site in trust satisfies the criteria of Section 151.3(a)(3).¹⁸ As discussed below, the acquisition of the Beloit Site in trust and development of the Proposed Project will facilitate tribal self-determination and economic development by funding social, educational, and employment programs for the Nation.

The following discussion is summarized from the Secretarial Determination which provided a detailed discussion of the Nation need for additional revenue to fund programs for its members. In 1992, the Nation had an enrolled membership of 2,204. In 1997 the Nation altered its enrollment criteria and the enrolled membership grew over 60 percent in a single year. As of March 2018, the Nation had 7,803 enrolled members and had an average population growth of 1-2 percent per year.¹⁹ The Nation's growing population is causing financial strain, which limits the Nation's ability to provide services to its members.

¹⁷ 25 U.S.C. § 5108.

¹⁸ Although only one factor in Section 151.3(a) must be met, the Nation's Application also satisfies the requirements of subsection (a)(2) because the Nation owns the Site in fee. See Nation's Application at 7, and Tab 4.

¹⁹ See *The Unmet Needs of the Ho-Chunk Nation: The Extensive Challenges of Scattered Lands* at 11-12 (August 7, 2018) (hereinafter Nation's Needs Report). The Nation's Needs Report contains confidential financial information of the Nation, is marked confidential, and submitted to the Department with an expectation of confidentiality. This information is protected from release to third parties without the consent of the Nation (5 U.S.C § 552(b)(4)).

Scattered Land Holdings

The Nation reports that one of its greatest governmental challenges is its scattered land base.²⁰ The Nation's trust lands total 6,648 acres located in 12 different counties in Wisconsin.²¹ The Nation owns 2,520 acres of fractionated lands in Wisconsin, and 4,693 acres of fee lands in Wisconsin.²² As a result, the Nation's members are also scattered between small tribal communities, separated by hundreds of miles. The Nation's members live in 22 counties in Wisconsin, two counties in Minnesota, and two counties in Illinois. Individual tribal members own individual lands totaling 3,327 acres in Wisconsin and 302 acres in Minnesota.²³

The Nation's scattered land base creates difficulties that the Nation cannot address through a conventional tribal government structure.²⁴ For example, the Nation organizes its government and the administration of its programs and services by creating five legislative districts, four of which are located in Wisconsin. The fifth legislative district represents members living outside of Wisconsin. The four legislative districts in Wisconsin encompass the entire state.²⁵

Each district delivers programs and services to the Nation's members through branch offices. The Nation reports that maintaining five separate districts results in increased costs.²⁶ The Nation reports that it is often difficult to even provide services to members in a single legislative district. For example, in District 1, members must travel up to 155 miles to reach the closest tribal government office and health facility.²⁷

Unemployment

The Nation is experiencing an unemployment crisis.²⁸ The Nation reports that its unemployment rate is 32 percent, while the states of Wisconsin, Minnesota, and Illinois, have unemployment rates between 4 percent, and 5.5 percent. According to the 2010 Census, nearly 25 percent of families on the Nation's lands were living in poverty, compared to 10.1 percent in Rock County and 9.1 percent in the state of Wisconsin.²⁹

The Nation established Departments of Education, Labor, and Personnel to assist its members in attaining higher education and employment through job skills training, but these departments lack sufficient funding to provide adequate services.³⁰ In addition, many members cannot afford childcare, which further limits their employment options.

²⁰ See Nation's Need Report at 5.

²¹ See Memorandum to Director, Office of Indian Gaming, from Acting Regional Director, Midwest Region, Findings of Midwest Region pursuant to 25 CFR § 292 – Ho-Chunk Nation of Wisconsin, Keecak Casino Project (December 23, 2019) (hereinafter Regional Director's Part 292 Findings of Fact) at 4, citing to a Trust Asset and Account Management System *Tribally Owned Tract Report* dated May, 24, 2018; See also Nation's Needs Report at 8-9.

²² See Ho-Chunk Nation, Ho-Chunk Nation at a Glance (April 1, 2019).

²³ *Id.*

²⁴ See Nation's Needs Report at 9.

²⁵ *Id.* at 8.

²⁶ *Id.* at 9 – 10.

²⁷ *Id.* at 9 – 10.

²⁸ Nation's Needs Report at at 39 – 41.

²⁹ See FEIS § 3.7.1.

³⁰ Nation's Needs Report at 41.

Education

The Nation has significant educational needs.³¹ Currently, only 6.8 percent of the Nation's members have college degrees, compared to 17.4 percent in the state of Wisconsin.³² The Nation provides access to educational programs and services regardless of where members live, but reports that it struggles to provide opportunities to all of its members.

Approximately 39.7 percent of the Nation's members are enrolled in either the Head Start Program, Hoocak Ee Cooni Early Learning Center, or PreK-12 Grant Program.³³ The Grant Program provides grants to meet children's basic educational needs and to ensure that students can participate in educational opportunities. Approximately 40 percent of families apply for the available 32 grants each year. Despite the Nation's strict grant guidelines, which limit application eligibility, funding runs out each year and the remaining qualified families are placed on a waiting list.³⁴ Similarly, the Nation's Higher Education Scholarship Program provides scholarships, but the Program's funds are depleted before meeting existing demand.

The Nation lacks funding to provide culturally specific educational opportunities such as revitalizing the aboriginal language, the Hoocak language.³⁵ With additional funding, the Nation would establish a tribal school, a Hoocak language learning center, and certify Ho-Chunk teachers. The Nation needs funds to certify its programs, renovate buildings, develop curriculum, and ensure compliance with state educational laws.

Health Care

The Nation has poor health outcomes compared to the Wisconsin's general population.³⁶ The Nation experiences health concerns that are generally found in under-served and economically depressed communities, including high obesity rates, alcoholism, drug addiction, diabetes, depression, and hypertension. For example, within the Nation's communities of Wittenberg, Nekoosa, Tomah, La Crosse, Wisconsin Dells, and Black River Falls, 312 members tested positive for heroin/opiates, methamphetamine, and other drugs within a 12-month period.

The Nation's caseload for child protection cases, domestic abuse cases, elder neglect and abuse cases, and family displacement continue to rise.³⁷ In 2014, 417 Ho-Chunk members were diagnosed with alcoholism, 198 members were diagnosed with drug addiction, and six newborns tested positive for alcohol, marijuana, and opiates. In 2014, the Nation reported that there were 346 requests for emergency health care assistance averaging \$600 per case for a total of \$207,600 in costs for that year. The Tribal Child and Family Services (CFS) Placement Assistance Program lacks adequate funding.³⁸ This is due in great part to the

³¹ *Id.* at 26.

³² FEIS, § 3.7.1.

³³ Nation's Needs Report at 26.

³⁴ *Id.* at 28

³⁵ *Id.* at 27.

³⁶ Nation's Needs Report at 25.

³⁷ *Id.* at 39.

³⁸ Ho-Chunk Nation Department of Business, *Ho-Chunk Gaming – Beloit Project Plan and Cost Estimate* (March 2012) [hereinafter Project Plan], in Nation's Application, Tab 2. This document contains trade secrets, financial information, is marked confidential, and submitted to the Department with an expectation of confidentiality. This information is protected from release to third parties without the consent of the Nation (5 U.S.C § 552(b)(4)).

increasing drug use epidemic, and children born with neonatal abstinence syndrome. Consequently, the CFS Placement Assistance lacks critical funding to address these issues.

Wisconsin's health for Native Americans rank among the worst in the United States. In 2013, the University of Wisconsin graded Wisconsin Native American child and young adult death rates from ages 1-24 with an F on a grading scale from A-F, with A being the best possible grade and F being the worst possible grade.³⁹ The report found that Wisconsin is failing in its efforts to promote health for Native American children and young adults. Wisconsin barely received a passing grade of D for its efforts to promote the health of Native American infants and infants whose mothers have no education beyond high school. Wisconsin also received a grade of F in its efforts to improve the health of Native Americans ages 25-64.

A lack of funding and the dispersed nature of the Nation's lands contribute to a lack of access to quality health care, an insufficient number of clinics, and difficulty accessing existing health care facilities.⁴⁰ To reach its members, the Nation built multiple offices and facilities in centralized areas near tribal communities. The Nation has two health care facilities located in its most populated areas. The Black River Falls facility is funded through a combination of Indian Health Service funds, grants, and net gaming revenue. The second medical facility is located 75 miles south of Black River Falls, near Wisconsin Dells, and is completely funded by the Nation from net gaming revenue. The Nation's Health Department also operates four satellite offices, but the services at each are limited to community health and behavioral health services. The Nation provides health-related transportation over long distances to these health facilities.

In addition to the lack of accessible health care services, the Nation reports that it experiences medical staff shortages and difficulty in recruiting and retaining physicians, dentists, optometrists, nurses, and other health care professionals because of the lack of funding and the inability to provide sufficient salaries.⁴¹ The Nation compensates doctors and other medical professions at below the state annual average. The Nation's annual compensation to dentists is \$47,012.43 below the state average. Salaries for clinical nurses is \$16,455.20 below the state annual average. In total, the Nation anticipates a cost of \$12.1 million to address the health related concerns of its members.

Housing Shortages

The Nation has a severe housing shortage.⁴² The Nation owns 194 tribal rental units, but reports that 1478 members, or 19 percent of tribal members, were on the rental housing waiting list in 2018. The Nation's Department of Housing (DOH) receives an average of 94 requests per month from members requesting emergency housing. The DOH also has a backlog of requests for assistance from members whose homes are dilapidated or undersized.

Currently, the DOH provides limited assistance and services to the Nation's members through the following programs: Down Payment Assistance Grants, Mortgage Assistance Grants, Home Ownership

³⁹ *Health of Wisconsin Report Card, 2013*, at 7. Available at <https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2018/01/Report-Card-2013.pdf>.

⁴⁰ Nation's Needs Report at 30-35.

⁴¹ Regional Director's Part 151 Findings of Fact at 8-9.

⁴² Nation's Needs Report at 24. *See also* and *Health of Wisconsin Report Card, 2013*, at 7. Available at <https://uwphi.pophealth.wisc.edu/wp-content/uploads/sites/316/2018/01/Report-Card-2013.pdf>.

Programs, Home Repair Loans, and Roof Repair Grants for elders. The Nation reports, however, that due to insufficient funds, some members are homeless, live in severely over-crowded homes, or are awaiting permanent housing options.⁴³

The Nation estimates that it would need approximately \$3 million to build 20 homes per year through its Home Ownership Programs to address the housing shortage.⁴⁴ The Nation has, however, only built an average of five elder and five non-elder homes per year due to the lack of adequate funding. The funding available within the Home Ownership Program is not adequate and forces some tribal families to continue to live in poor conditions. For example, many of the members' homes need mold removal; however, the Nation, has no funding to allocate for mold removal.⁴⁵

In 2013, the Nation's Department of Environmental Health sampled 332 homes with household wells to identify water quality issues.⁴⁶ Of those, 22 homes had critical water quality needs. Another 184 homes had secondary water quality issues that result in damage to plumbing, clothing, and appliances.

Conclusion

The Nation lacks funding to meet the critical needs of its members. The scattered locations of tribal communities exacerbates the need for multiple, duplicate facilities and resources. As a result, members suffer severe consequences. Revenue from the Proposed Project will assist in alleviating budgetary shortfalls.

The acquisition of the Beloit Site is necessary to facilitate tribal self-determination and economic development.

25 C.F.R. § 151.11 – Off-Reservation Acquisition.

We consider the Nation's application under the off-reservation criteria of Section 151.11 because the Beloit Site is located outside of and noncontiguous to the Nation's existing reservation lands. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), (e) through (h), and 151.11(b) through (e), as discussed below.

25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority.

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it. For the reasons explained below, the Nation is eligible for the land into trust provisions contained in 25 U.S.C. § 5108.

⁴³ Nation's Needs Report at 25.

⁴⁴ *Id.*

⁴⁵ See Nation's Application, Tab 4.

⁴⁶ Regional Director's Part 151 Findings of Fact at 9.

Standard of Review

A. Carcieri

Section 5 of the IRA⁴⁷ authorizes the Secretary to acquire land in trust for “Indians.” Section 19 of the Act defines “Indian” to include several categories of persons.⁴⁸ As relevant here, the first definition of “Indian” applies to “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction.”⁴⁹ In *Carcieri v. Salazar*,⁵⁰ the Supreme Court considered the ordinary meaning of the term “now,” its sense within the context of the IRA, as well as contemporaneous Departmental correspondence,⁵¹ and concluded that the phrase “now under the federal jurisdiction” unambiguously referred to tribes “that were under the federal jurisdiction of the United States when the IRA was enacted in 1934.”⁵² The majority did not, however, address the meaning of the phrase “under federal jurisdiction,” however, concluding that the parties had conceded that the Narragansett Tribe was not under federal jurisdiction in 1934.⁵³

B. Sol. Op. M-37029

To guide implementation of the Secretary’s discretionary authority under Section 5 after *Carcieri*, in 2010, the Department prepared a two-part procedure for determining when an applicant tribe was “under federal jurisdiction” in 1934.⁵⁴ In 2014, the Solicitor of the Interior (Solicitor) memorialized the Department’s interpretation in the Sol. Op. M-37029⁵⁵ (M-37029).⁵⁶ The Solicitor determined that because the IRA does not unambiguously give meaning to the phrase “under federal jurisdiction,” Congress left a gap for the agency to fill.⁵⁷ When construing the phrase at issue, the Solicitor considered the text of the IRA, its remedial purposes, legislative history, the Department’s early practices, as well as the Indian canons of construction.⁵⁸

⁴⁷ IRA, § 5, codified at 25 U.S.C. § 5108.

⁴⁸ *Id.* at § 19, codified at 25 U.S.C. § 5129.

⁴⁹ 25 U.S.C. § 5129.

⁵⁰ 555 U.S. 379 (2009).

⁵¹ *Carcieri*, 555 U.S. at 388-90.

⁵² *Id.* at 395.

⁵³ *Id.* at 382, 395.

⁵⁴ See U.S. Dep’t. of the Interior, Assistant Secretary, Record of Decision, *Trust Acquisition of, and Reservation Proclamation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe* at 77-106 (Dec. 17, 2010) (hereafter “Cowlitz ROD”); see also *County of Amador v. United States Department of the Interior*, 872 F.3d 1012, n. 15 (9th Cir. 2017).

⁵⁵ Sol. Op. M-37029, *The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act* (Mar. 12, 2014) (“M-37029”).

⁵⁶ See M-37029 (A signed M-Opinion binds Departmental offices and officials and may only be overruled or modified by the Secretary, Deputy Secretary, or Solicitor. Dept. of the Interior, See Departmental Manual, Part 209, Ch. 3, § 3.2(A)(11)).

⁵⁷ M-37029 at 17. The Secretary receives deference to interpret statutes that consigned to his administration. See *Chevron v. NRDC*, 461 U.S. 837, 842–45 (1984); *United States v. Mead Corp.*, 533 U.S. 218, 229–31 (2001); see also, *Skidmore v. Swift*, 323 U.S. 134, 139 (1944) (holding that agencies merit deference based on “specialized experience and broader investigations and information” available to them).

⁵⁸ M-37029 at 19.

As a threshold matter, the Solicitor rejected the argument that Congress' constitutional plenary authority over tribes standing alone is sufficient to show that a tribe was "under federal jurisdiction."⁵⁹ Rather, the Solicitor concluded, *Carciere* requires indicia that Federal officials exercised that authority with respect to the Tribe or its members.⁶⁰ The analysis for determining a tribe's eligibility for land into trust under the M-Opinion therefore presumes a tribe is subject to the Federal Government's plenary authority over Indian affairs.⁶¹

After establishing that plenary authority alone was insufficient to satisfy the requirements of the first definition, the M-Opinion construed the phrase "under federal jurisdiction" as requiring the application of a two-part inquiry to determine eligibility for the IRA's land into trust benefits.⁶² The first part examines whether evidence from the tribe's history, at or before 1934, demonstrates that it was "under federal jurisdiction."⁶³ This step looks to whether the United States had, in 1934 or earlier, taken an action or series of actions — through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members — that are sufficient to establish or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal Government.⁶⁴

The Solicitor noted that certain Federal actions in and of themselves demonstrate that a tribe was under federal jurisdiction at some identifiable period in its history, such as treaties or the implementation of specific legislation (e.g., votes conducted under Section 18 of the IRA).⁶⁵ While in "other cases, a variety of federal actions viewed *in concert* may demonstrate that a tribe was under federal jurisdiction."⁶⁶ Such evidence might include guardian-like actions undertaken on behalf of a tribe or a continuous course of dealings with a tribe.⁶⁷ It could also include the negotiation of treaties; Federal approval of contracts between a tribe and non-Indians; enforcement of the Trade and Intercourse Acts (Indian trader, liquor laws, and land transactions); the education of Indian students at BIA schools; and the provision of health or social services to a tribe.⁶⁸ Finally, it might also include actions by Office of Indian Affairs officials administering the affairs of Indian reservations or implementing Federal legislation.⁶⁹

Where a tribe established that it was under Federal jurisdiction before 1934, the second part of the inquiry determines whether that jurisdictional status remained intact in 1934.⁷⁰ The courts that have considered the

Id. at 10.

⁶¹ *Ibid.* The M-37029 instructs that indicia of federal jurisdiction beyond the general principle of plenary authority is required to demonstrate that a tribe was "under federal jurisdiction."

⁶² *Id.* at 18-19.

⁶³ *Id.* at 19.

⁶⁴ *Ibid.*

⁶⁵ *Id.* at 19-20.

⁶⁶ *Id.* at 19 (emphasis added).

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Id.* at 19.

Department's reading of "under Federal jurisdiction," articulated in the M-Opinion, including the United States Court of Appeals for the District of Columbia,⁷¹ have upheld the Department's interpretation.⁷²

Analysis

We conclude that the evidence demonstrates that the Nation was under Federal jurisdiction in 1934 within the meaning of Section 19 of the IRA. The Nation came under Federal jurisdiction no later than 1816 when the United States negotiated and executed a treaty with the Nation. In the decades following, the United States continued to exercise significant jurisdictional authority over the Nation and its members. The Nation retained its jurisdictional status through and beyond 1934, as evidenced by a 1937 Solicitor's Opinion clarifying that the Nation was eligible to organize under the IRA.

A. Federal Jurisdiction before 1934

The evidence before the Solicitor's Office reveals that the Federal Government engaged in a course of dealings establishing that the Nation was under Federal jurisdiction before 1934 and as early as 1816. This evidence includes entering into multiple treaties with the Nation; removal west of the Mississippi River; specific legislation applicable to the Nation and its members; enumeration of the Nation in censuses and numerous reports; conferring jurisdiction on the Court of Claims to redress the Nation's claims against the United States as well as approval of attorney contracts.

1. 1816 – 1865 Treaty Making and Removal

On June 3, 1816, the United States entered into a treaty of peace and friendship with the Ho-Chunk Indians.⁷³ This treaty, executed in the wake of the War of 1812, was to be the first of many between the parties, which would ultimately result in the loss of all Ho-Chunk lands east of the Mississippi River.⁷⁴ After removals to Iowa, Minnesota, and South Dakota, the Ho-Chunk Indians negotiated a final treaty in 1865, wherein it exchanged its reservation in South Dakota for reserved lands in northeast Nebraska.⁷⁵ The several treaties between the Nation and the United States provide strong evidence of Federal jurisdiction. As M-37029 explains, a treaty between the United States and a tribe may in and of itself implicitly establish Federal jurisdiction over the tribe.⁷⁶

⁷¹ *Confederated Tribes of the Grand Ronde Cmty. of Or. v. Jewell*, 75 F.Supp.3d 387 (D.D.C. 2014), *aff'd*, 830F.3d 552 (D.C. Cir. 2016), *cert. den. sub nom. Citizens Against Reservation Shopping v. Zinke*, 137 S.Ct. 1433(2017) [hereinafter *Grand Ronde*].

⁷² *Cent. NY. Fair Bus. Ass'n v. Jewell*, 2015 WL 1400384 (N.D.N.Y. Mar. 26, 2015) (not reported), *aff'd*, 673 Fed. Appx. 63 (2d Cir. 2016) (not reported), *cert. den.*, 137 S.Ct. 2134 (2017); *Citizens for a Better Way v. United States DOI*, 2015 WL 5648925 (E.D. Cal. Sep. 23, 2015) (not reported), *aff'd sub. nom. Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F.3d 584 (9th Cir. 2018); *Stand Up for Cal.! v. United States DOI*, 204 F. Supp. 3d 212, 282 (D.D.C. 2016), 879 F.3d 1177 (D.C. Cir. 2018), *reh'g en banc den.*, Apr. 10, 2018, cert pet. docketed, No. 18-61 (U.S. Jul. 11, 2018); *County of Amador v. Jewell*, 136 F. Supp. 3d 1193 (E.D. Cal. 2015), *aff'd*, 872 F.3d 1012, 1025 (9th Cir. 2017), *reh'g en banc den.* (Jan. 11, 2018), cert pet. docketed, No. 17-1432 (U.S. Apr. 13, 2018). *See also Shawano County, Wisconsin v. Acting Midwest Reg'l Dir.*, 53 IBIA 62 (2011); *Village of Hobart, Wisc. v. Acting Midwest Reg'l Dir.*, *Bureau of Indian Affairs*, 57 IBIA 4 (2013).

⁷³ Treaty with the Winnebago, 7 Stat. 144 (1816).

⁷⁴ *Winnebago Tribe v. United States*, 8 Ind. Cl. Comm. 78 Dockets 243, 244, 256 at 81-82 (Aug. 10, 1959).

⁷⁵ 14 Stat. 671 (Mar. 8, 1865).

⁷⁶ M-37029 at 14.

2. 1873 – 1912 Ho-Chunk Indians of Wisconsin

Throughout these relocations, there remained Ho-Chunk Indians who refused to leave, or would subsequently return to their ancestral homelands in Wisconsin.⁷⁷ After a final attempt at removal in 1873,⁷⁸ Federal Indian policy began to shift, and in 1875 Congress extended the provisions of the Homestead Act to those Indians who agreed to abandon tribal relations.⁷⁹ A “large number” of Ho-Chunk Indians in Wisconsin secured allotments under the Homestead Act, as amended, but such allottees often selected unproductive land and remained in “extreme poverty.”⁸⁰ In response, Congress enacted the Winnebago Homestead Act in 1881 (1881 Act).⁸¹

Among other things, the 1881 Act recognized the unique challenges faced by the Ho-Chunk Indians of Wisconsin, as compared to the Ho-Chunk Indians residing on the Winnebago Reservation in Nebraska. The 1881 Act acknowledged that the location of the Ho-Chunk Indians of Wisconsin “has (...) become permanent” and that certain funds intended for its benefit by Congressional statute enacted in 1885 and held at the Department of the Treasury (Treasury) had been improperly directed to the Winnebago Reservation in Nebraska. The 1881 Act then directed the Secretary to “cause a census of the tribe of Winnebago Indians” (Winnebago Census) and record enrollment upon separate lists for those in Nebraska and those in Wisconsin.⁸² From this list, the Secretary was to take certain actions to “equalize the payments between the two bands”⁸³ and prospectively use the census to distribute future annuities on a pro-rata basis.⁸⁴

In the early 1900s, Congress considered permanently segregating the Treasury funds between the Winnebago of Nebraska and the Ho-Chunk Indians of Wisconsin.⁸⁵ In support of such legislation, C.F. Hauke, Acting Commissioner of Indian Affairs, submitted a report to the House Committee on Indian Affairs in March 1912, expressly describing the Ho-Chunk Indians of Wisconsin as a “recognized tribe” and those listed on the Winnebago Census and residing in Wisconsin as eligible for distribution of tribal funds.⁸⁶

In this case, the Federal Government recognized the Ho-Chunk Indians of Wisconsin through legislation specific to the Nation. This constitutes strong evidence of the exercise of Federal jurisdiction.⁸⁷ As explained in M-37029, there is a great breadth of actions and jurisdiction that the United States has asserted over Indians over the course of its history.⁸⁸ These include a number of administrative actions such as the production of “annual reports, surveys, and census reports on many of the tribes and Indians under its

⁷⁷ *Winnebago Tribe*, 8 Ind. Cl. Comm. at 82 (approximately 1,000 Winnebago remained in Wisconsin).

⁷⁸ *Id.*

⁷⁹ 18 Stat. 420 (Mar. 3, 1875).

⁸⁰ 21 Stat. 315 (Jan. 18, 1881) at § 1.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Id.* at § 2.

⁸⁴ *Id.* at § 3.

⁸⁵ *See*, 35 Stat. 781, 798 (Mar. 3, 1909)(established a roll for all Winnebago Indians); 36 Stat. 873 (Jan. 20, 1910)(directing payments to “the members of the Winnebago Tribe of Indians in Nebraska and Wisconsin); 37 Stat. 187 (Jul. 1, 1912)(directing the Secretary to make a census of the “two branches of the tribe”).

⁸⁶ *Relief of Winnebago Indians of Nebraska and Wisconsin*, Report from C.F. Houke, Acting Commissioner of Indian Affairs to the House of Representatives Committee on Indian Affairs, 62nd Cong. Report No. 384 at 4 (1912).

⁸⁷ *See*, M-37029 at 22-23 (specifically discussing Wisconsin Winnebago).

⁸⁸ M-37029 at 16.

jurisdiction.”⁸⁹ The Winnebago Census and its use to determine payments to the Nation’s members provides additional evidence of an ongoing course of dealings between the Tribe and the federal government evidencing Federal jurisdiction.

3. 1928 Court of Claims

In 1928, Congress conferred jurisdiction on the United States Federal Court of Claims (Court of Claims) to adjudicate all legal and equitable claims arising under the various treaties, statutes and executive orders “which said Winnebago Tribe of Indians, or any band thereof, may have against the United States.”⁹⁰ The Department’s report to Congress on the jurisdictional bill referred to “branches” of Winnebago in both Nebraska and Wisconsin,⁹¹ and in subsequent years, the Department approved a number of attorney contracts supporting representation of the “Winnebago Tribe of Indians resident in Wisconsin” before the Court of Claims.⁹² Congress’ specific authorization for the Nation to bring claims against the United States and the approval of attorney contracts between the Nation (specifically the Winnebago Tribe of Indians resident in Wisconsin) and non-Indians for that purpose constitute strong indicia of Federal jurisdiction.⁹³

Summary

The course of Federal dealing with the Ho-Chunk Tribe from 1816 to 1934 clearly demonstrates that the Federal Government engaged in a course of dealings with the Nation and its members that evidenced Federal obligations, duties, responsibility for, and authority over the Nation. We find that the Nation was under Federal jurisdiction prior to 1934.

B. Federal Jurisdiction through 1934 and after

Having established that the Nation was under Federal jurisdiction prior to 1934, the next step in the inquiry is to determine whether the Nation’s jurisdictional status remained intact through 1934. The absence of probative evidence that a tribe’s jurisdictional status was terminated or lost prior to 1934 strongly suggests that such status was retained in 1934.⁹⁴

1. Margold Opinion

After passage of the IRA in 1934, there were immediate questions as to whether the Ho-Chunk Indians in Wisconsin were eligible to organize under the Act. In March 1937, the Solicitor issued a legal opinion concluding that, despite taking allotments pursuant to the Homestead Act, as amended, later Congressional actions made clear that “abandonment of tribal relations was never fully accomplished.”⁹⁵ Thus, Solicitor Margold determined that:

⁸⁹ *Id.*

⁹⁰ 45 Stat. 1027 (Dec. 17, 1928).

⁹¹ *Status of Wisconsin Winnebago, Memorandum to the Commissioner of Indian Affairs, Solicitor Nathan R. Margold, 733 (Mar. 6, 1937) (“Margold Opinion”).*

⁹² Margold Opinion at 733. *See also, Winnebago Tribe of Indians v. United States*, 100 Ct.Cl. 1, 6 (1942).

⁹³ M-37029 at 19.

⁹⁴ *Id.* at 20.

⁹⁵ *Id.* at 732.

“These Indians can be considered either as an organized band or tribe for the purposes of organization and land purchase. They can be designated as the ‘Winnebago Tribe of Wisconsin’ or ‘Winnebago Band of Wisconsin’ or by other variations of the name”⁹⁶

2. Indian Claims Commission

In 1959, when considering the consolidated treaty claims of the Winnebago of Nebraska and the Ho-Chunk Indians of Wisconsin, the Indian Claims Commission (Commission) summarized the Nation’s historic and continuous relationship with the United States government, as follows:

Throughout their history from 1634 to the present there has always existed a Winnebago Tribe or Nation of significant numbers, well known to the United States Government. The United States has dealt with them as a tribal entity on many occasions finally locating part of them as a tribe or nation on a Nebraska reservation. In like manner the existence of a large group of Winnebago Indians living in Wisconsin has been well known to government officials. Therefore the evidence shows that the petitioner members of the Winnebago Tribe of Nebraska, as well as the individual petitioners residing in Wisconsin are descendants of members of the Winnebago Tribe and Nation of Indians as originally constituted, and with whom the United States has dealt by treaty on numerous occasions as set out in the Commission’s findings.⁹⁷

Consistent with the Margold Opinion and the Commission’s findings of fact, in January 1963, the Department supervised an election for the Nation to organize under the IRA and adopt a constitution and bylaws.⁹⁸

Summary

Despite any questions regarding the Nation’s status in the wake of the IRA, the probative evidence demonstrates that the Nation’s jurisdictional status remained intact through 1934. Both Solicitor Margold’s opinion and the Indian Claims Commission’s findings confirm this conclusion. Finally, there is no evidence in the record to establish that jurisdiction over the Nation was ever terminated or extinguished.

Conclusion

Beginning as early as 1816 the Federal Government asserted jurisdiction over the Nation through negotiating and entering into a treaty with it. The record demonstrates that the Federal Government continued to exercise significant jurisdictional authority over the Nation and its members by removing the Nation from its lands, enacting and implementing tribe specific legislation, approving attorney contracts on the Nation’s behalf and enumerating the Nation in a census. The evidence further demonstrates that the Tribe retained its jurisdictional status through and beyond 1934. Based on the foregoing, the Tribe satisfies the IRA’s first definition.

⁹⁶ *Id.* at 733.

⁹⁷ *Winnebago Tribe*, 81 Ind. Cl. Comm. at 83.

⁹⁸ Letter from E.J. Riley, Superintendent to James Hawkins, Area Director (Jan. 22, 1963) (The Tribe adopted the proposed Constitution and Bylaws by a vote of 514 to 5 on January 19, 1963).

25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land.

Section 151.10(b) requires the Secretary to consider a tribe's need for additional land.

The Nation needs additional land for economic development and tribal self-determination and to support its growing population. As explained above, and in the Secretarial Determination, the Nation identified five primary areas of concern: (1) scattered land holdings, (2) unemployment, (3) education, (4) health care, (5) housing.⁹⁹ The Nation's scattered land base also creates difficulties that the Nation cannot address through a conventional tribal government structure.¹⁰⁰ The acquisition of the Beloit Site is an essential component of the Nation's self-determination and broader economic initiatives to establish a long-term revenue base that will strengthen the Nation's government, enhance the quality and quantity of governmental services, create employment opportunities, and provide capital for economic development.

The Regional Director determined, and we concur, that the Beloit Site will address the Nation's need for additional land.¹⁰¹

25 C.F.R. § 151.10(c) - The purposes for which the land will be used.

Section 151.10(c) requires the Secretary to consider the purposes for which the land will be used. The Nation proposes to develop a casino-resort on the Beloit Site. The casino would feature 2,200 class III gaming machines and 50 table games on an approximately 139,700-square foot (sf) gaming floor.¹⁰² The casino-resort would also feature food and beverage space of approximately 45,580 sf. The hotel would consist of 300 rooms and include a convention center with approximately 45,190 sf for meetings and entertainment. The casino-resort would also feature an indoor waterpark of approximately 40,000 sf and parking for 5,000 vehicles. In addition, the Nation would develop retail outlet space of approximately 175,000 sf and parking on the adjacent 40-acre fee parcel. A site plan is included in Enclosure I.

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

By correspondence dated August 24, 2018,¹⁰³ the BIA solicited comments from the following state and local governments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:

- Governor of the State of Wisconsin
- Chairman, Rock County
- City Manager, City of Beloit
- Chairperson, Town of Turtle

⁹⁹ Nation's Needs Report at 15.

¹⁰⁰ *Id.* at 9.

¹⁰¹ Regional Director's Part 151 Findings of Fact at 12.

¹⁰² See FEIS, § 2.3.1.

¹⁰³ See Regional Director's Part 151 Findings of Fact at 4.

The BIA received comments from Rock County and the City of Beloit which expressed their support for the Proposed Project and both stated that there are no special assessments on the property.¹⁰⁴ In 2018, the Nation was assessed \$281.72 in total property taxes for the Beloit Site.¹⁰⁵ The BIA received no other substantive comments regarding removing the Beloit Site from the tax rolls. Because of Nation's scattered land base and members throughout a tri-state area, the Nation exercises its governmental authority by entering into partnerships with the local governments to provide certain government services.¹⁰⁶ The Nation entered into an Intergovernmental Agreement with the City of Beloit and Rock County in 2012, to facilitate construction of the proposed project and address potential impacts to the City and the County from operation of the proposed casino-resort.¹⁰⁷ I am in agreement with the parties that the Intergovernmental Agreement must be approved under 25 U.S.C. § 81 once the land involved is acquired in trust on behalf of the Nation in order to be valid.¹⁰⁸ The regulations implementing Section 81 prohibits the Department from providing approvals of agreements encumbering land before that land is federally restricted against alienation or held by the United States in trust status. See *id.* § 84.005. Therefore, I cannot approve the Intergovernmental Agreement at this time. Once trust title to the Beloit Site is recorded in the Land Title Records Office, the site will be tribal lands for the purposes of Section 81, and the parties must submit the Intergovernmental Agreement for review and approval to the Director, Office of Indian Gaming.

Economic Output and Employment

The Proposed Project would result in a variety of benefits to the regional economy, including increases in overall economic output and employment. The Innovation Group prepared an analysis of the economic impact of the Proposed Project in the 2018 *Market and Impact Assessment for Retail, Gaming, and Waterpark Hotel Development: Beloit, Wisconsin* (Economic Impact Analysis).¹⁰⁹ The Economic Impact Analysis analyzed the local gaming market and expected impacts to the Nation and the local economy from construction of the Proposed Project and its subsequent operation.

Construction Impact

Construction of the Proposed Project will create approximately 4,029 total jobs with 2,595 direct jobs, 419 indirect jobs, and 1,015 induced jobs. Construction of the Proposed Project will also generate \$214 million in labor income consisting of \$150.8 million of direct wages, \$22.3 million of indirect wages, and \$40.9 million of induced wages.¹¹⁰

¹⁰⁴ Letter from Lori S. Curtis Luther, Beloit City Manager, to Regional Director LaPointe (April 4, 2019); letter from J. Russell Podzilni, Chair, Rock County Board of Supervisors, to Regional Director (April 18, 2019).

¹⁰⁵ State of Wisconsin, 2018 Real Estate Property Tax Bill, City of Beloit, Tax ID No. 206-23271000.

¹⁰⁶ Nations' Application at 11.

¹⁰⁷ See *Intergovernmental Agreement Between the Ho-Chunk Nation, City of Beloit, Rock County* (March 2019) (hereinafter Intergovernmental Agreement) at § 3.

¹⁰⁸ 25 C.F.R. §§ 84.003 (Section 81 applies to "tribal lands"); see also *id.* § 84.007.

¹⁰⁹ The Innovation Group, *Market and Impact Assessment/or Retail, Gaming, and Waterpark Hotel Development: Beloit, Wisconsin* (June 2018) in FEIS, Appendix H (hereinafter Economic Impact Analysis).

¹¹⁰ Economic Impact Analysis at 61.

Operational Impact

Operation of the Proposed Project including the retail component on the adjacent fee parcel, will create approximately 3,421 total jobs with 1,985 direct jobs, 738 indirect jobs, and 699 induced jobs.¹¹¹ Operation of the Proposed Project will generate approximately \$149.1 million in annual wages, consisting of \$90.2 of direct wages, \$30.4 of indirect wages and \$28.5 million of induced wages. The majority of these economic effects are estimated to accrue to the City of Beloit and its residents.

Tax Impacts

The loss of property tax revenue will be minimal and more than offset by increased business activity from the Proposed Project. Trust acquisition of the approximately 32-acre Beloit Site will result in annual property tax loss of \$281.72.¹¹² The Proposed Project includes the adjacent 40-acres which will remain in fee and on the tax rolls.

Additionally, the Nation's Intergovernmental Agreement with the City and County includes impact payments infrastructure improvements, municipal services, and to offset property tax loss.¹¹³ The Nation will also make a onetime \$2 million Infrastructure Down Payment to the City.¹¹⁴ These payments will more than offset the loss of tax revenue from removal of land from the tax rolls.

The Impact Payments made by the Nation, listed in Section 3.1 of the IGA, will reimburse the City for lost taxes as a result of taking the Beloit Site into trust. In addition, the Proposed Project will generate substantial tax revenue for state and local government from economic activity associated with construction and operation. Local governments likely to experience economic activity as a result include the City of Beloit, Rock County, the City of South Beloit, and Winnebago County, Illinois. The Proposed Project would generate \$3.3 million in retail sales tax, \$20.9 million in revenue sharing with state and local governments, \$35.6 million in direct state and local taxes, \$5.89 million in indirect state and local taxes, and \$5.98 million in induced state and local taxes.¹¹⁵ An additional \$1.5 million is projected for state and local governments from hotel tax.

Conclusion

The Proposed Project will provide substantial benefits to the regional economy. The Regional Director determined, and we concur, that the impact of removing the Beloit Site from the tax rolls is minimal when balanced with the benefits that will accrue to the region from the increased economic activity from the Proposed Project.¹¹⁶

¹¹¹ Economic Impact Analysis at 52-54.

¹¹² State of Wisconsin, 2018 Real Estate Property Tax Bill, City of Beloit, Tax ID No. 206-23271000.

¹¹³ Intergovernmental Agreement at § 3.

¹¹⁴ Intergovernmental Agreement at § 3.

¹¹⁵ FEIS § 4.7.

¹¹⁶ See Regional Director's Part 151 Findings of Fact at 14. 17

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise.

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

As discussed in Section 151.10(e) above, the BIA by correspondence dated August 24, 2018, requested comments regarding jurisdictional problems and potential conflicts of land use from state and local governments.¹¹⁷ The County and City were the only respondents and both are parties to the Intergovernmental Agreement with the Nation that addresses potential impacts. No negative comments were received. The Proposed Project includes the Beloit Site as well as the adjacent 40-acres which will remain in fee.

Land Use

The Proposed Project is located within the limits of the City of Beloit. The City of Beloit Comprehensive Plan and the City Zoning Ordinance guide development in the City. The Beloit Site is zoned General Manufacturing but is currently used for agriculture.¹¹⁸ The areas surrounding the Beloit Site are a mixture of General Manufacturing, Public Land, and Two-Family Residential. The Beloit Site has been identified by the City as an area of economic development and was reclassified to a Community Commercial land use designation in the most recent City of Beloit Comprehensive Plan (2008).¹¹⁹ The Proposed Project is consistent the City's goal of creating an entertainment district including restaurants, a casino, and other related development. The Proposed Project would not disrupt or conflict with neighboring land uses or prohibit access to neighboring parcels. The Proposed Project would not result in significant impacts to land use.

Jurisdiction

The Proposed Project would increase demand for public services, resulting in increased costs for local governments. Because of Nation's scattered land base and members throughout a tri-state area, the Nation exercises its governmental authority by entering into partnerships with the local governments to provide certain government services.¹²⁰ In accordance with Public Law 280 and Section 1.22 of the Intergovernmental Agreement, the City and County would provide municipal services as well as police, fire, and emergency medical services.¹²¹ The City of Beloit Police Department is located approximately 3 miles west of the Beloit Site, the City of Beloit Fire Department is located approximately 2 miles west of the Beloit Site, and the construction of a fourth satellite fire station in the City is planned to accommodate increased demand.¹²²

¹¹⁷ See Notice of Gaming Land Acquisition Application, Acting Regional Director, Midwest Region, BIA (August 24, 2018). A second notice was issued with the correct legal description; see Notice of Land A Notice of Gaming Land Acquisition Application, Acting Regional Director, Midwest Region, BIA (March 26, 2019).

¹¹⁸ See FEIS, § 4.9.1.

¹¹⁹ See FEIS, § 4.9.1.

¹²⁰ Nations' Application at 11.

¹²¹ See Intergovernmental Agreement.

¹²² See FEIS, § 4.10.1.

Conclusion

The Nation's Intergovernmental Agreement with the City of Beloit and Rock County addresses potential jurisdictional problems and potential land use conflicts. Acquisition of the Beloit Site in trust would not cause conflicts of land use or other jurisdictional problems.

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Section 151.10(g) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities if the land is acquired in trust.

The Regional Director has determined, and we concur, that the BIA has sufficient resources to assume the additional responsibilities resulting from the acquisition, and that acquiring the Beloit Site in trust would not impose any significant additional responsibilities or burdens on the BIA.¹²³

25 C.F.R. § 151.10(h) - The extent to which the applicant has provided information that allows 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.

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the NEPA, 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances.

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Phase 1 Environmental Site Assessments (ESA) for the Beloit Site were completed in 2013. The ESA identified no Recognized Environmental Concerns.¹²⁴ An updated ESA that identified no Recognized Environmental Concerns was completed on May 9, 2022.¹²⁵ This fulfills the requirements of 602 DM 2.

National Environmental Policy Act

The BIA prepared an environmental impact statement (EIS) pursuant to NEPA. The EIS evaluated the issuance of a Secretarial Determination, acquisition of the Beloit Site in trust, and subsequent development of the Proposed Project by the Nation.

The BIA published a Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on November 26, 2012, describing the Proposed Actions, announcing the BIA's intent to prepare an EIS for the Proposed Actions, and inviting public and agency comments.¹²⁶ The BIA also published the NOI in *The Daily News*, *The Janesville Gazette*, and *The Rockford Register Star*. The BIA held a scoping meeting in the City of Beloit on December 13, 2012. The BIA published the Notice of Availability

¹²³ See Regional Director's Part 151 Findings of Fact at 16.

¹²⁴ See FEIS, Appendix M.

¹²⁵ See Phase I Environmental Site Assessment, Ho-Chunk Nation, Beloit, Wisconsin dated May 9, 2022.

¹²⁶ 77 Fed. Reg. 70460 (Nov. 26, 2012).

(NOA) for the Draft EIS in the *Federal Register* on November 9, 2018.¹²⁷ The BIA also published the NOA in *The Daily News*, *The Janesville Gazette*, and *The Rockford Register Star*. The BIA held a public hearing on December 11, 2018. The BIA published the NOA for the Final EIS in the *Federal Register* on May 31, 2019.¹²⁸ The BIA also published the NOA in *The Daily News*, *The Janesville Gazette*, and *The Rockford Register Star*. The Draft and Final EIS are available at <https://www.ho-chunkbeloiteis.com>.

The EIS analyzed four alternatives:

- Alternative A - Proposed Project: Acquisition of the Beloit Site in trust with a casino, hotel, restaurants, convention center, waterpark and retail outlets
- Alternative B - Reduced Intensity Alternative: Same as Alternative A, but at a reduced scale. No hotel, convention center waterpark or retail outlets would be developed
- Alternative C - Non-Gaming Retail: Only the retail outlets would be developed
- Alternative D - No Action/No Development: No land would be transferred into trust and no development alternatives would be implemented

On April 16, 2020, the Department issued a Record of Decision, determining that the issuance of the Secretarial Determination, acquisition of the Beloit Site in trust, and subsequent development of the Proposed Project will have no significant impact on the quality of the human environment. The Record of Decision is included as Enclosure V. This fulfilled the requirements of NEPA as set out in the Council on Environmental Quality Regulations for implementing NEPA, 40 C.F.R. Parts 1500-1508 (2005, as amended).

25 C.F.R. § 151.11(b) - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation.

The Beloit Site is located in southern Wisconsin, about half a mile north of the Illinois border, and is approximately 175 miles from the Nation's headquarters in Black River Falls, Wisconsin, and approximately 40 miles from the nearest Ho-Chunk Nation trust land and tribal government offices in Madison, Wisconsin. See Enclosure I.

25 C.F.R. § 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The Nation submitted a 2012 *Project Plan and Cost Estimate* report (Project Plan)¹²⁹ and a 2020 Pro Forma financial statement prepared by the Innovation Group that includes income statement, balance sheet, and statement of cash flow for the first five years of operation.¹³⁰ The Innovation Group also prepared the Economic Impact Analysis which analyzed the local gaming market and expected

¹²⁷ 83 Fed. Reg. 56096 (Nov. 8, 2018).

¹²⁸ 84 Fed. Reg. 25302 (May 31, 2019).

¹²⁹ *Supra* note 38.

¹³⁰ The Innovation Group, Ho-Chunk Beloit Casino Pro Forma Financial Statements (March 2020) (hereinafter Pro Forma). This document contains trade secrets, financial information, is marked confidential, and submitted to the Department with an expectation of confidentiality. This information is protected from release to third parties without the consent of the Nation (5 U.S.C § 552(b)(4)).

impacts to the Nation and the local economy from construction of the Proposed Project and its subsequent operation.

The Proposed Project is expected to capture nearly 3 million gaming visits per year or approximately 9 percent of the gaming market.¹³¹ The Pro Forma projects that at the end of the first year of operation, after covering expense and servicing debts, the Proposed Project will be profitable.¹³²

We find that the financial projections are reasonable and indicate that the Proposed Project would provide much needed revenue for the Nation.

25 C.F.R. § 151.11(d) - Contact with state and local governments pursuant to sections 151.10(e) and (f).

See Sections 151.10(e) and (f) above.

DECISION TO APPROVE THE NATION'S FEE-TO-TRUST APPLICATION

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Beloit Site in trust for the Nation. After the Beloit Site is acquired in trust, the Nation will be eligible to conduct gaming on the Beloit Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719 (b)(1)(A). Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the Beloit Site in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosures:

- I. Maps
- II. Legal Description
- III. Secretarial Determination
- IV. Governor Evers Concurrence
- V. Record of Decision

cc: Regional Director, Midwest Region

¹³¹ Economic Impact Analysis at 31.

¹³² Pro Forma at 7.