UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ONEIDA TRIBE OF INDIANS OF WISCONSIN,	)	
Plaintiff,	)	Civil File No. 06-C-1302
v.	)	Hon. William C. Griesbach
VILLAGE OF HOBART, WISCONSIN,	)	
Defendant.	)	

BRIEF OF *AMICUS CURIAE* THE GREAT LAKES INTER-TRIBAL COUNCIL IN SUPPORT OF THE PLAINTIFF ONEIDA TRIBE OF INDIANS OF WISCONSIN'S MOTION FOR SUMMARY JUDGMENT

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INTEREST OF AMICUS CURIAE

> In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments.
>
> 25 U.S.C. § 476(e) (emphasis added)

> No grant of a right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 [25 U.S.C. 461 *et seq*.] … shall be made without the consent of the proper tribal officials.
>
> 25 U.S.C. § 324

The Great Lakes Inter-Tribal Council (GLITC) is a coalition of eleven Indian tribal governments from Wisconsin and Upper Michigan.[1] GLITC was formed in 1965 to advocate for protection of tribal rights under treaties and federal laws, among other purposes. GLITC's member tribes own many thousands of acres of land holdings of various types, including trust and fee lands within their reservations. All of GLITC's member tribes are seeking to reacquire and restore tribal lands under the provisions of the Indian Reorganization Act and are well-positioned to address the issues presented to the court in this case.

[1] The eleven member tribes in GLITC are the Bad River Band of Lake Superior Tribe of Chippewa Indians, Forest County Potawatomi Community, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Menominee Indian Tribe of Wisconsin, Oneida Tribe of Indians of Wisconsin, Red Cliff Band of Lake Superior Chippewa Indians, Saint Croix Chippewa Indians of Wisconsin, Sokaogon Chippewa Community, and the Stockbridge-Munsee Community. The GLITC member tribes unite ten of the eleven Indian tribal governments located in Wisconsin.

The principal goal of the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §§ 461-479, was to halt and reverse the abrupt decline in the economic, cultural, governmental, and social well-being of Indian tribes caused by the disastrous federal policy of "allotment" and the sale of reservation lands. Between the years of 1887 and 1934, the U.S. Government took more than 90 million acres from the tribes—nearly two-thirds of all reservation lands—and sold it to settlers. The IRA is comprehensive legislation for the benefit of tribes that stops the involuntary sale of all tribal lands, provides mechanisms for tribes to reacquire and restore the tribal land base, encourages economic development, and provides a framework for the establishment of tribal government institutions on their own lands.

The plain language of Section 16 of the IRA prohibits the disposition of all lands owned by tribes without tribal consent. The language is unambiguous, but to the extent the Court finds any ambiguity about the meaning of Section 16, the plain language meaning is supported by the other provisions of the IRA, the overall purposes of the Act, the Act's legislative history, contemporaneous interpretation by Department of Interior officials, and subsequent acts preserving the tribal right to consent to disposition of all tribal interests in land.

These purposes of tribal land recovery enacted by Congress would be entirely frustrated by allowing local governments to condemn tribally owned fee land before it can be converted to trust. The court should reject the hollow remedy proffered by *amici* landowners, under which local governments could usurp tribal land acquisitions and preempt any action by the Secretary of Interior to take such lands into trust by

condemning the land. The Village and the *amici* landowners would elevate the importance of the land-into-trust provisions of the IRA to such a level that other provisions of the same Act are eviscerated, contrary to all common sense.

The GLITC member tribes submit the *amicus curiae* brief to provide the Court with these additional interpretive materials related to Section 16 of the IRA. To date, no other member tribes of GLITC have had municipalities attempt to condemn lands within a reservation and owned by the tribe. The arguments made by the Village and its *amici* threaten to set extremely harmful precedent that will hinder GLITC's member tribes and their citizens as they strive to implement the Congressional purpose embodied in the IRA to restore and stabilize their reservation lands, economies, and governments.

BACKGROUND

The decades preceding passage of the Indian Reorganization Act ("IRA") of 1934, 25 U.S.C. §§ 461–479, were marked by a policy of assimilation designed to break individual Indians loose from their tribal bonds. In 1871, Congress officially suspended treaty-making with Indian tribes. *See* 25 U.S.C. § 71. By that time, the United States had entered into approxi-mately 400 ratified treaties and another 400 unratified treaties with Indian tribes, setting aside reservations for Indians' exclusive use and promising protection in exchange for the cession of vast tracts of Indian lands. *See Board of County Commissioners v. Seber*, 318 U.S. 705, 715 (1943); Charles J. Kappler, Indian Affairs: Laws and Treaties (1940–41); and Vine Deloria, Jr. and Raymond J. Demallie, Documents of American Indian Diplomacy; Treaties, Agreements and Conventions, 1775–1979 (1999).

But despite assurances that Indian tribes would receive "permanent, self-governing reservations, along with federal goods and services," government administrators "tried to substitute federal power for the Indians' own institutions by imposing changes in every aspect of native life." S. Rep. No. 101–216 at 3 (1989). Policymakers sought to eradicate native religions, indigenous languages, and communal ownership of property, and they shifted power from tribal leaders to government agents. 78 Cong. Rec. 11725, 11729 (June 15, 1934); *see also generally* Francis Paul Prucha, The Great Father 609–916 (1984).

Critical to this broad assimilationist campaign was the General Allotment Act of 1887, 24 Stat. 388, known as the "Dawes Act," which authorized the division of

reservation lands into individual Indian allotments and required the sale of any remaining "surplus" lands. Although the purported intent of the Dawes Act was to improve the economic conditions of Indians, the primary beneficiaries of this federal policy were land speculators, who quickly acquired large portions of Indian lands at prices well below market value. In less than half a century, the amount of land in Indian hands shrank from 138 million acres to 48 million. 78 Cong. Rec. 11725, 11726 (June 15, 1934); Felix S. Cohen, Handbook of Federal Indian Law 138 (1982 ed.). The loss of these lands was catastrophic, resulting in the precipitous decline of the economic, cultural, social, and physical health of Indian tribes and their members. 78 Cong. Rec. 11725, 11726 (June 15 1934); *see* Charles F. Wilkinson, American Indians, Time and the Law, 19–21 (1987); L. Meriam, Institute for Government Research, The Problem of Indian Administration 40–41 (1928).

The IRA reflected a dramatic shift away from these devastating policies. Congress sought to "establish machinery whereby Indian Tribes would be able to assume a greater degree of self-government, both politically and economically," *Morton v. Mancari*, 417 U.S. 535, 542 (1974), thereby restoring stability to Indian communities and promoting Indian economic development, *see Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 14 n.5 (1987); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151-52 (1973). Each Indian tribe residing on a reservation was encouraged to "re-organize" and incorporate itself as a chartered membership corporation with a tribal constitution and by-laws, which would in turn render the tribe eligible for economic-development loans from a revolving credit fund, as well as other federal assistance. *See* 25 U.S.C. §§ 469–470, 476–478.

More than 180 Indian tribes adopted and ratified constitutions pursuant to the IRA, returning control over some tribal resources to the tribes.

More important for present purposes, Congress recognized that tribal self-determination and economic self-sufficiency could not be achieved without adequate lands. 78 Cong. Rec.11725, 11728 (June 15, 1934). The IRA immediately stemmed the loss of Indian lands—prohibiting further allotment and extending indefinitely all restrictions on alienation of Indian lands. 25 U.S.C. §§ 461–62. "Surplus" lands that the Government had opened for sale, but had not yet sold, were restored to tribal ownership. 25 U.S.C. § 463. The Secretary was given authority to acquire land in trust for Indian tribes and, once acquired, that land could be added to an existing reservation or proclaimed as a new reservation. 25 U.S.C. §§ 465 and 467. And, in the provision at issue in this case, each Indian tribe was expressly vested by Congress with the power "to prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe." 25 U.S.C. § 476(e).

ARGUMENT

In its opening brief in support of summary judgment, the Oneida Tribe effectively demonstrates that, based on the plain language of Section 16 of the Indian Reorganization (Wheeler-Howard) Act of 1934, codified at 25 U.S.C. § 476(e), the Village is prohibited from condemning the Tribe's reservation fee land without the Tribe's consent. Tribe's Br. at 6-10. As noted within their discussion, the "legislative history of the IRA confirms that Section 476(e) applies to all tribal lands, interests in land, and assets," whether owned in fee by the Tribe or held in trust by the United States for the benefit of the Tribe. *Id.* at 9. Tribal *amici* here provide, in further support of the Tribe's motion, additional material and discussion of the IRA as a comprehensive program of land recovery for Indian tribes, including additional legislative history of § 16, early Solicitor of the Interior interpretation of the land provisions of the IRA, and subsequent enactments reinforcing Congress's commitment to and understanding of Section 16. Finally, this brief explains that Section 5's trust process must not be interpreted to frustrate the comprehensive purpose of the IRA and the protections intended in Section 16.

1. The Plain Language of Section 16 and the Plain Meaning of "Tribal Lands" Is Supported by Other Provisions Within the IRA.

The IRA achieves its purposes of tribal self-determination and economic self-sufficiency through a comprehensive array of provisions related to land rights and tribal government powers. These other terms of the Act provide the context in which Section 16 can more easily be understood. As a textual matter, it is worth noting that the term "tribal lands," as referenced in Section 16, appears nowhere else in the IRA. If Congress had intended to limit Section 16's tribal consent requirement to something less than all

lands owned by a tribe, it was well-aware of how to refer to lands held in trust or restricted status. For example, in Sections 2 and 4 of the IRA, Congress uses the term "Indian lands" to encompass all lands owned by both Indian tribes and individual Indians. 25 U.S.C. §§ 462, 464. Section 2 refers to "restriction on alienation" and to "existing periods of trust" to qualify the protections being extended to "Indian lands." 25 U.S.C. § 462. And, Section 4 of the IRA prohibits any "sale, devise, gift, exchange or other transfer of restricted Indian lands." *Id.* § 464.

Moreover, the fact that Section 4 already prohibits the disposition of "restricted Indian lands" means that the delegation of power to tribal governments in Section 16 to "prevent the sale [or] disposition . . . of tribal lands" – would be superfluous unless the term "tribal lands" encompasses lands that are not "restricted Indian lands." In other words, "tribal lands" must be read to include non-restricted fee land owned by a tribe.

Finally, it would defy a common sense reading of the term "tribal lands" to include only lands where the legal title is held by the United States but not include lands where the legal title is held by the tribe. The land's nexus to the tribe is at its strongest when the tribe holds both the equitable and legal interests. This interpretation is made conclusive by Congress's inclusion of any "interests in lands, or other tribal assets" within Section 16's requirements. There is no doubt that Congress intended an expansive prohibition on any involuntary disposition of any tribally owned property without tribal consent.

2. The Legislative History of Section 16 Confirms Congress's Specific Intent to Require Tribal Consent for the Sale or Disposition of All Lands and Interests in Lands Owned by Tribes.

If there were any ambiguity of the plain language meaning of "tribal lands, interests in land, or other tribal assets," which there is not, the legislative history of Section 16 confirms the plain language meaning of the provision. The legislative history informs the Court of the serious historical problems that Section 16 was intended to remedy—the involuntary and highly detrimental disposition of lands owned by a tribe.

The overriding purpose to protect and increase lands owned by tribes should be paramount in reading the IRA. As Mr. Howard, one of the sponsors of the Act, noted, "it seems best that in the consideration of this measure, and in order to have it better understood, we should view somewhat the background of the present Indian problem." 78 Cong. Rec. 11725, 11726 (June 15, 1934). He further characterized the problem as one of "ruthless spoliation of defenseless wards." *Id.* He noted that, "[t]he failure of their governmental guardian to conserve the Indians' lands and assets, and the consequent loss of income and earning power, has been the principal cause of the present plight of the average Indian." *Id.* "Predatory interests have systematically and continually robbed the Indian of his property." *Id.* at 11727. While Indian lands "form the indispensable economic basis for the solution to the Indian problem," the situation after the General Allotment Act was one in which, "[m]any reservations have in Indian ownership a mere fragment of the original land, and all the remaining allotted reservations are badly checkerboarded." *Id.* at 11728. As demonstrated in detail below, Congress consistently held this purpose in mind in enacting the tribal consent provision on Section 16.

The protections of Section 16 were first insisted on by many tribes. In the original version of the legislation that the Roosevelt Administration presented to Congress in February 1934, there was no such language regarding disposition of tribal lands. However, in March 1934, a team from the Department of the Interior held inter-tribal "congresses" on the proposed legislation in South Dakota, Oregon, Arizona, New Mexico, California, and Oklahoma (and later, also in Wisconsin). *See generally* The Indian Reorganization Act: Congresses and Bills 24-367 (Vine Deloria, ed. 2002) (reprinting transcripts of the March 1934 Indian Congresses). Based largely on tribal responses from those congresses, John Collier, Commissioner of Indian Affairs, returned to Congress in April 1934 and proposed several amendments to the Administration's bill. *See* House Hearings on H.R. 7902, 73d Cong., 2d Sess. at 176-199 (Apr. 9, 1934).

At the House Committee on Indian Affairs hearing of April 9, 1934, Collier proposed a new section requiring tribal consent for disposition of certain tribal assets and also requiring individual Indian consent for disposition of certain individual Indian assets: "No disposition of any tribal or community lands or any interest therein or any right of use thereto shall be made without the consent of the tribe or community. . . . No disposition of any improved land, beneficially used by any individual entitled to the possession thereof by a title, assignment, or tribal custom, or of any interest or right of use in such land, shall be made without the consent of such individual." House Hearings on H.R. 7902, 73d Cong., 2d Sess. at 189 (Apr. 9, 1934). Here, for the first time, the term "tribal lands"[2] is introduced into the legislation.

[2] The term was "tribal or community lands" but later versions of the bill removed all reference to chartered "Indian communities," a term used dozens of times in the original Administration bill, which effectively sought to reorganize "tribes" into chartered, incorporated "communities."

In recommending the amendment, Collier provided a written summary to explain the proposal: "[A]t the suggestion from numerous Indians, a new section has been drawn specifically prohibiting the disposition of any community or tribal assets without the consent of the tribe or community." *Id.* at 195. During his oral testimony, Collier explained the amendment's first sentence requiring tribal consent as altering the balance of power between the federal government and tribal authorities: "In other words, under existing law, in any one case, the Secretary of the Interior can rent, lease, alienate tribal assets; under this new section that power would be taken away from him and would make *all* disposal subject to tribal consent." *Id.* at 189 (emphasis added). Regarding the section of this first draft of the bill requiring individual Indian consent, Collier continued: "Almost everywhere we went[,] the Indians raised their voice on that point. It was an old grievance and a proper grievance, we take it, and the Indians wanted that protection. … The Navajos have it in their oil and the Pueblos have it in their land, but the other [tribes] have not got it."[3] *Id.* These explanations are particularly relevant in demonstrating a serious historical problem of involuntary disposal of tribal interests in land and assets. It is exactly this history—a history of dispossession of lands, deeply

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[3] Collier described his newly proposed section as extending to all tribes the power that the Pueblos already had with respect to Pueblo lands. Assistant Solicitor of the Interior Felix Cohen later explained that Section 16 "generalized" for all tribes organized under the IRA the principle set forth in the Act of May 31, 1933, 48 Stat. 108, which constrained the Secretary of the Interior's discretion to dispose of certain Pueblo assets by requiring the consent of the Pueblo's governing authorities. *See* Felix S. Cohen, Handbook of Federal Indian Law 393 (1942 ed.). As Cohen explained, the legal title to most Pueblo lands were held not by the United States but rather by the Pueblos themselves, in fee, either under grants from the Spanish, Mexican, or United States governments or by reason of purchases made by the Pueblos. *Id.* at 396. Therefore, Collier was saying, in essence, that all organized tribes, including those whose land is held in trust by the United States, should have the power to veto the disposition of their lands, just as the Pueblos have the power to veto the disposition of their fee lands. Therefore, Collier's legislation was designed to protect both reservation lands held in trust by the United States for Indian tribes and reservation lands owned in fee simple by Indian tribes equally.

disruptive to tribal governments and economies—to which Section 16 was aimed from its first inception.

These consent provisions, so critical to tribal interests, were maintained and emphasized throughout the legislative process and survive in the current version of the IRA. The House Committee revised the language of Collier's proposal, and the full House then adopted a bill in June 1934 that provided: "No sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets shall be made without the consent of the tribe." 78 Cong. Rec. 11725 (June 15, 1934) (§ 17 of the bill "to conserve and develop Indian lands and resources"). The House report explained that this provision "prohibits the use or dissipation of tribal assets without the consent of the tribe." H.R. Rep. 1804 at 7 (May 28, 1934). Representative Edgar Howard, the chairman of the House committee, explained the significance of this provision when he spoke on the House floor: "Among the most important powers conferred by this section is that which would prevent the sale, disposition, lease, or encumbrance of tribal lands or assets without the consent of the tribe." 78 Cong. Rec. 11725 (June 15, 1934).

Ultimately, legislation incorporating similar "land-disposition veto" language was introduced in the Senate, accepted by the conference committee, and included in the bill that President Roosevelt signed. *See* H.R. Rep. 2049 at 8 (June 16, 1934). The Senate version referred to this power as one that "shall" be vested in a tribe (or the council of a tribe) that adopts a tribal constitution under the Act. 25 U.S.C. § 476(e). Thus, if this Court finds any ambiguity in the meaning of Section 16, the analysis should be informed by Congress's unwaivering concern for ending the devastating involuntary disposal of

land and assets of tribes that motivated the inclusion of Section 16 from its conception by tribes, to its proposal by the administration, to its support through both houses of Congress and ultimately in its enactment. This concern for involuntary loss of land, interests in land, and other assets, applies equally to disposition by the federal government and state and local governments under the intentionally broad language of Section 16.

3. Contemporaneous Administrative Interpretation Supports the Plain Language Meaning of Section 16.

Assistant Solicitor Felix Cohen, who was the principal drafter of the Indian Reorganization Act, prepared a very detailed guide to drafting tribal constitutions pursuant to Section 16. Felix S. Cohen, On the Drafting of Tribal Constitutions (David E. Wilkins, ed. 2006). In the document, Cohen does not define "tribal lands" but he does refer broadly to tribal control over "all tribal lands and property of every description," including *but not limited to* "lands held in trust by the United States government." *Id.* at 67. Specifically, Cohen noted that a tribal constitution could authorize a tribal council to decide whether to sell "tribal lands" to non-Indians without the consent of the Secretary of the Interior, unless those lands are "held in trust by the United States government." *Id.* Clearly Cohen contemplated that tribes would utilize provisions of IRA and their own inherent powers to acquire fee lands in addition to trust lands. Surely then, any disposition of any land owned by tribes requires tribal consent under Section 16.

4. Congress Reaffirmed Its Commitment to and Understanding of the Tribal Consent Provision By Subsequently Incorporating Its Protections Into a Rights-of-Way Statute.

Congress affirmed its support of the broadly conceived tribal consent provision in 1948 by enacting a federal law that prohibits the Secretary of the Interior from granting rights-of-way across "any lands belonging to a tribe" without the consent of the proper tribal officials. 25 U.S.C. § 324. Section 324 provides:

> "No grant of right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), as amended [25 U.S.C.A. § 461 *et seq.*]: the Act of May 1, 1936 (49 Stat. 1250) [25 U.S.C.A. §§ 473a, 496]; or the Act of June 26, 1936 (49 Stat. 1967) [25 U.S.C.A. § 501 *et seq.*], shall be made without the consent of the proper tribal officials."

25 U.S.C. § 324.

Section 324 is one part of the General Rights-of-Way Act of 1948, 25 U.S.C. §§ 323-328. Section 323, the first provision of the Act, allows the Secretary of the Interior to grant rights-of-way over certain individually and tribally owned Indian lands. *Id.* at § 323; see S. Rep. 80-823, 1948 U.S.C.C.A.N. 1033, 1036. The Act was introduced at the request of the Osage Tribe to simplify and expedite the granting of rights-of-way across Osage Indian lands. *Id.* at 1035. The bill was later changed to extend the simplified process to all tribes at the recommendation of the Secretary of the Interior. *Id.* at 1034. The Secretary described the bill as follows: "The proposed legislation would vest in the Secretary of the Interior authority to grant rights-of-way of any nature over the Indian lands described in the bill. The bill preserves the powers of those Indian tribes organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); the act of May 1, 1936 (49 Stat. 1250), extending certain provisions of that act to Alaska; and the

Oklahoma Welfare Act of June 26, 1936 (49 Stat. 1967), with reference to the disposition of tribal land." *Id.* at 1036.

Thus, it is clear that Congress specifically intended that Section 324 preserve and recodify the tribal consent requirement from Section 16 of the IRA, 25 U.S.C. § 476(e). In order to enact that intent, Congress used the very broad and inclusive language "any lands belonging to a tribe." 25 U.S.C. § 324. This broad language instructs us as to Congress's understanding of the powers it secured to tribes in Section 16 of the IRA. This broad language stands in stark contrast to the first section of the General Rights-of-Way Act in which the Secretary's authority to grant rights-of-way is described more specifically as limited to:

> any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians of New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of Indians.

25 U.S.C. § 323. The text of this subsequent Act indicates once again that Congress knew how to make specific reference to various types of Indian lands and chose to use much broader language when describing tribes' authority to prevent the disposition of any tribally owned property under Section 16 of the IRA. Thus, the clear and inclusive language of Section 16 was intended by Congress initially and reaffirmed by subsequent enactments.

5. The IRA's Section 5 Land-Into-Trust Process Does Not Protect Tribal Interests Unless the Section 16 Tribal Consent Provision Also Remains Intact.

The purposes of the IRA, to strengthen tribal governments and promote tribal economies and land recovery, *see* Background Section *above*, would be entirely frustrated by allowing state and local governments to condemn fee lands owned by tribes within their reservations. Section 5 of the IRA, 25 U.S.C. § 465, does provide an avenue for tribes to have the United States place their lands into trust for the benefit of the tribe, one which is heavily emphasized by the Village and its *amici* landowners. *See* Village's Br. at 28-33, Landowner *Amici* Br. at 19, 23–25.

Section 5 does not, however, provide adequate protection of tribal interests in land unless it is supplemented by Section 16 and the remaining provisions of the IRA. The Section 5 trust process works in tandem with Section 16, which codifies the right of tribes to prevent the disposition of their lands, to protect tribal interests in land in the interim period before the land can be placed into trust. *See* 25 U.S.C. § 476(e). Department of Interior regulations established the process by which the United States takes the land of individual Indians and tribes into trust in 1980. *See* 25 C.F.R. § 151.1-151.15. The regulatory process can be time-consuming and can require significant effort on the part of tribal governments and the Department of Interior. The trust process can, for example, include an examination of title, 25 C.F.R. § 151.13, compliance with environmental regulations, *id.* at 151.10(h), or a study of economic benefits related to the transaction, *id.* at 151.11(c). Obviously, such inquiries can require significant investment of labor and can be quite time-consuming to prepare and review. In fact, Congress recently held hearings investigating delays at the Department of Interior in processing land-into-trust

and other applications.[4] Moreover, the Government Accountability Office has issued a report investigating the same issue. *BIA's Processing of Land in Trust Applications* at 6, GAO-06-781 (July 2006). Since the IRA was enacted in 1934, the total acreage held in trust by the federal government for the benefit of tribes and their members has only increased from 49 million to about 54 million acres, *Id.* at 9, far short of the 138 million acres in trust before the General Allotment Act, 78 Cong. Rec. 11725, 11726 (June 15, 1934).

These practical realities demonstrate the very real danger in relying solely on Section 5's trust process to the exclusion of the Section 16. Without the protection of Section 16's tribal consent provision, local governments would have ability to frustrate both the broad purposes of the IRA and to preempt the Department of Interior's action on trust applications before they can be completed by condemning of lands owned by Tribes within their reservations. It would defy common sense to allow over-emphasis on one section of the IRA to frustrate both the clear requirements of another section of the Act and the intent of the Act as a whole to allow tribes to put an end to loss of their lands, to start to recover land, and to thereby strengthen and restore their tribal economies and governments. Indeed, Congress noted that its extensive hearings "left no doubt as to the imperative need of **comprehensive** legislation to remedy the existing conditions among American Indians generally." H.R. Rep. 1804 at 6 (May 28, 1934) (emphasis added); *see also* 78 Cong. Rec. 11725, 11726 (June 15, 1934).

In conclusion, while the language of Section 16 is unambiguous and clearly supports the Tribe's motion for summary judgment, any ambiguity, if found, is resolved

[4] Webcast, agenda, and statement of witnesses available at: http://indian.senate.gov/public/.

in the Tribe's favor through the consideration of the other provisions of the IRA, the legislative history of Section 16, the contemporaneous administrative interpretations of Interior officials, and faithfulness to the comprehensive purposes of the Act.

6. Tribal *Amici* Herein Support and Reemphasize the Importance of All the Arguments Made By the Oneida Tribe of Indians of Wisconsin.

In this brief, tribal *amici* have attempted to provide the Court with additional information to demonstrating that Section 16's plain language meaning was the meaning intended by Congress. The tribal government members of GLITC also wish to state generally their support of all of the arguments made by the Oneida Tribe of Indians of Wisconsin in its motion for summary judgment and its objection to the Village's motion for summary judgment. GLITC fully supports those arguments, such as those regarding the Indian Nonintercourse Act, and non-application of the *City of Sherrill* made by the Tribe. *Amicus Curiae* herein will not repeat those arguments other than to state its concern that those issues similarly are critically important to all of its member tribes as they endanger the rights and expectations of tribes to protect themselves from condemnation by states and local municipalities.

CONCLUSION

For the reasons set forth above, the Oneida Tribe of Indians of Wisconsin's motion for summary judgment should be granted and the Village of Hobart's motion for summary judgment should be denied.

Dated this 30th day of November, 2007.

Respectfully Submitted,

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