

Wisconsin Department of Transportation
Inter-Tribal Task Force

Tribal Real Estate Training
Tuesday, April 5, 2016

REPORT



Prepared by:

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REPORT OVERVIEW

This report is based upon real estate training conducted on April 5, 2016, in Bowler, Wisconsin. The training was held pursuant to a Memorandum of Agreement entered into between the Wisconsin Department of Transportation and the Lac Court Oreilles Band of Lake Superior Chippewa Indians.

This report is broken down by sections, beginning with a summary of the training, brief highlights of each presentation, the case study forum, session evaluations, and presentation materials.

The report concludes with proposed recommendations, both substantive and logistical, taken from both observations of questions and discussion and from the training evaluations.

Summary of Real Estate Training

Session 1. Overview of Tribal Lands and Jurisdiction

Presenters: Carol J. Brown, *Brown Law Offices*; Dena Ness, *BIA Great Lakes Agency*; Michelle Davidson, *Office of Special Trustee, Midwest Regional Appraiser*

A general overview of Tribal jurisdiction was provided, which included a history of federal Indian policy. The presentation covered the impact federal policy had on Indian Territory and the effect on jurisdiction. Highlights included the distinction between the western view of land and the Native perspective, Public Law-280, and a proposed roadmap to unraveling jurisdiction in transportation project-specific situations. A broad overview of the Office of Special Trustee was provided, including a summary of services. The third segment offered a summary of services provided under the BIA Division of Realty Services office. More in-depth information was shared during a Q&A session. Evaluations ranged from good to excellent, highlighting the effective manner in which the panel kept the group engaged, as well as providing a good historical overview.

2. Overview of BIA - Code of Federal Regulations (CFR) Part 169

Presenter: Dena Ness, *Bureau of Indian Affairs - Great Lakes Agency*

This presentation covered the proposed new regulations governing Tribal rights-of-way. (25 CFR Part 169). The presenter reviewed the history of the federal revisions, highlighting BIA's intent of improving and updating policies and processes over management of trust land. Specific information on the changes impacting service lines agreements, duration to renewals, amendments, assignments and mortgages, compliance, and enforcement were covered. It was noted the final rule was published on November 19, 2015, with an expected final publication in spring 2016, which may potentially be moved to a later date. The follow-up Q&A session covered fact-specific

scenarios. Evaluations ranged from good to excellent, noting the information was helpful and useful.

3. Review of BIA Forms and Processes

Presenters: Dena Ness, *Bureau of Indian Affairs - Great Lakes Agency*

The forms and processes that will implement the new regulations governing Tribal rights-of-way were presented. Further discussion continued regarding the impact of the new rules on existing right-of-ways, easements, and new applications. Evaluations ranged from good to excellent.

4. WisDOT Real Estate Process

Presenters: Norman Pawelczyk, *DOT Division of Transportation Systems Development*, Mary Jo Nash, *Oneida Nation Acquisitions Manager*, Kathy Curren, *Real Estate Manager, CORRE, Inc.*

Detailed information was provided on the Wisconsin Department of Transportation's right-of-way process. Early communication, project scoping, design and timelines were covered, and proposed project timelines were discussed. The presentation also included effective real estate appraisal practices, the DOT acquisition process, and tips on effective methods. Issues related to relocation were covered including concerns such as owner rights, property management, and effective landowner meeting guidance. Evaluations ranged from good to excellent.

5. Case Study Panel

Panel Members: Dena Ness, *Bureau of Indian Affairs - Great Lakes Agency*; Norman Pawelczyk, *Division of Transportation Systems Development*; Kathy Curren, *Real Estate Manager, Corre, Inc.*; Mary Jo Nash, *Acquisition Manger, Oneida Nation*; Zoya Mayo, *Lac du Flambeau Land Management Officer*

Facilitator: Carol J. Brown

A case study was presented by the panel, which included discussion of issues affected in a mock WisDOT transportation project. The panel also discussed a hypothetical scenario that implicated Tribal, federal and allotted lands. The purpose for the exercise was to create an intergovernmental and inter-agency dialogue that would enhance understanding of respective processes and begin a discussion on ways to streamline efforts, communication and procedures. Both the case study and the hypothetical land scenario triggered questions and comments on a wide range of related topics.

The primary areas of discussion included state and federal appraisal processes generally, and, specifically, on mixed fee and trust-land projects, transfers of land, problems

surrounding expired right-of-ways and utility easements, notice to Tribes on updates to long-range transportation projects, Tribal Member employment, the BIA timeframe for review and approval of projects impacting trust, allotted and Tribal lands, and the need for early consultation and early team-building.

Specific questions included issues related to interest valuation and the process for compensating the owner, in trust and combined trust and fee situations, who would pay in each scenario, and the BIA policy on separate disbursements for compensation. A discussion on the trust and fee land appraisal process covered both real estate and personal property implications. Issues were raised affecting jurisdictional transfers from the DOT's perspective highlighted concerns involving access, regulation of access, and whole/partial interest conveyances.

Additional issues discussed included factors that would trigger mitigation, such as wetlands and historic properties.

Questions on expired right-of-ways and easements triggered a discussion over the distinct practices of each Tribe. As an example, Lac du Flambeau Land Management explained the process its Tribe adopted governing situations involving both expired and asserted rights-of-ways. Participants exchanged comments on effective practices to engage pertinent parties, stressing the importance of early team-building and agreeing that team composition evolves as the project develops on both a state and Tribe operational level. Questions surrounding notice to Tribes on long-range transportation projects were raised, resulting in a short discussion on the state's transportation and budget process.

Information was shared following a question on how to encourage the employment of skilled Tribal Members on projects on or near Tribal lands. The policy and procedures adopted by the WisDOT to ensure best efforts are utilized was explained, directing participants to the Tribal Labor Advisory Committee (TLAC) website for further information.

Comments covering other project-related areas of concern revealed that abandoned roadways are a state and nationwide interest. The discussion that ensued suggests sessions on this topic and abandoned railways would be helpful. Specific scenarios over abandoned railroad beds generated questions and a discussion on the DOT process.

Concerns surrounding government leadership turnover was raised, pointing out that continuous, consistent communications on projects are impacted. It was suggested that staff, which experiences less of a regular turnover and are regularly engaged, inform new leadership. The importance of early and meaningful consultation was stressed. Right-of-ways that access navigable waterways were discussed, highlighting the complexities of public and private access, which may be dependent upon the source of funding when Tribal lands are involved.

A short discussion on Wisconsin's public trust doctrine as it relates to access over navigable waterways was then held. The issues surrounding moving, removing and constructing utilities in and around Tribal lands was discussed, with the federal process summarized by the BIA. Questions regarding the land status of right-of-ways and which

entity bears the cost for moving were clarified. It was noted that analyzing applicable Tribal ordinances should be part of the review process as it relates to the early-planning phase of projects. The importance of land to Tribes and Tribal Members was shared by various Tribal representatives as a result of a question raised regarding state requests to relinquish portions of Tribally-owned fee land for maintenance or other project-related purposes.

Evaluations ranged from good to excellent, including comments indicating the session was a good exercise, covered many useful areas, and reflected diverse agency and governmental perspectives.

RECOMMENDATIONS

The overall evaluations reflected a positive training experience. The following recommendations are based upon an observation of a) questions raised during the presentations; b) questions, comments, and discussions held during the case study panel presentation; and c) comments extracted from the training evaluations:

Substantive:

1. Continue dialogue with the Bureau of Indian Affairs on the federal implementation of the new right-of-way regulations and include in future trainings. Issues involving BIA oversight and involvement are complex, and the questions and comments reflected a need for more trainings and opportunities in this area. A more detailed step-by-step walk-through of a project from the BIA's perspective would be beneficial and enhance understanding of the federal process.
2. Continue training on the WisDOT real estate process with step-by-step guidance.
3. Continue to provide Tribal jurisdiction training sessions, presenting individual sessions that focus on specific areas related to right-of-ways, access, jurisdictional land transfers, navigable waterways, and land-into-trust, using specific examples for illustrative purposes and allow ample time for Q & A.
4. Include training that presents instruction from individual Tribes on applicable and project-related policies, practice and procedures, including contact information of potential team members. Comments reflected a need for more information-sharing on a Tribe-specific.
5. Develop training that includes railroad-specific topics and abandoned roadways. Several comments suggested these issues warrant a separate session.

6. Continue case-study sessions. Include small, individual break-out roundtables to allow for more in-depth discussions, information sharing, and problem solving.

7. Include an open discussion forum focusing on topics that are suggested through early solicitation from past participants prior to the training.¹ Issues of interest included Indian and non-Indian interests in land and project-specific information from the State DOT and BIA real estate process, using “start-to-finish” step-by-step visuals.

¹ While the evaluations contained a few suggestions, a follow-up solicitation during the planning phase of the next training may reveal additional topics.

Logistical:

1. Include biographies of presenters, with contact information, in the training packet. Circulate participant contact information to participants after the training to allow for continued dialogue.

2. Encourage all presenters to provide a presentation power point for future reference.

APPENDIX A – Training Agenda

Tribal Real Estate Training
Tuesday, April 5, 2016
8:00 am to 5:00 pm
Stockbridge-Munsee, Bowler, WI

“Finding Common Ground”

“Bringing together Tribal, state and federal representatives to exchange information and discuss strategies that cooperatively meet multiple real estate processes and requirements within each agency to facilitate efficient project delivery.”

AGENDA	
8:00 – 8:30	Registration/Breakfast
8:30 – 9:00	Welcome and Introductions
9:00 – 10:00	Overview of Tribal Lands and Jurisdiction – Facilitated by Carol Brown, Attorney Dena Ness, BIA Great Lakes Agency; Michelle Davidson, Office of The Special Trustee, Midwest Regional Appraiser
10:00 – 10:30	Overview of BIA – Code of Federal Regulations (CFR) Part 169 Dena Ness, Bureau of Indian Affairs – Great Lakes Agency
10:30 – 10:45	Break
10:45 – 11:15	Review of BIA Forms and Processes Dena Ness, Bureau of Indian Affairs – Great Lakes Agency
11:15 – 12:00	WisDOT Real Estate Process - Norman Pawelczyk, Division of Transportation Systems Development - Mary Jo Nash, Acquisition Manager, Oneida Nation & Kathy Curren, Real Estate Manager, Corre, Inc.
12:00 – 1:00	Lunch
1:00 – 2:30	Case Study Panel Carol Brown, Facilitator; Dena Ness, Bureau of Indian Affairs, Great Lakes Agency; Norman Pawelczyk, Division of Transportation Systems Development; Kathy Curren, Real Estate Manager, Corre, Inc.; Mary Jo Nash, Acquisition Manager, Oneida Nation, Zoya Mayo, Lac du Flambeau Land Management Officer
2:30 – 2:45	Break
2:45 – 3:30	Case Study Panel Continued
3:30 – 4:30	Round table – Question and Answers

Appendix B - ATTENDEES

#	First Name	Last Name	Email Address	Company
1	Michelle	Basina	michelle_basina@ost.doi.gov	DOI/OST/Office of Appraisal Services
2	Maggie	Bennett	maggie.bennett@mohican-nsn.gov	Stockbridge-Munsee Band of Mohican Indians
3	Josh	Brown	josh.brown@ldfTribe.com	Lac Du Flambeau Tribe
4	Connie	Bruns	connie.bruns@dot.wi.gov	Wisconsin Department of Transportation
5	Crystal	Chevalier	ccchapman@mitw.org	Menominee Indian Tribe of Wisconsin
6	Kathryn	Curren	kcurren@correinc.com	CORRE, Inc.
7	Michelle	Davidson	michelle_davidson@ost.doi.gov	DOI/OST/Office of Appraisal Services
8	Heather	Dresel	heather.dresel@dot.wi.gov	Wisconsin Department of Transportation
9	Tina	Figueroa	tfiguero@oneidanation.org	Oneida Tribe of Indians of Wisconsin - DOLM
10	Patricia	Guske	patricia.guske@dot.wi.gov	WisDOT
11	Scott	Hewitt	Scott.hewitt@bia.gov	BIA
12	Christy	Jackson	christy.jackson@ldf-construction.com	LDF Construction
13	David	Jordan	djordan1@oneidanation.org	Oneida Tribe of Indians of WI
14	Nita	Kemp	nita.kemp@lco-nsn.gov	Lac Courte Oreilles Tribal Government
15	Kim	Komanekin	kkomanekin@mitw.org	Menominee Indian Tribe of Wisconsin
16	Roger	Larsen	Roger.larson@dot.wi.gov	WisDOT
17	Michelle	Ledzian	michelle.ledzian@dot.wi.gov	Wisconsin Department of Transportation
18	Philip	Livingston	watersewersupvr@badriver-nsn.gov	Bad River Tribe of Lake Superior Chippewa Indians
19	James	Makuski	james.makuski@dot.wi.gov	Wisconsin Department of Transportation
20	Zoya	Mayo	zamayo@ldfTribe.com	Lac Du Flambeau Tribe
21	Chad	Miller	chad.miller@mohican-nsn.gov	Stockbridge-Munsee Band of Mohican Indians
22	Mary Jo	Nash	mnash@oneidanation.org	Oneida Tribe of Indians of WI
23	Dena	Ness	dena.ness@bia.gov	Bureau of Indian Affairs
24	Dave	ODonahue	david.odonahue@bia.gov	BIA
25	Norman	Pawelczyk	norman.pawelczyk@dot.wi.gov	WisDOT
26	Brent	Pickard	brent.pickard@dot.wi.gov	WisDOT
27	Abigail	Ringel	abigail.ringel@dot.wi.gov	Wisconsin Department of Transportation
28	Jo Ann	Schedler	joann.schedler@mohican-nsn.gov	Stockbridge-Munsee Community
29	Adam	Schleicher	adam.schleicher@dot.wi.gov	WisDOT
30	Niccole	Smith	niccole.smith@dot.wi.gov	WisDOT
31	Alexandra	Stankevich	sandy.stankevich@dot.wi.gov	WisDOT
32	Troy	Stapelmann	troy.stapelmann@dot.wi.gov	Wisconsin Dept. of Transportation
33	David	Steiro	dave@steiroappraisal.com	Steiro Appraisal Service, Inc.
34	Adam	VanZile	adam.vanzile@scc-nsn.gov	Sokaogon Chippewa Community
35	Derek	Weyer	derek.weyer@dot.wi.gov	Wisconsin Department of Transportation
36	Sandy	Wondra	swondra@oneidanation.org	Oneida Tribe

APPENDIX C – EVALUATIONS

TRIBAL REAL ESTATE TRAINING – APRIL 5, 2016

Please take a minute to complete this evaluation and turn it in at the end of the training.

Tell us about yourself. Check all that may apply:

- Elected Tribal Government Official
 Tribal Real Estate Staff
 Other Tribal Staff – Position _____
 Other _____

- WisDOT Employee
 WisDOT Real Estate Staff
 Bureau of Indian Affairs
 Other Agency Staff _____

9:00 – 10:00 OVERVIEW OF TRIBAL LANDS AND JURISDICTION - 16 Responding

Content	Excellent	Good	Needs Improvement	Not Applicable
Covered Useful Material	[8]	[8]	[]	[]
Practical to My Needs and Interests	[5]	[11]	[]	[]
Well Organized	[9]	[7]	[]	[]
Presented at the Right Level	[8]	[7]	[]	[]
Effective Activities	[5]	[6]	[]	[5]
Useful Visual Aids and Handouts	[6]	9[]	[1]	[]

Presentation	Excellent	Good	Needs Improvement	Not Applicable
Presenters' Knowledge	[13]	[3]	[]	[]
Presenters' Presentation Style	[10]	[6]	[]	[]
Presenters Covered Material Clearly	[11]	[5]	[]	[]
Presenters Responded Well to Questions	[11]	[5]	[]	[]

Overall, how would you evaluate this workshop training session?

Excellent - 7	Good - 6	Fair	Poor
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Additional Comments: Good clear history – Good overview – Could have had more in-depth information, presenter had lots of extra time, I feels she filled it appropriately with questions and discussions, though – Recommendation for next year's training:

Maybe expand more on topic (more discussion) so everyone till better understand “how” and “why”

TRIBAL REAL ESTATE TRAINING – APRIL 5, 2016

Please take a minute to complete this evaluation and turn it in at the end of the training.

Tell us about yourself. Check all that may apply:

- Elected Tribal Government Official
- Tribal Real Estate Staff
- Other Tribal Staff – Position _____
- Other _____

- WisDOT Employee
- WisDOT Real Estate Staff
- Bureau of Indian Affairs
- Other Agency Staff _____

10:00 – 11:15 OVERVIEW OF BIA CFR PART 169 & REVIEW OF BIA FORMS AND PROCESSES
16 Responding

Content	Excellent	Good	Needs Improvement	Not Applicable
Covered Useful Material	[12]	[4]	[]	[]
Practical to My Needs and Interests	[11]	[5]	[]	[]
Well Organized	[11]	[5]	[]	[]
Presented at the Right Level	[12]	[4]	[]	[]
Effective Activities	[6]	[5]	[]	[5]
Useful Visual Aids and Handouts	[9]	[8]	[]	[]

Presentation	Excellent	Good	Needs Improvement	Not Applicable
Presenters' Knowledge	[12]	[4]	[]	[]
Presenters' Presentation Style	[8]	[8]	[]	[]
Presenters Covered Material Clearly	[11]	[5]	[]	[]
Presenters Responded Well to Questions	[13]	[3]	[]	[]

Overall, how would you evaluate this workshop training session?

Excellent - 8	Good - 5	Fair	Poor
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Additional Comments: Provide link for BIA – I'm very nervous that Dena's knowledge base will not be as accessible – Great presenter! – Presentation was similar to discussion love it – Dena is well informed and able to answer questions as presented by guests. Helpful, useful info. Good explanations. – The speaker was real good and knowledgeable, but I believe the material would be confusing no matter who presented it

Recommendation for next year's training:
We need much more information on this from the BIA.

TRIBAL REAL ESTATE TRAINING – APRIL 5, 2016

Please take a minute to complete this evaluation and turn it in at the end of the training.

Tell us about yourself. Check all that may apply:

- Elected Tribal Government Official
- Tribal Real Estate Staff
- Other Tribal Staff – Position _____
- Other _____

- WisDOT Employee
- WisDOT Real Estate Staff
- Bureau of Indian Affairs
- Other Agency Staff _____

11:15 – 12:00 WISDOT REAL ESTATE PROCESSES - 16 Responding

Content	Excellent	Good	Needs Improvement	Not Applicable
Covered Useful Material	[7]	[8]	[]	[]
Practical to My Needs and Interests	[7]	[8]	[]	[]
Well Organized	[9]	[6]	[]	[]
Presented at the Right Level	[8]	[7]	[]	[]
Effective Activities	[7]	[4]	[]	[4]
Useful Visual Aids and Handouts	[9]	[6]	[]	[]

Presentation	Excellent	Good	Needs Improvement	Not Applicable
Presenters' Knowledge	[12]	[4]	[]	[]
Presenters' Presentation Style	[12]	[4]	[]	[]
Presenters Covered Material Clearly	[11]	[5]	[]	[]
Presenters Responded Well to Questions	[12]	[4]	[]	[]

Overall, how would you evaluate this workshop training session?

Excellent - 5	Good - 6	Fair	Poor
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Additional Comments: Panel kept group engaged on asking questions – They we all good

Recommendation for next year's training:

Provide a visual timeline from start to finish for Tribal Members to better understand the timelines so we can work more effectively together – Next time, more information on the “how-to” for Tribe specific projects.

TRIBAL REAL ESTATE TRAINING – APRIL 5, 2016

Please take a minute to complete this evaluation and turn it in at the end of the training.

Tell us about yourself. Check all that may apply:

- Elected Tribal Government Official
- Tribal Real Estate Staff
- Other Tribal Staff – Position _____
- Other _____

- WisDOT Employee
- WisDOT Real Estate Staff
- Bureau of Indian Affairs
- Other Agency Staff _____

1:00 – 3:30 CASE STUDY PANEL - 16 Responding

Content	Excellent	Good	Needs Improvement	Not Applicable
Covered Useful Material	[8]	[6]	[1]	[]
Practical to My Needs and Interests	[8]	[8]	[]	[]
Well Organized	[7]	[6]	[2]	[]
Presented at the Right Level	[7]	[7]	[]	[]
Effective Activities	[7]	[6]	[2]	[]
Useful Visual Aids and Handouts	[7]	[5]	[1]	[1]

Presentation	Excellent	Good	Needs Improvement	Not Applicable
Presenters' Knowledge	[8]	[6]	[]	[]
Presenters' Presentation Style	[8]	[6]	[1]	[]
Presenters Covered Material Clearly	[8]	[6]	[]	[]
Presenters Responded Well to Questions	[8]	[6]	[]	[]

Overall, how would you evaluate this workshop training session?

Excellent - 4	Good - 7	Fair	Poor
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Additional Comments: Good exercise – Interesting! – Having all different perspectives from the panel was excellent. Helped round out our conversations. – Presentation covered many areas. – Useful session. – So complicated.

Recommendation for next year's training:
