Exhibit V

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 19 2017

The Honorable Aaron A. Payment
Chairman, Sault Ste. Marie Tribe of Chippewa Indians
523 Ashmun Street
Sault Ste. Marie, Michigan 49783

Dear Chairman Payment:

On June 10, 2014, the Sault Ste. Marie Tribe of Chippewa Indians (Tribe) submitted to the Bureau of Indian Affairs (BIA), Midwest Region (Region), two applications for "mandatory" land-into-trust acquisitions. One, titled *Submission for Mandatory Fee-to-Trust Acquisition Pursuant to the Michigan Indian Land Claims Settlement Act – The "Corner Parcel" and The "Showcase Parcel,"* sought mandatory land-into-trust of two parcels in Lansing, Ingraham County, Michigan (Lansing Application); the second, titled *Submission for Mandatory Fee-to-Trust Acquisition Pursuant to the Michigan Indian Land Claims Settlement Act – The "Sibley Parcel,"* sought mandatory land-into-trust of a parcel in Huron Charter Township, Wayne County, Michigan (Sibley Application) (together the "Applications"). The Applications assert that the subject parcels have been or will be purchased with funds from the Tribe's Self-Sufficiency Fund, established pursuant to the Michigan Indian Land Claims Settlement Act (MILCSA).[1] The Applications further assert that the purchases would effect a "consolidation or enhancement of tribal lands," and, therefore, would be subject to mandatory land-into-trust acquisition by the Department of the Interior (Department) in accordance with MILCSA.

We have completed our review of the Tribe's request and supporting documentation. I regret to inform you that, at this time, there is insufficient evidence to allow us to proceed with the Applications. We agree with the Tribe that MILCSA does constitute statutory authority for mandatory land-into-trust acquisition, provided that the statutory requirements are met. One of those requirements is that the acquisition is "for consolidation or enhancement of tribal lands," terms that the Department previously has interpreted with regard to MILCSA.[2] We also are directed by the Department's procedures governing mandatory trust acquisitions,[3] which require evidence demonstrating that the subject parcel (or parcels) meet the requirements for mandatory acquisition. Here, I conclude that, at this time, the Applications lack sufficient evidence to

[1] Pub. L. 105-143, 111 Stat. 2652 (Dec. 15, 1997).

[2] Letter from Hilary C. Tompkins, Solicitor, U.S. Department of the Interior, to Michael Gross, Associate General Counsel, National Indian Gaming Commission (Dec. 21, 2010) ("Bay Mills Letter").

[3] *Updated Guidance on Processing of Mandatory Trust Acquisitions*, Memorandum from Larry Echo Hawk, Assistant Secretary-Indian Affairs, to Regional Directors and Superintendents, BIA (Apr. 6, 2012) ("Updated Guidance").

demonstrate that acquisition of the parcels would "consolidat[e] or enhance" tribal lands, as required by MILCSA.

MILCSA

Congress enacted MILCSA in 1997 to provide plans to distribute to the Tribe and others certain Indian Claims Commission (ICC) judgment[4] funds that the Department had been holding in trust.[5] MILCSA required the Tribe to establish a Self-Sufficiency Fund, into which the Tribe's share of the judgment funds would be deposited as principle.[6] The MILCSA also sets limits on how the Tribe may expend both Self-Sufficiency Fund principle[7] and income.[8] For example, the Tribe may use Self-Sufficiency Fund income "for educational, social welfare, health, cultural, or charitable purposes which benefit the members of the" Tribe,[9] or "for consolidation or enhancement of tribal lands,"[10] among other uses.[11] Finally, MILCSA provides that "[a]ny lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe."[12]

The Applications and Briefing

The Lansing Application seeks mandatory trust acquisition of two parcels, designated the "Corner Parcel" and the "Showcase Parcel" (together "Lansing Parcels"); the Sibley Application seeks mandatory trust acquisition of a third parcel, designated the "Sibley Parcel."[13] Approximately one year after submitting the Applications, the Tribe supplemented its submissions.[14] Subsequently, two other Michigan tribes have provided the Department with their opposition to the Applications: the Nottawaseppi Huron Band of the Potawatomi and the Saginaw Chippewa Indian Tribe (together, "Opposing Tribes").[15] The Tribe then submitted a reply brief.[16] Finally, after the Department requested additional evidence and argument on

---

[4] ICC Docket Nos. 18-E, 58, and 364 arose from the 1820 and 1836 treaties of cession between the United States and the Ottawa and Chippewa Indian tribes of Michigan. MILCSA at § 102(a)(1); H. Rep. 105-352. The ICC found that the United States' payments for the ceded lands were "unconscionable," and in 1971 awarded the tribes more than $10 million.

[5] MILCSA at § 102(b) (purpose); *see also id.* at § 102(a) (findings).

[6] MILCSA at § 108(a)(1)(A).

[7] MILCSA at § 108(b).

[8] MILCSA at § 108(c).

[9] MILCSA at § 108(c)(4).

[10] MILCSA at § 108(c)(5).

[11] *See generally* MILCSA at § 108(c).

[12] MILCSA at § 108(f) (emphasis added).

[13] In this letter, I refer to the Corner Parcel, the Showcase Parcel, and the Sibley Parcel collectively as the "Parcels."

[14] *The Sibley and Lansing Parcels Fee-To-Trust Acquisition Submission – Supplemental Information Concerning the Consolidation and Enhancement of Tribal Lands* at 11 (Apr. 22, 2015) ("Tribe's Supplement")

[15] *Opposition to the Fee-to-Trust Acquisition Applications of the Sault Ste. Marie Tribe of Chippewa Indians for the Lansing Parcels and the Sibley Parcel* (Apr. 6, 2016) ("Opposing Tribes' Brief").

[16] *The Sibley and Lansing Parcels Fee-to-Trust Acquisition Submissions – Reply to Objections Filed by Nottawaseppi Huron Band of the Potawatomi and the Saginaw Chippewa Indian Tribe* (May 20, 2016) ("Tribe's Reply").

specific questions,[17] both final briefs were submitted by both the Tribe[18] and the Opposing Tribes.[19] We have duly considered all of these submissions and the attachments and exhibits submitted with them.

Authority for Mandatory Trust Acquisition

At the outset, we are required to consult with the Office of the Solicitor for a determination of whether "a specific statute or judicial order" – in this case, MILCSA – constitutes mandatory authority for taking land into trust.[20] The Opposing Tribes argue that any land-into-trust application under the MILCSA is discretionary, notwithstanding the use of the word "shall" in Section 108(f).[21] We are not persuaded. Courts have long acknowledged that "[t]he word 'shall' is ordinarily the language of command."[22] In addition, the Bay Mills Letter acknowledged that Section 108(f) "called for a mandatory land acquisition."[23] Therefore, if lands are acquired using Self-Sufficiency Fund income in accordance with the provisions of Sections 108(c) and (f), then the Secretary is required to hold those lands in trust for the Tribe.

Evidence that Requirements of Mandatory Authority Are Satisfied

To satisfy the mandatory trust acquisition requirements of the MILCSA, the Tribe must demonstrate two distinct things: One, that the lands were "acquired using amounts from interest or other income of the Self-Sufficiency Fund" in accordance with Section 108(f); and two, that the expenditures from the Self-Sufficiency Fund were in accordance with one or more of the limitations provided in Section 108(c). The Tribe's primary argument that it meets the requirements for mandatory acquisition under MILCSA is that acquisition of each of the parcels, which it intends ultimately to use for gaming purposes,[24] would constitute "enhancement" of tribal lands.[25]

---

[17] Email from Jennifer Turner, Acting Assistant Solicitor, U.S. Department of the Interior, to John Wernet et al. (Nov. 18, 2016); email from Jennifer Turner, Acting Assistant Solicitor, U.S. Department of the Interior, to Robert L. Gips et al. (Nov. 18, 2016) (together, "Final Briefing Emails").

[18] *Responses to Questions Posed by the Department of the Interior Relating to The Fee-to-Trust Petitions for the Sibley and Lansing Parcels* (Dec. 9, 2016) ("Tribe's Final Brief").

[19] Letter from James T. Kilbreth, DrummondWoodsum, to Jennifer Turner, Acting Assistant Solicitor, U.S. Department of the Interior (Dec. 9, 2016) ("Opposing Tribes' Final Brief").

[20] Updated Guidance at 1-2.

[21] Opposing Tribes' Brief at 25-27.

[22] *Alabama v. Bozeman*, 533 U.S. 146, 153 (2001) (quoting *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) (quoting, in turn, *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935))).

[23] Bay Mills Letter at 12. Although the Bay Mills Letter hedged that statement by saying that retaining the mandatory language in Section 108(f) while removing it from other provisions of the MILCSA "perhaps was a mistake by Congress," *id.*, the mandatory language nonetheless remains.

[24] Lansing Application at 2 n.1; Sibley Application at 1 n.1. Although the Tribe does not at this time ask for a gaming eligibility determination, and the Tribe's use of the Parcels for gaming is not relevant to the determination of whether the acquisitions qualify for mandatory land-into-trust acquisition by the Department, the Tribe's intended use of the Parcels for economic development is relevant to the Tribe's arguments that the acquisitions satisfy the requirements of MILCSA.

[25] The Tribe advances two other arguments that we conclude are legally insufficient to meet the requirements of MILCSA.

The Tribe offers three arguments why acquisition of the parcels constitutes an "enhancement of tribal lands." First, the Tribe argues that the Department should embrace the definition of "enhance" adopted by the U.S. District Court for the Western District of Michigan in *Michigan v. Bay Mills Indian Community*,[26] which opined: "[t]he word 'enhance' means 'to improve or make greater' or 'to augment.' Obviously, the purchase of the Vanderbilt Tract is an enhancement of tribal landholdings, as the additional land augmented, or made greater, the total land possessed by Bay Mills."[27] We are not yet persuaded. The Department already has adopted a definition of "enhance" for purposes of MILCSA: "to make greater, as in cost, value, attractiveness, etc.; heighten; intensify; augment."[28] The District Court's definition of "enhance" was mere dictum,[29] and ultimately the District Court's decision was vacated (on other grounds) on appeal.[30] Moreover, under the District Court's definition would effectively provide that *any* acquisition of land using income from the Self-Sufficiency Fund would constitute an enhancement, as any acquisition would "ma[k]e greater the total land possessed" by the Tribe. Where Congress specified that Self-Sufficiency Fund income could *only* be spent for "consolidation or enhancement of tribal lands," we cannot conclude that *any* acquisition of land would satisfy that requirement.[31]

First, the Tribe argues that, because the Lansing Parcels are "less than three hundred feet from one another" and because the Tribe already owns a tract less than two miles from the Sibley Parcel, acquiring the Parcels would constitute a "consolidation" of tribal lands and, thus, satisfy Section 108(c)(5) of MILCSA. The Department previously defined "consolidate" for purposes of MILCSA to mean "to unite (various units) into one mass or body." Bay Mills Letter at 4 (quoting Webster New Twentieth Century Unabridged Dictionary). Because neither of the Applications would "unite various units into one mass or body," we conclude that the Applications would not effect a "consolidation . . . of tribal lands" for purposes of MILCSA. The Tribe offers alternative definitions of "consolidate" – to "reinforce or strengthen one's position," Lansing Application at 6 (quoting New Oxford American Dictionary 373 (2d ed. 2005) (omission in original)), and "to make firm or secure," *id.* (quoting Webster's New Collegiate Dictionary 240), and argues that acquisition of the Parcels will strengthen the Tribe's position by better enabling the Tribe to offer services to members who live near the Parcels. Tribe's Supplement at 3-4. However, even if we were to accept these alternative definitions, consolidation of *the Tribe's position* is not the same as a "consolidation . . . of *tribal lands*," which is what MILCSA requires.

Second, the Tribe argues that acquisition of the Parcels would satisfy Section 108(c)(4), because revenue generated by gaming enterprises on the Parcels would be used "for educational, social welfare, health, cultural, or charitable purposes which benefit members of the" Tribe ("social welfare purposes"). We find this argument to be too attenuated to satisfy MILCSA. Should the Tribe purchase land with Self-Sufficiency Fund income for a school, a job training center, a health clinic, or a museum, such purpose may fall within the scope of Section 108(c)(4) and be subject to the mandatory trust language of in Section 108(f). The Tribe, however, may not satisfy the Section 108(c)(4) requirement that *Self-Sufficiency Fund* interest and income be spent on social welfare purposes by using Self-Sufficiency fund income to start an economic enterprise, which may generate its own profits, which profits might then be spent on social welfare purposes.

[26] Case No. 1:10-cv-01273-PLM (W.D. Mich.).

[27] *Id.*, Op. and Order Granting Mot. Prelim. Inj., Dkt. No. 33, at 10-11 (Mar. 29, 2011) ("Injunction Order") (footnote and citation omitted), *rev'd on other grounds* 695 F.3d 406 (6th Cir. 2012).

[28] Bay Mills Letter at 4 (quoting Webster's New Twentieth Century Unabridged Dictionary).

[29] Unlike the Tribe's section of MILCSA, which allows expenditures of Self-Sufficiency Fund income to consolidate *or* enhance tribal lands, the section relevant to the Bay Mills Indian Community requires both consolidation *and* enhancement of tribal lands. MILCSA at § 107(3). Because the District Court concluded that the Bay Mills acquisition did not consolidate tribal lands, Injunction Order at 11-13, 16, the District Court's discussion of enhancement was mere dictum.

[30] 695 F.3d 406, 416-17.

[31] The Tribe also argues that any ambiguity should be resolved in favor of the Tribe, citing the Indian canon of construction. *See, e.g., Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985) ("statutes are to be construed liberally

Second, the Tribe argues that "enhancement" must be construed to include the acquisition of any land in areas with a "substantial nexus" to the Tribe and its members.[32] We cannot accept this argument on its own as it is not referenced in MILCSA itself. Section 108(c) of MILCSA defines the uses for which Self-Sufficiency Fund income can be spent, and the acquisition of land with a substantial nexus to the Tribe or its members is not on its own one of the allowed categories, though it could be a factor in our analysis.[33]

Third, the Tribe argues that acquisition of the parcels will "make more valuable existing tribal lands," both in Michigan's Upper Peninsula, where the Tribe's headquarters and primary landholdings are located,[34] and of the tracts of land the Tribe already owns near the parcels.[35] This approach is consistent with the framework the Solicitor set out in her Bay Mills Letter.[36] However, until the Tribe makes a sufficient showing of how the lands in the Upper Peninsula will be enhanced by the acquisition of the parcels we cannot complete our analysis on this point.

Finally, the Tribe's argument that the acquisition of the parcels would enhance nearby tracts already owned by the tribe lacks sufficient evidence to serve as the basis for us to conclude that the acquisitions would meet the requirements of MILCSA. The Tribe argues that acquisition of the Sibley Parcel would enhance the nearby tract owned by the Tribe by "creating a critical mass of tribal lands" that would allow for economic development and delivery of services to tribal members, and that acquisition of the Lansing Parcels into trust would allow for them to enhance each other.[37] To conclude that a request for mandatory land-into-trust meets the requirements of the authorizing legal authority, we need more; we need evidence.[38] The Tribe provides no evidence that the expenditure of Self-Sufficiency funds for the acquisition the parcels would enhance the Tribe's existing lands.

---

in favor of the Indians, with ambiguous provisions interpreted to their benefit"). We, however, see no ambiguity in Congress's use of the word "enhance" and, therefore, do not look to the Indian canon of construction.

[32] *See, e.g.*, Tribe's Reply at 8-10.

[33] Even if we could consider this option, we fail to see what intelligible principle the Department could use to divine what constitutes such a "substantial nexus." The Tribe offers that approximately one-sixth of its members live within a 50 miles of one or more of the parcels. Tribe's Supplement at 5-6, 12. Although we have no reason to doubt this figure, we also have no basis for concluding that this constitutes a "substantial nexus."

[34] Tribe's Supplement at 7.

[35] *Id.* at 10-11.

[36] Bay Mills Letter at 6 ("[E]ven under an interpretation where *enhancement* includes the addition of new land, there must be some connection to benefiting existing tribal landholdings" (emphasis in original)).

[37] Tribe's Supplement at 10-11.

[38] Updated Guidance at 2.

Because the Applications contain no evidence that the acquisitions of the parcels would effect a "consolidation or enhancement of tribal lands," the Applications currently do not meet the requirements of Section 108(c)(5) of MILCSA. Thus, we need not consider whether the parcels have been (or would be) acquired using Self-Sufficiency Fund income as required by Section 108(f) of MILCSA. We will keep the Applications open so that the Tribe may present evidence of an enhancement.

Sincerely,

Ann Marie Bledsoe Downes
Deputy Assistant Secretary – Policy and
Economic Development