



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

VILLAGE OF HOBART,  
WISCONSIN,  
Appellant,

v.

MIDWEST REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee.

) Docketing Notice for Docket No. IBIA  
) 11-002, Order Granting Motion to  
) Consolidate, and Order Modifying  
) Briefing Schedule in Docket  
) No. IBIA 10-131 and Setting Briefing  
) Schedule in Docket No. IBIA 11-002

) Docket Nos. IBIA 10-131  
) IBIA 11-002

) October 26, 2010

The Village of Hobart, Wisconsin (Village), seeks review from the Board of Indian Appeals (Board) of two decisions by the Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), dated July 8, 2010, and August 16, 2010, in which the Regional Director agreed to take certain parcels — known as the Buck, Catlin, Calaway, and DeRuyter properties — into trust status for the Oneida Tribe of Indians of Wisconsin (Tribe).

## Docketing Notice

Pursuant to 43 C.F.R. § 4.336, on October 5, 2010, the appeal challenging the Regional Director's August 16, 2010, decision to take the Catlin, Calaway, and DeRuyter properties into trust was assigned docket number IBIA 11-002.<sup>1</sup> Please refer to this docket number in all future correspondence or inquiries regarding the appeal of the Regional Director's August 16, 2010, decision.

On October 15, 2010, the Board received the administrative record for Docket No. IBIA 11-002, including a table of contents for the record. A copy of the table of contents is enclosed for the benefit of the parties. The administrative record in this case is available for inspection at the Board's office and also in the office of the Regional Director.

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<sup>1</sup> The appeal from the Regional Director's July 8, 2010, decision concerning the Buck property is docketed as No. IBIA 10-131.

The Board is not able to handle large-volume copying requests. Therefore, if a party desires to obtain copies of documents in the administrative record, and the volume of the documents sought exceeds 100 pages, the Board requests that the party make arrangements with the Regional Director to obtain the desired copies.

Regulations governing appeals to the Board are found in 43 C.F.R. Part 4. A copy of these regulations was mailed to non-Federal parties with the Board's September 24, 2010, pre-docketing notice in Docket No. IBIA 11-002.

Order Consolidating Docket Nos. IBIA 10-131 and IBIA 11-002

On October 21, 2010, the Board received a Motion for Consolidation from the Village in which the Village requests that the appeals of the Regional Director's decisions concerning the Buck, Catlin, Calaway, and DeRuyter properties be consolidated. In support of its motion to consolidate, the Village contends that the two appeals were filed within a similar time-frame, contain the same threshold issues, and involve the same parties. In the alternative, the Village requests that the Board extend the time for the filing of its opening brief in Docket No. IBIA 10-131 from October 28, 2010 to November 29, 2010.

Given the common issues raised in the detailed notices of appeal concerning BIA's authority to accept the parcels into trust and BIA's consideration of the required factors found in 25 C.F.R. Part 151, and upon review of the administrative records received thus far by the Board, good cause is found to consolidate Docket No. IBIA 10-131 (Buck property) with Docket No. IBIA 11-002 (Catlin, Calaway, and DeRuyter properties). Therefore, the Village's motion is GRANTED to consolidate Docket No. IBIA 10-131 with Docket No. IBIA 11-002.

Order Modifying Briefing Schedule in Docket No. IBIA 10-131 and Setting Briefing Schedule in Docket No. IBIA 11-002

The briefing schedule in Docket No. IBIA 10-131 is hereby MODIFIED.<sup>2</sup> In accordance with 43 C.F.R. § 4.311(e), the Board sets the following briefing schedule for Docket Nos. IBIA 10-131 and IBIA 11-002 (consolidated). The Village's opening brief is due on or before December 8, 2010. The filing of an opening brief is not required under the Board's regulations, and the Village may choose to rely upon the allegations of error, if

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<sup>2</sup> Pursuant to the Board's September 16, 2010, Notice of Docketing and Order Setting Briefing Schedule in Docket No. IBIA 10-131, the Village's opening brief is due on or before October 28, 2010.

any, contained in the notices of appeal to the Board. The Village is advised, however, that it bears the burden of proving error in the decision being appealed. If the Village chooses not to file an opening brief, it should file a statement to that effect.

The Regional Director and any opposing parties, including the Tribe, may file an answer brief for the consolidated appeals within 30 days of receipt of the Village's opening brief or statement. If no opening brief or statement is filed, opposing parties may file a brief within 30 days from the date the Village's opening brief or statement was due. The Village shall have 15 days from receipt of any answer brief in which to file a reply brief.

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). Parties who choose to serve and file by U.S. mail may use regular first-class mail; they do not need to use certified mail unless they wish to do so for their own record keeping purposes. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

If any party wishes to, it may include with the paper copy of its filing an electronic copy of that filing on a diskette or CD-rom in either Corel WordPerfect® or Microsoft Word® format.

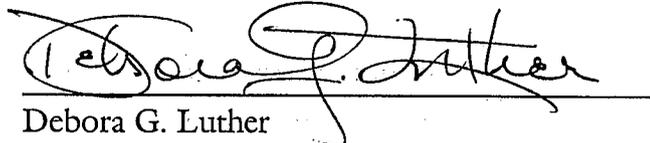
The Board's Internet website, containing a free, searchable database of its decisions, is located at [www.oha.doi.gov](http://www.oha.doi.gov). The Board's decisions are also available on the for-fee websites of WestLaw and Lexis-Nexis. There may be some delay in providing Board decisions to the operators of these sites, but they are relatively current.

The parties are advised that the Board strongly encourages the voluntary resolution of disputes brought before it. Such resolutions might take the form of traditional settlement discussions, or might involve the use of some form of alternative dispute resolution (ADR), such as mediation.

If the parties wish to discuss the possibility of settling this dispute or engaging in ADR, they should so inform the Board. Upon receiving such notification, the Board may stay further proceedings before it while the parties are exploring other possibilities.

If the parties would like to use mediation or another form of ADR, but have questions about the process, would like assistance in locating a neutral, or have other concerns, they may contact either the Board, which will refer them to the Department's Office of Collaborative Action and Dispute Resolution (CADR), or they may contact CADR directly. CADR does not normally provide neutrals, but can answer questions about ADR processes and assist parties in locating a mutually acceptable neutral.

The parties are also advised that the Board reviews all appeals, usually on several occasions, to determine whether it believes that the parties might benefit from the use of ADR. If it believes that the parties might benefit from the use of ADR, the Board may order them to participate in an assessment conference to determine whether ADR is likely to be successful. The Board will not, however, order the parties to mediation or any other form of ADR over their objections.



Debora G. Luther  
Administrative Judge

Enclosures

Distribution: See attached list.

<b>Village of Hobart Appeal</b>		
<b>Administrative Record Volume 1 of 4</b>		
<b>For the former Charlotte Catlin Property F-433-2007-610</b>		
<b>Tab No.</b>	<b>DATE</b>	<b>DOCUMENT</b>
1	8/16/2010	Notice of Decision to Tribal Chairman Richard G. Hill from Diane K. Rosen, Midwest Regional Director, with attachments as follows: 1. Return Receipts
2	8/4/2010	Memo to Regional Director from Patricia L. Olby, Acting Supervisory Realty Specialist, RE: Notice of Decision and Supporting Analysis with attachments as follows: 1. Notice of Decision, 2. FTTS reports, 3. Tribal Resolution, 4. Legal description acres/Legal Description Review, 5. Need/Purpose from the application from the Tribe, 6. Fee Warranty Deed to Tribe., 7. Maps, 8. 2nd Notice of Application dated 8/27/08 with return receipts from the City/Town, County and State, 9. Preliminary Title Opinion with Title Commitment & relevant updates, Objections satisfied, Non-interference memo; Initial CIP, Tax statement for 2009, 10. Environmental Compliance memo, Cat-ex, Phase I ESA, NHPA, Endangered Species,
3	7/23/2010	Certificate of Inspection
4	5/13/2010	Memo to Regional Director and Lead Realty Specialist from Environmental Services RE: 1st Update to Environmental Review
5	2/10/2010	Memo to Regional Director and Lease Realty Specialist from Environmental Services RE: Environmental Review for former Catlin Property
6	11/24/2009	Memo to Diane Baker, Lead Realty Specialist, from Lauren Hartman, Title Examiner/Fee to Trust Specialist, RE: Phase 4 PTO Response with attachment as follows: 1. Response to PTO Objections and Non-Interference memo dated 11/24/2009
7	11/17/2009	Letter to Dr. Fred Muscavitch from Diane K. Rosen, (Acting) Regional Director RE: Preliminary Title Opinion
8	11/10/2009	Letter to Diane Rosen, (Acting) Regional Director, Midwest Regional Office, from Priscilla A. Wilfahrt, RE: Preliminary Title Opinion
9	10/6/2009	Memo to Field Solicitor from Norma Lussier, Supervisory Realty Specialist, transmitting PTO with attachments as follows: 1. Draft Preliminary Title Opintion for Charlotte Catlin property, 2. Commitment for Title Insurance (Open Ended) 3. Documents in support of all liens, 4. Warranty Deed to the United States, 5. Tribal Resolution, 6. Property Boundary and location maps, 7. Initial Certificate of Inspection, 8. Legal Description Review Certificate
10	9/14/2009	Certificate of Inspection dated 9/14/2009
11	10/14/2008	Email from Lauren Hartment to Diane Baker RE: Receipts with attachments as follows: 1. Receipts
12	8/27/2008	Letter to Governor James Doyle, Office of the Governor, Madison, WI RE: 2nd Notice of Application dated 8/27/08
13	6/5/2008	Memo to Environmental Scientist from Acting Supervisory Realty Specialist requesting Environmental/Hazardous Waste Clearance
14	2/29/2008	Note to Cristine Basina from Pat Twohy, RE: Legal Description approved on original memo dated 2/29/2008
15	2/28/2008	Memo to BLM Indian Land Surveyor from Cristine Basina RE: Legal Description Review
		1. Fee-to-Trust Legal Description Review Approval Sheet, 2. Schedule A from Title Commitment, 3. Plat of Survey, 4. Page from Deed Plotter

16	11/2/2007	Fax to Herb Nelson, BIA/MRO from Faith Metoxen, Land, Title & Trust Specialist, RE: Consultation Letters with attachments as follows (all dated 9/7/2007):
		1. Letter to Mr. Tom Hinz, Brown Co. Executive, 2. Letter to Mr. Richard Heidel, Hobart Village President, 3. Letter to Governor James Doyle, Office of the Governor
17	11/2/2007	Fax to Herb Nelson, BIA Lead Realty Specialist from Fred Muscavitch, RE: Phase 4 Cases
18	10/29/2007	Fax to Herb Nelson, BIA Lead Realty Specialist, from Fred Muscavitch, RE: Acknowledgement of receipt of faxes from BIA
19	10/26/2007	Fax to Fred Muscavitch, Director, Division of Land Management, from Herb Nelson, Acting Lead Realty Specialist, RE: Acknowledgement of receipt of Comments to Consultation Notices and request for copies of Notices of Application
20	10/6/2007	Letter to Terrence Virden, BIA, Midwest Regional Office, from Richard Heidel, Hobart Village President, RE: Comments to the Notice of Application received from Gerald Danforth, Chairman of the Oneida Tribe of Indians of Wisconsin
21	9/20/2007	Letter to Terrence Virden from Gerald Danforth, Chairman, Oneida Tribe of Indians of Wisconsin transmitting Fee to Trust Package with attachments as follows:
		1. Table of contents 2. Resolution, 3. Warranty Deed (doc. no. 1813798), 4. Title Commitment, 5. Rental Unit Energy Certificate of Compliance dated 11/17/1989, recorded 12/4/1989, Jacket 15000 Records, Image 36, Doc. No. 1199422, 6. Maps, 7. Level 1 Land Contaminant Survey Report dated 3/10/05 & EDR Radius map with GeoCheck, dated 3/9/05, 8. Tax Statements for Tax Year 2006, 9. Certificate of Inspection & Possession Form, 10. Certificate as to Rights-of-way, Easements & Restrictions Form
22	9/7/2007	Letter from Gerald L. Danforth, Chairman, Oneida Tribe of Indians of Wisconsin, to Tom Hinz, Brown County Executive, Green Bay, WI RE: 1st Notice of Application dated 9/7/2007
23	9/7/2007	Letter from Gerald L. Danforth, Chairman, Oneida Tribe of Indians of Wisconsin to Governor James Doyle, Office of the Governor, Madison, WI RE: 1st Notice of Application dated 9/7/2007
24	9/7/2007	Letter from Gerald L. Danforth, Chairman, Oneida Tribe of Indians of Wisconsin to Richard Heidel, Hobart Village President, Oneida, WI RE: 1st Notice of Application dated 9/7/2007
25	8/2/2007	Fax to Eleanore Smith, Oneida Land Department, from Mervel Harris, Acting Lead Realty Specialist RE: Activity Log for Phase 4 cases with attachments as follows:
		1. Activity Log
26	3/9/2007	Fax to Tina L. Figueroa, Div. of Land Dept., from Diane Baker, Lead Realty Specialist RE: Legal Description Disk
27	2/12/2007	Memo to Diane Baker from Tina Figueroa RE: Lega Descriptions for Phase 4 Properties
28	1/23/2007	Fax to Dr. Fred Muscavitch, Director Div. of Land Management, from Diane Baker, Div. of Fee to Trust, RE: Cases beginning with Phase 3 and thereafter with attachment as follows:
		1. List of Phase 4 cases
29	9/13/2006	Fax to Diane Baker, BIA, from Fred Muscavitch, RE: Listing of Phases 3 & 4 cases with attachment as follows:
		1. Spreadsheet with Phase 3 & 4 cases

**Distribution: IBIA 10-131 and 11-002**

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