United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:
Appeal No. 2014-145

April 27, 2015

Joseph Hunt
(b) (6) [redacted]

Dear Mr. Hunt:

This responds to the July 17, 2014, Freedom of Information Act ("FOIA") appeal ("appeal") (**No. 2014-145**) that you filed with the Department of the Interior ("Department") on behalf of the Lac Du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin. Your appeal concerns a May 12, 2014, FOIA request that you submitted to the Bureau of Indian Affairs ("BIA") seeking its Midwest Regional Office's recommendation on a "casino off reservation gaming/trust land application" from the Bad River and St. Croix Bands of Chippewa Indians. You challenge the BIA's determination to withhold in full, pursuant to FOIA exemption (5),[1] specifically, the deliberative process privilege,[2] an 18-page document that is responsive to your FOIA request.

After fully reviewing the issues presented in the appeal, the withheld document, and current case law, the Department concludes that your appeal will be **GRANTED IN PART** and **DENIED IN PART**.

The appeal is **GRANTED** insofar as the Department's line-by-line, page-by-page review of the document reveals that some of the information is not protected from disclosure by a FOIA exemption and should have been released to you.

The appeal is **DENIED** in that the Department will uphold the BIA's decision to invoke the deliberative process privilege of exemption (5) as a basis to withhold the aspects of the document that reflects the Regional Office's opinions, analysis, and deliberations on how decisionmakers should proceed with the application. This protected information does not represent a final agency decision on the matter and, instead, served only as a guide for decisionmakers to aid in the final determination on the application. On this point, please note that contrary to the implications that you make in the appeal, the Regional Office did not serve as the final authority on whether to approve the application. The statutes and regulations that guide the sorts of applications at issue in the appeal make clear that the authority is vested in others.

Normally, the Department would have also invoked the deliberative process privilege of exemption (5) as a basis to withhold the actual recommendation that the Regional Office made to

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[1] Exemption (5) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party…in litigation with the agency." *5 U.S.C. § 552(b)(5).*

[2] The deliberative process privilege protects the decisionmaking process of government agencies in order to prevent injury to the quality of agency decisions. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980); *Sierra Club, et al. v. United States Department of Interior, et al.*, 384 F. Supp. 2d 1, 15 (D.D.C. 2004).

decisionmakers regarding the application. However, the Department will not do so in this case because the Regional Office has already disclosed its recommendation to the public,[3] resulting in a waiver of any FOIA exemption or privilege that would have attached to the information. Accordingly, the Department will release the aspect of the document that reflects the recommendation that the Regional Office made.

The Department has attached to this decision the 18-page document that the BIA withheld in full, with the information on 14 of the pages that is protected from disclosure by the deliberative process privilege of exemption (5) redacted.

This completes the Department's response to your appeal. You have a right to seek judicial review of this decision under *5 U.S.C. § 552(a)(4)(B).*

If you have any questions regarding this matter, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,

Darrell R. Strayhorn
FOIA Appeals Officer
Department of the Interior

Attachment

cc: Daniel Largo, FOIA Officer, BIA
Theresa Reilly, FOIA Coordinator, BIA-Great Lakes Agency
Office of the Solicitor-Twin Cities Field Office
Cindy Cafaro, Department FOIA Officer

[3] *See e.g.*, *Ashland Daily Press*, January 9, 2007: "Regional BIA director approves Beloit casino proposal" ("The [BIA] midwest regional director has signed his approval to plans to construct a multi-million dollar Native American casino…to be jointly operated by the Bad River and St. Croix Bands of Lake Superior Chippewa.") http://www.ashlandwi.com/news/article_247b651d-283c-59ea-9177-6316653ab81f html?mode=jqm; *Beloit Daily News*, January 10, 2007: "Casino Signing" with accompanying photo of the BIA's Midwest Regional Director "surrounded by elected representatives of the Bad River and St. Croix Chippewa bands…as he signs the formal approval of the…Trust Land Application" http://www.beloitdailynews.com/news/casino-signing/article_eaabdf16-da7a-5822-ba2f-1704f4d0e3a0 html;

FOIA APPEAL DECISION 2014-145: RELEASE IN PART
ALL REDACTIONS DELIBERATIVE PROCESS PRIVILEGE OF EXEMPTION (5)

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
Bishop Henry Whipple Federal Building
One Federal Drive, Room 550
Ft. Snelling, MN 55111

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

Tribal Operations

JAN – 8 2007

TO: George Skibine, Acting Deputy Assistant Secretary for Policy and Economic Development

FROM: Regional Director Terrence L Virden

SUBJECT: Bad River Band of the Lake Superior Tribe of Chippewa Indians and the St. Croix Chippewa Indians of Wisconsin (Off-reservation) Gaming Acquisition and Section 20 (b)(1)(A) Two Part Determination

INTRODUCTION

Through this memorandum, the Midwest Regional Office (MRO) is hereby transmitting to the Office of Indian Gaming Management the Bad River and St. Croix Chippewa Indians request and application to acquire one (1) parcel of land into trust pursuant to 25 CFR Part 151. The subject parcel contains 26 acres, more or less, and is located in City of Beloit, Wisconsin, and is proposed for a Class III gaming facility.

This memorandum documents the Midwest Region's findings and recommendations on whether or not to place the parcel of land into trust for gaming purposes and follow in compliance with the requirements of Section 20 of the Indian Gaming Regulatory Act (IGRA) and 25 C.F.R. Part 151 - Land Acquisitions.

BACKGROUND

The Bad River Band of Lake Superior Tribe of Chippewa Indians have a Class III gaming compact with the state of Wisconsin, which was approved by the Assistant Secretary – Indian Affairs on March 30, 1992 (Tab 1). With a second amendment to the gaming compact of 1991, approved and signed April 25, 2003 (Tab 1). The St. Croix Tribe has a Class III gaming compact with the state of Wisconsin, which was approved by the Assistant Secretary – Indian Affairs on August 7, 1998 (Tab 2). With a second amendment to the gaming compact of 1991, approved and signed May 12, 2003 (Tab 2).

On September 30, 2005, the Acting Regional Director of the Midwest Region, by certified mail, return receipt requested, issued notice of application, and sought comments regarding the proposed fee-to-trust application from Honorable James Doyle, Governor of Wisconsin, Eva M. Arnold, Rock County Board of Supervisors, Larry Arft, City of Beloit, Randy Kirichkow, Mayor, City of South Beloit, Congresswoman Tammy Baldwin, 2nd District of Wisconsin, and

Judy Robson, State Senator. The certified mail receipts indicate the aforementioned parties received the September 30, 2005, Notice of Land Acquisition (Gaming) Application between October 4, and October 14, 2005 (Tab 3). The BIA received nine (9) comment letters in response to our notice of application (NOA). Each comment letter is numbered and responded to by their number assigned to each letter (Tab 4).

1. The letter dated October 10, 2005, by William M. Lowe, Ho-Chunk Nation, responded to the NOA. Ho-Chunk Nation letters states our office should clearly state whether or not the application is for "off reservation" or "on reservation". Ho-Chunk Nation states the Bureau of Indian Affairs (BIA) has not complied with the federal regulations regarding the section 106 process nor has it addressed issues of the consulting officials in the spirit of the section 106 process. Ho-Chunk Nation states the BIA failed to define the historic boundaries of the St. Croix and Bad River Chippewa. Ho-Chunk Nation states the BIA has allowed the co-application for trust land when clearly the regulations allow trust land for "a tribe", a singular governmental entity.

2. Ho-Chunk Nation through Mr. Lowe's supplement letter requested an extension of time to supplement their October 10, 2005 letter. The Nation was granted an extension and their response letter dated December 5, 2005, contains additional comments and requests a copy of the fee-to-trust application of the St. Croix and Bad River Chippewa for the Beloit casino site. The Dec. 5th letter states the St. Croix and Bad River Chippewa do not have exclusive use and occupancy to any land in the Beloit, Wisconsin, area or anything else in southern Wisconsin.

3. On October 17, 2005, John J. Steiner, P.E., SW-Region Planning Project Manager, Division of Transportation System Development, responded with a letter requesting a 50 foot highway setback along IH-39/90 be placed within the deed for the highway purposes.

4. On October 17, 2005, Ross E. Monk, Division of Highways, Illinois Department of Transportation (IDOT), responded with a letter stating Illinois Rout 75 will serve as part of the access to this location and could be adversely affected by the traffic generated by the development. IDOT asked to be kept informed of the development project process.

5. On October 20, 2005, Jim Brandenburg, Town of Turtle, Beloit, Wisconsin, responded with a letter stating in 2003 the Town of Turtle Board approved a resolution supporting the City of Beloit in this project with the stipulation that it was not built in the Town of Turtle.

6. On October 20, 2005, Randy Kirichkow, City of South Beloit, Illinois, responded with a letter stating the approval of this project will have a positive economic impact both for the Tribes who will own and operate the facility, as well as surrounding communities of the greater Stateline area.

7. On October 17, 2005, Cos Daguanno, Town of Beloit, Beloit, Wisconsin, responded with a letter stating the Town of Beloit fully supports the United States of America accepting in trust the specified real property located in the City of Beloit, Wisconsin, on behalf of the Indian Bands for the construction, maintenance, and operation of a Class III gaming facility. The Town of

Beloit believes this project will benefit the Indian Bands and provide needed employment and economic growth in the greater Beloit area.

8. On October 11, and on October 14 (correction to city correspondence), 2005, Larry N. Arft, City of Beloit, Wisconsin, responded with a letter stating their overwhelming support for this application. The City's support includes a resolution, unanimously adopted by the Beloit City Council on February 7, 2005, further articulating the community's support for this project.

9. On October 10, 2005, Craig Knutson, Administrator, Rock County Administrator's Office, Janesville, Wisconsin, responded with a letter stating the Rock County Board of Supervisors approved resolutions in 2003 and 2005 supporting the Tribes' application and has pledged, through participation in the InterGovernmental Agreement (IGA) (Tab 11), to provide County services to the Beloit Casino. Support for the project is strong, and numerous studies and reports demonstrate the effects of the project on Rock County and surrounding areas will be positive.

On January 5, 2006, the above response letters generated from the NOA were forwarded to the respective Tribes to respond or comment.

On January 30, 2006, the Bad River Band of Lake Superior Tribe of Chippewa Indians and the St. Croix Chippewa Indians of Wisconsin responded to each of the NOA's comment letters. Both Tribes (together) wrote letters to each of the above mentioned NOA comment letters with answers or comments (Tab 5).

BIA PERSPECTIVE OF COMMENTS RECEIVED

1. The October 10, 2005, comment letter regards the "off reservation or on reservation" clarification. Our office after receiving this letter did put forward the suggestion from Ho-Chunk with future out going correspondence our office would clearly state for this application is an "off-reservation" acquisition. [redacted]

2. [redacted]

3. Mr. Steiner's letter dated October 17, 2005, does not address any of the specific four questions posed in our NOA comment request. Mr. Steiner's letter requests for a 50-foot highway setback along IH-39/90 be placed within the deed for highway purposes. Mr. Steiner's comments

4. Mr. Monk's letter dated October 17, 2005, does not address any of the specific four questions posed in our NOA comment request. However, Mr. Monk, did ask to be kept informed of the development project process and remains on the interested party list.

5. Mr. Brandenburg's letter dated October 20, 2005, did respond to all four questions posed in our NOA. The Town of Turtle approved a resolution supporting the City of Beloit in this subject project. This resolution helps maintain and creates a government to government relationship for support of the gaming acquisition.

6. Mr. Kirichkow's letter dated October 20, 2005, responded to the NOA The City of South Beloit is maintaining a government to government relationship with the Tribes and supports the economic growth along with sales tax revenue generated by the jobs created by the proposed gaming facility.

7. Mr. Daguanno's letter dated October 17, 2005, did not respond specifically to the four questions posed in our NOA. However, the Town of Beloit fully supports the acquisition of land in trust for operation of a Class III gaming facility. The Town of Beloit is maintaining a government to government relationship with the Tribes.

8. Mr. Arft's letter dated October 11, 2005, and corrected letter dated October 14, 2005, did respond with comments to all four questions in the NOA. Question 1 response is the property taxes are not collected as the City of Beloit owns the property. Question 2 is answered with there is no special assessments against the project site. Question 3 is responded with the project site is maintained with routine maintenance of public streets located adjacent to the site. Question 4 is asking for comments regarding zoning and response for this project site is consistent with current zoning. The City of Beloit and the Tribes and plan to maintain a positive government to government relationship. The corrected letter dated October 14, 2005, corrects question 1 about the correct amount of $186.66 taxes collected for the project site and the taxes collected are minimal.

9. Mr. Knutson's letter dated October 10, 2005, responded and answered all four questions from the NOA. Question 1 is answered with the amount of taxes collected from the $186.66 is allocated ($44.23) to Rock County. No special assessments currently assessed against the property for question 2. Question 3 is answered by Rock County who has worked in partnership with the Tribes and the City of Beloit in negotiating an InterGovernmental Agreement (IGA)

(Tab 11) for Services. The County does not have jurisdiction for zoning and therefore has no comment to question four. However, the project site is not located on or adjacent to a floodplain, nor is it shore land. This IGA has created and maintained a government to government relationship between the Tribes and County & City.

The above seven comment letters received from the governmental entities did not state any opposition to the acquisition of the gaming project site on behalf of the Tribes.

AUTHORITY OF TRIBAL OFFICIAL TO ACT

Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin

On July 25, 2001, the Bad River Band of Lake Superior Tribe of Chippewa Indians duly adopted a resolution (Tab 6) requesting assistance from the BIA to place the acquisition into Federal Trust Status for the purpose of Class III Gaming.

On May 23, 1936, the Bad River Band of Lake Superior Tribe of Chippewa Indians adopted an IRA Constitution (Tab 7). The Constitution specifies the Bad River Band of Lake Superior Tribe has governmental jurisdiction over land acquired or reserved within or without said boundary lines by or on behalf of the Bad River Band.

St. Croix Chippewa Indians of Wisconsin

On July 26, 2001, St. Croix Chippewa Indians of Wisconsin duly adopted a resolution (Tab 8) to request assistance from the BIA to place the acquisition into Federal Trust Status for the purpose of Class III Gaming.

On August 29, 1942, the St. Croix Chippewa Indians of Wisconsin adopted an IRA Constitution (Tab 9). The Constitution specifies the St. Croix Chippewa Indians has governmental jurisdiction over all lands hereafter acquired by or for the St. Croix Indians.

Niizhoo Akiing (Two Nations as One)

Both Tribes entered into a Memorandum of Agreement (MOA) on April 11, 2001, which creates a partnership between the sovereign nations in their joint operation of an off-reservation gaming facility in Beloit, Wisconsin. In addition to the MOA, the Inter-Tribal Agreement includes specific sections including: the By-Laws of the Niizhoo Akiing (the joint entity formed by the Tribes to conduct the gaming operations), the Gaming Ordinance, and the Judicial Code: St. Coix and Bad River Inter-Tribal Judicial Dispute Resolution (Tab 19).

The MOA identifies the parties as the Bad River and St. Croix Bands of Chippewa and describes the steps involved in organizing the partnership. Both parties agree the gaming facility shall be operated by the Niizhoo Akiing which shall oversee all decisions of the management of the gaming facility.

The By-Laws of the Niizhoo Akiing describes the creation of Niizhoo Akiing, sets the operational guidelines, powers and duties of the Niizhoo Akiing.

The Gaming Ordinance was created and adopted by both Tribes pursuant to their respective sovereign authority, in order to provide for joint governance of all gaming conducted at the proposed Beloit facility. The adoption of the ordinance is a cooperative effort resulting in the formation of the enterprise. This joint gaming ordinance and regulations to govern their jointly held proposed property in Beloit, Wisconsin, the Tribes are able to effectively oversee the operations of the facility.

The adopted Judicial Code establishes the Tribes collective desire for structure and procedure for resolution of disputes regarding the trust land, conduct the Gaming Enterprise, and other matters associated with the proposed Beloit facility.

LEGAL DESCRIPTION

The land referred to is situated in the State of Wisconsin, County of Rock, and is described as follows (maps – Tab 10):

Part of the West ½ of the N.W. ¼ of Section 32, T.1 N., R. 13 E. of the 4th P.M., City of Beloit, Rock County, Wisconsin.

Commencing at the West ¼ corner of Section 32, aforesaid; thence South 89°18'34" East along the South line of the N.W. ¼ of said Section a distance of 264.09 feet to the S.E. corner of Lot 2 of a certified Survey Map recorded in Volume 13 on Pages 341-344 of Certified Survey Maps being also the place of the beginning for the land to be herein described; thence North 0°52'16" West along the East line of said Lot 2 a distance of 894.82 feet; thence North 88°54'01" East 420.00 feet; thence North 78°38'34" East 528.83 feet; thence North 0°52'16" West 190.83 feet; thence South 88°54'01" West 940.00 feet to the East line of said Lot 2; thence North 0°52'16" West 154.00 feet to a point 35.00 feet South of the centerline of Colley Road; thence North 88°54'01" East and parallel to said centerline 1306.28 feet; thence South 1°37'52" East 360.80 feet to the Northwesterly right of way line of I-90; thence South 37°31'16" West along said right of way line 1266.39 feet to the South line of said N.W. ¼; thence North 89°18'34" West 524.876 feet to the place of beginning.

The above described parcel is commonly referred to as Permanent Parcel#: 2327-1000 and contains 30 acres. Of these 30 acres, 26 acres is being proposed for fee to trust status on behalf of the applicants. Maps are attached (Tab 10).

STATUTORY AUTHORITY

In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. §465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

The regulations specify that it is the Secretary's policy to accept lands "in trust" for the benefit of tribes when such acquisition is authorized by an Act of Congress, and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. The subject property is located approximately 350 miles from the Bad River Band Reservation and approximately 330 miles from the St. Croix Reservation (maps – Tab 10).

25 CFR PART 151.10 and 151.11

Pursuant to 25 CFR 151.10 and 151.11, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purpose for which the land will be used (3) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) whether or not contaminants or hazardous substances may be present on the property; and (7) the location of the land relative to state boundaries and its distance from the boundaries of the tribe's reservation. Accordingly, the following analysis of the application is provided.

FACTOR 1 – Need for Additional Land

FACTOR 2 – Proposed Land Use

The subject property is located in the southeast portion of the City of Beloit in Rock County, Wisconsin. The property is bounded on the north by Colley Road and on the east by I-90. Also, the proposed site is located within the zoned commercial/industrial Springbrook Planning Area.

The Tribes intend to use the land to commercially develop and offer Class III gaming (as defined by the I.G.R.A., 25 U.S.C. §2701 et seq.) to the public.

The proposed facility includes the following: a casino with 3,000 gaming machines, 75 table games, full service hotel, a 2,800 person conference center, a 3,000-seat events center, a 450-seat buffet restaurant, a 250-seat upscale restaurant (steak/seafood house), a 200-seat coffee house, a deli/snack bar, a 200-seat sports bar/nightclub with a small stage and dance floor, a 68,000 square-foot indoor/outdoor water park, a 10,000 square-foot child care center and a gift shop.

In addition, the proposed project is to increase and improve tribal governmental revenue base, providing jobs and career opportunities for tribal members as well as local residents of the surrounding Beloit community.

Gaming has generated desperately needed revenue for tribal governments. In an effort to further their pursuit of economic independence, the Bad River and St. Croix Bands are proposing this joint development of a casino resort facility in Beloit, Wisconsin and are confident that their proposal will encourage economic development in the Beloit area, which is economically disadvantaged as well.

FACTOR 3 – Impact on State and Local Government's Tax Base

In the signed InterGovernmental Agreement (IGA) (Tab 11) between the Tribes, the City of Beloit, and Rock County, the Tribes recognize the City and County may lose revenues generated from real estate and personal property taxes on the portion of the development property to be placed in trust. The 2004 combined (city, county, school district, technical college district, and state) property taxes paid on the land requested to be placed in trust total $186.66. To lessen this

impact, the Tribes have agreed to pay $145 million dollars over 10 years to the City and County for lost revenues from taxes and for additional services and community needs that could arise because of the proposed project.

There is no opposition of this gaming acquisition on behalf of the Tribes from the local governments surrounding the project site.

FACTOR 4 – Jurisdictional Problems/Potential Conflicts

[redacted] Public safety services, including police, fire, and ambulance would be supplied by the City of Beloit. In the IGA various jurisdictional and or conflict issues is addressed in Sections 2, 4, 6, and 10 (Tab 11).

FACTOR 5 – Whether the BIA is Equipped to Discharge the Additional Responsibilities

[redacted]

FACTOR 6 – Whether or Not Contaminants or Hazardous Substances are Present

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. [redacted]

FACTOR 7 – The location of the Land Relative to State Boundaries

The proposed Beloit casino project is approximately 330 miles from the St. Croix Tribal Reservation and the distance from Bad River Band Reservation is approximately 350 miles from the proposed site (maps – Tab 10). Both Tribes are located in the state of Wisconsin and the proposed site is also located within the state of Wisconsin.

The property is located in an area of Wisconsin that has historically been occupied by Chippewa Indians along with the Ottawa and Potawatomi. The Prairie du Chien Treaty of 1825 set boundaries to establish an area west of the Rock River as "Winnebago country" and an area east of the Rock River, which contains the proposed project site, as the territory of the Chippewa,

Ottawa, and Potawatomi. Chippewa Chiefs, along with chiefs of the Ottawa and Potawatomi, were signers of the cession treaties relinquishing their occupancy of these lands to the United States of America in 1833.

The Ho-Chunk Nation is a Sovereign Government; it does not exercise any jurisdictional or governmental authority over any land within the City of Beloit, Wisconsin.

SECTION 20 EXEMPTION OF IGRA

INDIAN GAMING REGULATORY ACT – 25 U.S.C. 2719, SECTION 20(b)(1)(A)

CONSULTATION BY THE SECRETARY OF THE INTERIOR:

The Bureau of Indian Affairs has been delegated responsibility to conduct the Section 20 consultation on behalf of the Secretary. Consultation consisted of certified return receipt letters by mail to the applicant tribes, Ho-Chunk Nation, Forest County Potawatomi, Rock County Administrator, City of Beloit, and the Governor of Wisconsin in August 15, 2003 (Tab 13).

We received response letters and support resolutions from the following: (1) Bad River Band, dated September 12, 2003 and the St. Croix Tribe, dated September 17, 2003, with their joint enclosure. (2) County Administrator for Rock County, Wisconsin responded with a letter dated September 10, 2003. (3) City of Beloit (dated September 3, 2003), Rock County (September 2, 2003), both in Wisconsin, and City of South Beloit (September 16, 2003), Illinois submitted Resolutions of Support of the proposed Class III facility, during the comment period for the Section 20 consultation (Tab 21). Congresswoman Tammy Baldwin, letter dated September 11, 2003 and State Senator Judith Robson, letter dated September 12, 2003, both of these letters do not respond directly about the Section 20 questions in the consultation, however they do respond with support (Tab 14). We received no comments from the Governor of Wisconsin's office.

Our office sent consultation letters to the applicant tribes and to the Governor of Wisconsin in January 9, 2006, for a second opportunity to comment on Section 20 (Tab 15). We received a response from both of the applicant tribes dated January 27, 2006 (joint signatures by the tribes) (Tab 16) and we received no comments from the Governor of Wisconsin.

Would a Gaming Establishment on Newly Acquired Land be in the Best Interest of the Tribe and its Members? (Two-Part Determination)

[redacted]

[redacted]

The proposed casino project will be developed in two phases as follows:

Development Phase I -- Construction of approximately 45,500 square feet Conference Center to be utilized as a temporary Casino facility, housing 1,000 gaming devices and twenty table games. This phase would include site development for Phase II and parking facilities.

Development Phase II -- Construction of a new casino complex, including completed parking areas, signs, and lighting. The new complex would include up to 3,000 gaming devices and 75 table games. Upon completion of the new casino, the temporary facility would be remodeled to be utilized as the Conference Center.

Niizhoo Akiing will be responsible for the management of all aspects of the operations of the complex. Niizhoo Akiing is the joint entity created by both Tribes and entered into a Memorandum of Agreement in April 11, 2001 (Tab 19).

All assumptions were prepared in accordance with generally accepted accounting principles and the National Indian Gaming Commission Standards.

Both tribes are involved in planning for hotel/motel facilities as well as non-gaming destination tourism activities such as a cultural centers and museums to be located on their respective reservations.

[redacted]

Would a Gaming Establishment on the Newly Acquired Land be Detrimental to the Surrounding Community? (Two-Part Determination)

[redacted]

1. Evidence of Environmental Impacts and Plans for Mitigating Adverse Impacts:

We have addressed these impacts in the NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE on page 17 of this recommendation document.

2. Impact on infrastructure and on land use patterns of the surrounding community:

[redacted]

3. Impact on income and employment in the surrounding community:

[redacted]

[redacted]

4. Costs of additional municipal services required and sources of revenue to the surrounding community:

5. Proposed programs for compulsive gamblers and the source of funding:

6. Any other information which may provide a basis for Secretarial determination the gaming facility is not detrimental to the surrounding community:

[redacted]

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

Based on the March 7, 2005, directive regarding Gaming Acquisitions and Section 20 Determinations, the Tribes, the Midwest Regional Office and consultants prepared an environmental impact statement (EIS) (Tab 12).

A final environmental impact statement (FEIS) was provided to the Indian Gaming Management Staff (IGMS) and Solicitor – Indian Affairs for legal adequacy review in November 2006. A Copy of the FEIS is attached. Also, attached is the draft Record of Decision (draft ROD) for review. The draft ROD will focus initially on the contemplated approval of the Section 20 two-part determination. Upon completion of review of the draft ROD and FEIS by IGMS and Solicitor, the FEIS will need to be filed with EPA and the 30-day FEIS waiting period completed (Tab 12).

No further compliance is required for Section 106 of the National Historic Preservation Act.

The Phase I Environmental Site Assessment (Phase I ESA) dated October 25, 2005, followed the standard practice in compliance with 602DM2. The Phase I ESA has expired in November 1, 2006, thus there is a need to update the Phase I ESA within 180 days of the trust acquisition of the project site (Tab 12).

Endangered Species Act, Section 7 Consultation was conducted by letters dated July 15, 2005 and January 22, 2004, the U.S. Fish and Wildlife Service indicates concurrence that the proposed project site would not adversely affect federally listed species or result in the adverse modification of critical habitat. No further compliance action is required under Section 7.

The Checklist of Environmental Issues for NEPA Review of Proposed Gaming-related Actions was prepared by Midwest Region staff and is attached (Tab 12). The checklist identifies a

number of significant impacts that would be cased by the project. All of the significant impacts can be mitigated to less than significant levels.

Third Party Agreement

Title Requirements (25 CFR §151.13)

The Department of Justice (DOJ) is authorized to approve the title in Land Acquisitions on behalf of the United States (25 CFR 151.13). Pursuant to 40 U.S.C. §255, the DOJ will render opinions to encumbrances on title that will not jeopardize the interest of the United States.

Pursuant to the Department of Justice Title Standards we have provided a commitment to issue the title insurance on the ALTA U.S. Policy Form-9/28/91 stating the proposed insured is the "The United States of America in trust for the Bad River Band of Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin, and St. Croix Chippewa Indians of Wisconsin." (Tab 22)

Together the Tribes currently have an Option to Purchase with the current land holder, Kurt L. Carlson (Tab 22). The closing of the Option to Purchase remains expressly conditioned upon Buyer (Tribes) obtaining a Compact from the State of Wisconsin [to permit gaming at the casino to be built upon the Subject Property, and at least a portion of the Property being placed into federal trust status for the purpose of operating an Indian gaming facility pursuant to federal law].

REGIONAL DIRECTOR RECOMMENDATION

I attest that I have reviewed this transaction and find that the case file is documented and in compliance with all of the above-stated regulations, citations and facts. Based on the information presented in this proposal, it is my opinion that the establishment of a gaming facility on newly acquired land in Beloit, Wisconsin **will be** in the best interest of both Tribes and its Members and **not be** detrimental to the surrounding community. Therefore, it is my recommendation that the Assistant Secretary – Indian Affairs issue a Section 20(b)(1)(A) two-part determination pursuant to the Indian Gaming Regulatory Act of 1988. This conclusion is further supported by copies of the original documents.

Attachments