



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

SEP - 1 2022

The Honorable Tehassi Hill  
Chairman, Oneida Nation  
P.O. Box 365  
Oneida, Wisconsin 54155

Dear Chairman Hill:

On October 17, 2019, the Oneida Nation (Nation), previously known as Oneida Tribe of Indians of Wisconsin,<sup>1</sup> submitted a request to the Department of the Interior (Department) for the acquisition in trust of approximately 1.411 acres of land in the City of Green Bay, Brown County, Wisconsin, known as the 2522 West Mason Parcel (West Mason Site or Site) for gaming and other purposes.<sup>2</sup> The West Mason Site is within the boundaries of the Oneida Reservation in Wisconsin and is held in fee by the Nation.<sup>3</sup> The Nation also requested confirmation that the West Mason Site would remain eligible for gaming if acquired in trust.

The Nation currently operates the Oneida Casino West Mason (West Mason Casino) in a building partially located on the Site. The Nation owns and operates several businesses within the West Mason Casino building including a restaurant, bar, and a coffee station. The Site also includes 35 parking spaces.<sup>4</sup> The Nation will continue these existing uses after the Site is transferred into trust.

We have completed our review of the Nation's request, the Regional Director's Findings of Fact, and the documentation in the record. As discussed below, we determine that the West Mason 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 (IRA), 25 U.S.C. § 5108. Once acquired in trust, the Nation may continue to conduct gaming on the Site pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(a)(1).

## BACKGROUND

In the 1820's, because of the heavy influx of white settlers into New York State and pressures exerted by the United States' removal policies, many New York Indians moved west to

<sup>1</sup> The Nation is officially identified in the *Federal Register* as the Oneida Nation, previously listed as Oneida Tribe of Indians of Wisconsin. See *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022).

<sup>2</sup> Oneida Nation Application for Trust Acquisition (Oct. 11, 2019), Application Tab 1 at 3.

<sup>3</sup> See Memorandum, *Findings of Midwest Region Concerning the Factors Codified in 25 C.F.R. § 151 for the Fee-to-Trust (Gaming) Application, 2522 West Mason Parcel, for the Oneida Nation ver. II*, from Regional Director, Midwest Region to Director, Office of Indian Gaming (Jun. 2, 2022) (hereinafter Regional Director's Findings of Fact) at 7. The Regional Director's Findings of Fact replaced a substantively similar Memorandum, dated January 26, 2022, in order to update the citations in the Memorandum. All references herein are to the Regional Director's Findings of Fact dated June 2, 2022.

<sup>4</sup> Oneida Nation Supplement to West Mason Trust Acquisition (Jun. 4, 2020), Application Tab 7 at 1.

Menominee lands in what is now the State of Wisconsin. On February 8, 1831, the United States entered into a treaty with the Menominee Tribe under which the Menominee leaders agreed to cede a tract of land consisting of approximately 500,000 acres to be set apart as a home to several groups of New York Indians, including Oneida Indians.<sup>5</sup> The portion of the Oneida Indians who relocated to Wisconsin established settlements on the lands granted by the Menominee near Green Bay, Wisconsin.<sup>6</sup> In 1838, those Oneida Indians entered into a treaty which ceded their claim to the Menominee lands set aside for them through treaties with the Menominee, while reserving a tract of land west of Green Bay, to be held as Indian lands are held.<sup>7</sup> The 1838 Treaty reserved 100 acres for each of the 654 individual Oneidas in Wisconsin.<sup>8</sup> The United States completed its survey of the reserved tracts in December 1838 constituting approximately 65,400 acres, termed the “Oneida Reservation” (Oneida Reservation, Wisconsin).<sup>9</sup>

In 1934, the Oneida Indians residing on the Oneida Reservation in Wisconsin voted to accept the IRA.<sup>10</sup> In 1936, these Oneida Indians adopted an IRA constitution under the name of the Oneida Tribe of Indians of Wisconsin.<sup>11</sup> As detailed in the Haas Report, a majority of the adult Indians residing on the Oneida Reservation in Wisconsin voted in favor of adopting the IRA by a vote of 688 to 126.<sup>12</sup> In 2016, through a constitutional amendment, the Oneida Tribe of Indians of Wisconsin changed its name to the Oneida Nation.<sup>13</sup> The Oneida Indians who remained in New York are also a federally recognized Tribe known as the Oneida Indian Nation, previously known as the Oneida Nation of New York. As used in this decision, Oneida Nation or Nation refers to the Oneida Nation, located in Wisconsin.

During the allotment era of federal Indian policy, Congress authorized allotments within the Oneida Reservation. Over time, most of the allotments eventually were conveyed to non-Indians by sale, foreclosure, or enforcement of tax liens.<sup>14</sup> Recently, the Seventh Circuit Court of Appeals in *Oneida Nation v. Hobart* held that the 1838 Treaty boundaries of the Oneida Reservation in Wisconsin remained intact.<sup>15</sup> The *Hobart* court unequivocally reaffirmed the

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<sup>5</sup> Treaty with the Menominees of February 8, 1831, art. 1, 7 Stat. 342.

<sup>6</sup> *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 669 (7th Cir. 2020).

<sup>7</sup> Treaty with the Oneida, 1838 of Feb. 3, 1838, 7 Stat. 566, Arts. 1 and 2.

<sup>8</sup> See *Oneida Nation v. Vill. of Hobart*, 371 F. Supp. 3d 500, 506 (E.D. Wis. 2019), reversed on other grounds, *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664 (7th Cir. 2020).

<sup>9</sup> Amicus Curiae Brief of the United States in Support of Plaintiff’s Motion for Summary Judgement, *Oneida Nation v. Vill. of Hobart*, Case 1:16-cv-01217-WCG.

<sup>10</sup> Theodore H. Haas, Ten Years of Tribal Government Under I.R.A. at 20 (1947).

<sup>11</sup> *Id.* at 26.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> See, e.g., 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022) (Oneida Nation, *previously* listed as Oneida Tribe of Indians of Wisconsin).

<sup>14</sup> *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 670 (7th Cir. 2020).

<sup>15</sup> *Id.* at 668.

Nation's jurisdiction over the Oneida Reservation in Wisconsin.<sup>16</sup>



**Figure 1 Map of Oneida Reservation Boundaries<sup>17</sup>**

**DESCRIPTION OF THE PROPERTY**

The West Mason Site is approximately 1.411 acres located within the boundaries of the Oneida Reservation in Brown County, Wisconsin.<sup>18</sup> The Site is owned in fee simple by the Nation.<sup>19</sup> The West Mason Casino is located partially on the Site and partially on adjacent trust land (BIA Tract 433 -T2072). The tax parcel ID number for the Site is 6H-1722. The legal description for the West Mason Site is included as Attachment II.<sup>20</sup>

<sup>16</sup> *Id.* (Holding that the Village of Hobart has no jurisdiction to apply a permitting ordinance to the Nation's on-reservation activities).

<sup>17</sup> Map available at [https://www.google.com/maps/place/Oneida+\(WI\)+Reservation,+WI/@44.5059138,-88.2045967,11z/data=!4m5!3m4!1s0x880256f875fa269d:0xaad778d68a69c3ff!8m2!3d44.4913114!4d-88.1971966](https://www.google.com/maps/place/Oneida+(WI)+Reservation,+WI/@44.5059138,-88.2045967,11z/data=!4m5!3m4!1s0x880256f875fa269d:0xaad778d68a69c3ff!8m2!3d44.4913114!4d-88.1971966).

<sup>18</sup> See Map of Oneida Reservation, Application Tab 16; See Regional Director's Findings of Fact at 8. We note that in July of 2020, the Seventh Circuit Court of Appeals held that the boundaries of the Oneida Reservation were not disestablished or diminished by Congress. See *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664 (7th Cir. 2020).

<sup>19</sup> See Application Tab 1 at 1; Regional Director's Findings of Fact at 9 (the Nation satisfies requirement of the agreement in that it has held fee title to the land in question for a period of three years or more . . .).

<sup>20</sup> Regional Director's Findings of Fact at 14.

## THE INDIAN GAMING REGULATORY ACT

Congress through IGRA recognized Tribes' inherent and exclusive right to regulate and conduct gaming activity on Indian lands<sup>21</sup>, which are defined, in pertinent part, as "all lands within the limits of any Indian reservation."<sup>22</sup> This definition includes all lands within the boundaries of a Tribe's reservation, including lands owned in fee simple.<sup>23</sup> Section 20 of IGRA permits tribes to conduct gaming on lands located within or contiguous to the boundaries of the reservation of an Indian tribe on October 17, 1988 (on-reservation exception).<sup>24</sup>

As explained above the Oneida Reservation in Wisconsin was established by treaty in 1838 and remains intact. Therefore, I conclude the Nation had a reservation on October 17, 1988. The West Mason Site is located within the boundaries of the Oneida Reservation in Wisconsin. The Map at Figure 2 below, shows the approximate location of the Site within the Oneida Reservation.



**Figure 2 Approximate Location of Oneida West Mason Casino on Oneida Reservation**

<sup>21</sup> See 25 U.S.C. § 2701(5).

<sup>22</sup> 25 U.S.C. § 2703(4)(A).

<sup>23</sup> See e.g., Letter from Roger W. Thomas, Office of the Solicitor, to Mr. Donald C. Kittson, Tribal Attorney, Blackfeet Tribe, dated December 3, 1990 (on file with the Office of Indian Gaming).

<sup>24</sup> 25 U.S.C. § 2719 (a)(1).

Because the West Mason Site is located within the Oneida reservation, I conclude the Nation may continue to conduct gaming pursuant to IGRA regardless of the trust status of the property on which the Site is located.<sup>25</sup>

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

The Secretary of the Interior's (Secretary) authority for acquiring the West Mason Site in trust is found in Section 5 of the IRA.<sup>26</sup> The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5.

#### **25 C.F.R. § 151.3 - Land acquisition policy**

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

- (1) When the property is located within the exterior boundaries of the tribe's reservation<sup>27</sup> 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.

Although only one factor in Section 151.3(a) must be met, the Nation's application satisfies all three factors. The criteria of subsection (a)(1) are satisfied because the Site is located within the exterior boundaries of the Oneida Reservation in Wisconsin. Subsection (a)(2) is satisfied because the Nation owns the Site in fee.<sup>28</sup> The Nation also satisfies the requirements of subsection (a)(3). As noted above, the Seventh Circuit reaffirmed the Nation's jurisdiction over fee land within the Oneida Reservation. The Department's trust acquisition of the West Mason Site reinforces the Nation's governmental authority over the Site, facilitating the Nation's self-determination and economic development.

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<sup>25</sup> 25 C.F.R. § 292.4 (a). The Department's regulations at Section 292.2 define "reservation" as "[l]and set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent." 25 C.F.R. § 292.2. The Department's regulations similarly state that a Tribe may conduct gaming under the on-reservation exception if the Tribe had a reservation on October 17, 1988, and if the lands are located within or contiguous to the boundaries of the reservation. 25 C.F.R. Part 292.4(a).

<sup>26</sup> Act of June 18, 1934, ch. 576, § 5, 48 Stat. 984 ("IRA") (codified at 25 U.S.C. § 5108) ("The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.").

<sup>27</sup> Section 151.2(f) defines "Indian reservation" to mean, in relevant part, that area of land over which the tribe is recognized by the United States as having governmental jurisdiction.

<sup>28</sup> Warranty Deed between Karau Development, LLC F/K/A/ KC Development, LLC, and the Oneida Tribe of Indians of Wisconsin conveying the Site to the Nation, Brown County Document No. 1746700, dated March 31, 2000, recorded April 4, 2000. Nation's Application Attachment 2; Regional Director's Findings of Fact, Application-Tab 1.

## **25 C.F.R. § 151.10 - On-reservation acquisitions**

Section 151.10 requires the Secretary to evaluate requests for acquisition of land under the on-reservation criteria when the land is located within or contiguous to an Indian reservation. Here, the Regional Director determined, and I concur, that the Nation's application should be considered pursuant to the on-reservation criteria of Section 151.10 because the West Mason Site is located within the Nation's reservation.<sup>29</sup>

### **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 including the effect, if any, of the decision in *Carcieri v. Salazar*.<sup>30</sup>

In 2014, the Solicitor of the Interior (Solicitor) memorialized the Department's understanding of the phrase "now under federal jurisdiction" in the IRA in light of *Carcieri*, in Sol. Op. M-37029, *The meaning of 'Under Federal Jurisdiction' for purposes of the Indian Reorganization Act*. (M-37029).<sup>31</sup> The Solicitor provided a two part procedure to determine if a tribe was under federal jurisdiction before 1934, and whether that jurisdictional status remained intact in 1934.<sup>32</sup> In 2021, the Solicitor reinstated M-37029.<sup>33</sup> In both the withdrawn and current analysis, the Solicitor concluded that a Tribe's election under Section 18 of the IRA whether to adopt or reject application of the the IRA unambiguously and conclusively establishes that the United States understood that this particular tribe was under federal jurisdiction in 1934.<sup>34</sup>

The Nation voted to accept the IRA. This is conclusive evidence that the Nation was under "under Federal Jurisdiction" in 1934 and the Secretary is authorized to acquire land in trust for the Nation under Section 5 of the IRA.<sup>35</sup>

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

Section 151.10(b) provides that the Secretary will consider a tribe's need for additional land when reviewing a tribe's request to accept land in trust.

The Site is within the boundaries of the Nation's 65,400-acre Reservation. Congress authorized allotments within the Reservation, eventually resulting in conveyance of most of the land to non-

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<sup>29</sup> See *id.*, fn 7.

<sup>30</sup> *Carcieri v. Salazar*, 555 U.S. 379 (2009) (hereinafter *Carcieri*).

<sup>31</sup> Sol. Op. M-37029, *The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act* (Mar. 12, 2014) ("M-37029").

<sup>32</sup> *Id.* at 19.

<sup>33</sup> Sol. Op. M-37070, *Withdrawal of Certain Solicitor M-Opinions, Reinstatement of Sol. Op. M-37029, the Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act, and Announcement Regarding Consultation on "Under Federal Jurisdiction" Determinations* (Apr. 27, 2021).

<sup>34</sup> M-37029 at 20.

<sup>35</sup> *Supra*, note 10.

Indians.<sup>36</sup> The West Mason Site was part of the land lost during the allotment era.<sup>37</sup> The Department's acquisition of the Site in trust will restore a portion of the land lost within the Reservation and will clarify the Nation's jurisdiction.<sup>38</sup>

We conclude that acquisition of the Site in trust for the Nation will help address the Nation's need for additional land.

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

Section 151.10(c) requires consideration of the purposes for which the land will be used.

As discussed above, the Nation currently owns and operates a casino and several tribally-owned businesses on the West Mason Site. The Nation will continue these existing uses after the West Mason Site is accepted in trust.

**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 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. As explained below, the transfer of less than two acres into trust will have a minimal impact on the State and its political subdivisions.

On January 6, 2021, the Midwest Regional Office of the Bureau of Indian Affairs solicited comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments from:

- the Governor of Wisconsin,
- the Brown County Board of Supervisors, and
- the Mayor of the City of Green Bay.<sup>39</sup>

The BIA received no responses.<sup>40</sup>

The Regional Director's Findings of Fact indicates that the City of Green Bay assessed \$31,874.86 in property taxes for the West Mason Site in 2020.<sup>41</sup> The amount of property taxes that the County collects from the West Mason Site is only a fraction of the County's 2020 total tax revenue of \$227,285,444.<sup>42</sup> The estimated impact on the County's and the City's tax receipts

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<sup>36</sup> *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 670 (7th Cir. 2020).

<sup>37</sup> Regional Director's Findings of Fact, Application – Tab 1, Oneida Nation Notice of Gaming Land Acquisition Application at 2 (Jan. 6, 2021).

<sup>38</sup> *Id.*

<sup>39</sup> See Regional Director's Findings of Fact at 4; (Jan. 6, 2021), Application Tab 1 at 3 (showing notice sent to Governor of Wisconsin, Brown County Board of Supervisors, City of Green Bay).

<sup>40</sup> See Regional Director's Findings of Fact at 4.

<sup>41</sup> See Regional Director's Findings of Fact at 6-7, Application Tab 5.

<sup>42</sup> *Id.*

from removing the property from the tax rolls, based on the 2020 tax bill, is less than 0.01 percent.<sup>43</sup>

The Regional Director determined, and I concur, that the impacts of removing the West Mason Site from the tax rolls is minimal.<sup>44</sup>

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

Section 151.10(f) requires consideration of jurisdictional problems and potential conflicts of land use which may arise if the land is accepted in trust.

As discussed in Section 151.10(e) above, the BIA requested comments regarding jurisdictional problems and potential conflicts of land use from state and local governments on January 6, 2021. The BIA received no responses.<sup>45</sup>

In 1953, Congress passed Public Law 83-280 (P.L. 280), a statute granting to five states, including Wisconsin, jurisdiction over most crimes and some civil regulatory matters on Indian reservations in the states.<sup>46</sup> Following enactment of P.L. 280, the county sheriffs in Wisconsin became responsible for providing law enforcement services on Indian reservations, including the Oneida Reservation.<sup>47</sup> P.L. 280 left intact Tribes' inherent civil and criminal jurisdiction.<sup>48</sup>

The land within the Oneida Reservation is subject to multiple jurisdictions operating within the same area, depending on the ownership status of the land and/or the identity of the individual or entity involved.<sup>49</sup> Land held in trust for the Nation is subject to the jurisdiction of the United States and the Nation, as well as to the State of Wisconsin for certain criminal matters. It is not unusual for one police department to have jurisdiction over a parcel of land while the parcels on either side might be within the jurisdiction of another government.

To address the jurisdictional complexity, the Nation maintains intergovernmental agreements with several local governments in the area, including the City of Green Bay, Village of Ashwaubenon, Town of Oneida, Brown County, and Outagamie County.<sup>50</sup> On March 4, 2021, the Nation and the City of Green Bay signed two agreements, the Cooperative Governance

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<sup>43</sup> *Id.* The tax revenues for 2021 were similar. During 2021 the subject property generated \$32,105.39 net property tax income, of which \$18,508.10 is allocated to the County and City.

<sup>44</sup> See Regional Director's Findings of Fact at 7.

<sup>45</sup> See Regional Director's Findings of Fact at 4.

<sup>46</sup> COHENS HANDBOOK OF FEDERAL INDIAN LAW Section 6.04[3][a] at 537 (Nell Jessup Newton ed., 2012).

<sup>47</sup> Information Memorandum, *Law Enforcement in Indian Country: State Laws and Programs*, David L. Lovell, Wisconsin Legislative Council (2013), available at

[https://docs.legis.wisconsin.gov/misc/lc/information\\_memos/2013/im\\_2013\\_10](https://docs.legis.wisconsin.gov/misc/lc/information_memos/2013/im_2013_10) (site last visited on May 16, 2022).

<sup>48</sup> COHENS HANDBOOK OF FEDERAL INDIAN LAW Section 6.04[3][c] at 555-556 (Nell Jessup Newton ed., 2012).

<sup>49</sup> Op. Att'y Gen. Wis. 237, 243 (1981), available at [https://www.doj.state.wi.us/sites/default/files/dls/ag-opinion-archive/1981/Volume%2070\\_1981.pdf](https://www.doj.state.wi.us/sites/default/files/dls/ag-opinion-archive/1981/Volume%2070_1981.pdf) (site last visited on May 16, 2022).

<sup>50</sup> See Oneida Intergovernmental Agreements at <https://oneida-nsn.gov/government/intergovernmental-agreements/> (last retrieved on Mar. 23, 2021).



Agreement, and the Law Enforcement Response and Mutual Assistance Agreement.<sup>51</sup> The intergovernmental agreements with the counties and the city cover a range of items including mitigating the impact of transferring land from fee to trust status.<sup>52</sup> Additionally, the Nation and the Brown County Sheriff adopted the Deputization Agreement in 2019.<sup>53</sup> This agreement allows the Sheriff to Deputize Nation police officers to perform law enforcement duties for both the Nation and the County, which alleviates much of the jurisdictional confusion caused by checkerboard jurisdictions. This existing jurisdictional framework will not change after the West Mason Site is acquired in trust.

The Regional Director determined, and I concur, that no jurisdictional problems or conflicts of land use will arise from acquiring the West Mason Site in trust.<sup>54</sup>

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

Section 151.10(g) requires consideration whether the BIA is equipped to discharge the additional responsibilities resulting from acquisition of the land in trust.

The West Mason Site is located within the Oneida Reservation for which the BIA currently provides services. The West Mason Site is adjacent to land held in trust for the Nation by the United States. The Regional Director determined, and I concur, that the BIA has sufficient resources to assume the nominal additional responsibilities resulting from the acquisition of the West Mason Site in trust.<sup>55</sup>

**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 National Environmental Policy Act (NEPA),<sup>56</sup> and a determination of the risk of the presence of hazardous substances.

Acquiring land in trust for tribes is a major federal action requiring review under NEPA.<sup>57</sup> If the federal action belongs to a category of actions which do not individually or cumulatively have a

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<sup>51</sup> Cooperative Governance Agreement between Oneida Nation and the City of Green Bay and the Law Enforcement Response and Mutual Assistance Agreement between Oneida Nation and the City of Green Bay (March 4, 2021) (retrieved from <https://oneida-nsn.gov/government/intergovernmental-agreements/>) (on file at the Office of Indian Gaming).

<sup>52</sup> *Id.* at 9.

<sup>53</sup> Regional Director's Findings of Fact at 10 and Application Exhibit Q (Deputization Agreement Between the Oneida Nation and the Brown County Sheriff (Feb. 27, 2019) (retrieved from <https://oneida-nsn.gov/government/intergovernmental-agreements/>).

<sup>54</sup> Regional Director's Findings of Fact, 7-11.

<sup>55</sup> Regional Director's Findings of Fact at 11.

<sup>56</sup> 42 U.S.C. § 4321 *et seq.*

<sup>57</sup> *See* 40 C.F.R. § 1508.1(q).

significant effect on the human environment it can be categorically excluded from further analysis.<sup>58</sup>

Pursuant to BIA policy, where no change in land use will occur as a result of the acquisition, the acquisition is subject to a categorical exclusion.<sup>59</sup> Here, there will be no change in land use because the Nation intends to continue the existing uses of the West Mason Site.<sup>60</sup> On August 11, 2020, the BIA completed a Categorical Exclusion Exception Review for the West Mason Site.<sup>61</sup> The BIA determined that no extraordinary circumstances existed that would require further analysis or the preparation of an environmental assessment.<sup>62</sup>

The BIA completed a Phase I Environmental Site Assessment (ESA) on July 20, 2021, which determined that there were no hazardous materials or contaminants.<sup>63</sup> The BIA will update the Phase I prior to acquisition in trust. I find the Nation's application satisfies the requirements of this section.

#### **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 West Mason Site in trust for the Nation. Furthermore, I have determined the Nation may continue to conduct gaming on the West Mason Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(a)(1). Consistent with applicable law and the Departmental requirements, the Regional Director shall immediately accept the land in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland  
Assistant Secretary - Indian Affairs

#### Enclosures:

- (1) Maps
- (2) Legal Description
- (3) Categorical Exclusion Exception Review

cc: Regional Director, Midwest Region

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<sup>58</sup> 40 C.F.R. § 1501.4(a); 43 C.F.R. § 46.205.

<sup>59</sup> See 516 DM 10.5(I), 83 Fed. Reg. 9535, 9537 (Mar. 6, 2018).

<sup>60</sup> Regional Director's Findings of Fact at 11-12.

<sup>61</sup> See Regional Director's Findings of Fact at 12, ENV-Tab 2 (final CEER Exception Checklist for BIA Categorical Exclusions (Aug. 11, 2020)).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 12 (no recognized conditions found on the 2522 West Mason property).