

EXHIBIT D

Coleman Letter Dated July 30, 2018

SPEARS CARLSON & COLEMAN S.C.

JOHN R. CARLSON*
LINDA I COLEMAN

—
JACK A. CARLSON
of Counsel

—
ROBERT M. SPEARS
(1913-2000)

*ALSO LICENSED IN MINNESOTA

ATTORNEYS AT LAW
122 WEST BAYFIELD STREET
PO BOX 547
WASHBURN, WISCONSIN 54891
TELEPHONE: 715-373-2628
FAX NO.: 715-373-5716

HAYWARD OFFICE
15886 HWY 63
HAYWARD, WI
TELEPHONE:
715-934-3236

8-1-18

July 30, 2018

United States Department of the Interior
Bureau of Indian Affairs
Great Lakes Agency
916 Lake Shore Drive West
Ashland, WI 54806

Re: July 2, 2018 Notice of (non-gaming) Land Acquisition Application

Greetings,

I write on behalf of the Town of Russell, located in Bayfield County, Wisconsin, in response to the July 2, 2018 Notice you sent of an application by Elizabeth Wagman to have her land placed into trust status. As a start, I believe you have already been made aware that the statement contained in the Notice that "This property is located within the boundaries of the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin's Reservation" is incorrect. The Wagman property is located outside, though adjacent to, the boundary of said Reservation.

Unfortunately, the Notice provided lacks detail that would help the Town to understand the purpose of this transfer. The Notice states only that the subject parcel will be "preserved in its natural state to benefit Elizabeth and her family for future generations." This parcel is over 60 acres in area. Will there be a conservation agreement ensuring it is never built upon? Why does Ms. Wagman need trust status to simply leave her property vacant? Does Ms. Wagman have an inability to care for her own affairs? These questions are unanswered, which is part of the reason that Ms. Wagman's application should be denied.

The Department should closely scrutinize an application for trust status for land that, in fact, is outside of reservation boundaries. This is even more so when the applicant is not the tribe, but an individual. This individual does not have a business purpose to be achieved by obtaining trust status. From the description on the Notice, she intends to continue owning the land and making no changes to it. Why would trust status be necessary to accomplish this purported goal?

In regards to the specific information you requested, we provide the following answers:

1. The annual amount of property taxes currently levied on the subject property allocated to your organization: The amount allocated to the Town of Russell is \$352.61 per year, as reflected on tax record, attached hereto as Exhibit A, related to this parcel.

Please be aware that this IS a taxed parcel. Pursuant to Chapter 20 of the Wisconsin Property Assessment Manual, land *on* a reservation may be exempt from taxation in certain circumstances. As noted above, this parcel is not within reservation boundaries and is therefore, without question, subject to taxation. Furthermore, fee simple property within reservation boundaries is subject to taxation if it was allotted after February 8, 1887 or if it was ever owned by a non-tribal member. *See* Chapter 20 of WPAM, page 26, a copy of which is attached hereto as Exhibit B. Even if this property were within the reservation boundary, it would be subject to taxation unless the property owner could produce some evidence that she qualifies for that exemption.

The BIA should also be mindful of a recent change in the Township of Russell that may be relevant to this application, and indeed may prompt other such applications.

Approximately 10 years ago, the Red Cliff Tribe in Bayfield County and the Bad River Tribe in Ashland County sent notice to the local assessors that the Tribes felt tribal members and the tribe never have to pay real estate taxes on fee simple property. As noted above, this is contrary to the state of the law in Wisconsin. Nonetheless, for reasons now unknown, the property assessor in the Town of Russell DID remove from taxation fee simple parcels owned by Native Americans within reservation boundaries if an owner requested the assessor do so. The assessor in the Town of Sanborn in Ashland County did the same. No other towns in these two counties that contain reservation land made such exemptions. A suit was brought against the Town of Sanborn in Ashland County for maintaining an unlawful taxation scheme wherein all tribal members were exempted from taxation. In Ashland County Case 16CV30, Judge John Yackel ordered that all parcels in the Town of Sanborn that were exempted from taxation due to the owner being a tribal member must be restored to taxation.

Based upon the order pertaining to the Town of Sanborn, the Town of Russell likewise restored to taxation all parcels that had been being improperly exempted from taxation for approximately a decade. Many tribal members expressed displeasure at being advised their properties were being returned to taxed status after enjoying a 10-year reprieve from real estate taxation. The Town of Russell is concerned that, if the BIA allows individuals to place their properties in trust status for no compelling reason, there may be a rush by other tribal members who have recently resumed paying real estate taxes to do the same. The cumulative effect will be a great decline in tax revenue for the Town.

2. There are no known special assessments pertaining to this property.
3. Governmental services are currently provided to this parcel, including:

The Town provides and pays for maintenance and repair to the access roads that this property uses. Attached hereto as Exhibit C you will find a series of maps. The first is a Bayfield County Land Records map of the Wagman Property, which is highlighted in red (accessible at <https://maps.bayfieldcounty.org/BayfieldWAB/>). This map reflects that the property is bordered by three road – Little Sand Bay Road, Ridge Road and Hyde Road. The second map is a map of Bayfield County roads from the Department of Transportation (accessible at <https://wisconsindot.gov/Documents/travel/road/hwy->

[maps/county-maps/bayfield.pdf](#)). The third map is a portion of the second map, enlarging the portion of the map reflecting roads in the Town of Russell. You will note on this map that Little Sand Bay Road and Hyde Road are Town roads (the legend reflects that the double black lines are for Town roads). Thus, the majority of access to this parcel is along Town Roads, paid for and upkeep by the municipality. You will also notice on this map that the parcel in question is surrounded on three sides by fee-simple property. If it were placed in trust status, it would be inconsistent with the nature of most of the surrounding property.

The Town has also contracted for emergency services, which are provided to this parcel. These include both EMS and Fire services. Like the roads, this represents an expense to the Town for services benefitting this property. If this property is placed in trust status, it will have municipal benefits without the responsibility of contributing to the tax base that allows for such services.

4. This fee-simple parcel, which is outside of reservation boundaries, is subject to zoning by the Bayfield County Zoning Agency. In fact, even fee-simple parcels *within* reservation boundaries are subject to Bayfield County zoning. This fact was confirmed in an oral ruling issued by Judge John Anderson, Bayfield County Circuit Judge, in Bayfield County Case 17CX01. That case pertained to a tribal member who owned a fee simple parcel within reservation boundaries in the Town of Russell. She argued she did not need a permit from Bayfield County to install a driveway because the Tribe, not the County, would have zoning authority over her. The Judge rejected that argument, relying upon language from the Supreme Court case, in *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 125 S.Ct. 1478 (2005), wherein the Court found that “a checkerboard of alternating state and tribal jurisdiction....would ‘seriously burden the administration of state and local governments and would adversely affect landowners neighboring the tribal patches.’”

As noted by Bayfield County Case 17CX01, there are and have been zoning issues related to real estate owned by tribal members. Placing this parcel in trust, while it is surrounded by fee simple property under the zoning authority of Bayfield County, would create the “checkerboard of alternating state and tribal jurisdiction” that the High Court seeks to avoid, or at the least create confusion as to what authority prevails over that particular parcel. This is unlike a case where an agreement exists between the municipality and the Tribe such that a finding can be made that land use problems are not at issue. *See State of South Dakota v. United States Department of Interior*, United States Court of Appeals, Eighth Circuit, Decision June 01, 2007.

Having addressed the questions you asked us to answer, I’d like to address the considerations required by 25 C.F.R. §151.10. While this is not an on-reservation acquisition, this section is being cited because the parcel in question is adjacent to the reservation. Turning to the statutory considerations:

- a) The existence of statutory authority for the acquisition and any limitations contained in such authority.

General authority to place land in trust on behalf of an individual tribal member exists for land within reservation boundaries. It can be extended to land contiguous to the reservation. However, consideration ought to be given to the fact that this real estate is not currently within reservation boundaries and that this request is not made by the Tribe, but rather an individual owner for her individual purposes.

- b) The need of the individual Indian or the tribe for additional land.

There is no information in the notice to indicate why Ms. Wagman needs her aceraged placed into trust. She already owns this land. She already controls its use. Placing it into trust is not going to give her additional control over the property. It's also not going to add land that the tribe needs for tribal purposes. There has apparently been no reason presented as to why placing this property in trust is necessary or even appropriate.

- c) The purposes for which the land will be used.

The Notice indicates that this vacant land will be "preserved in its natural state to benefit Elizabeth and her family for future generations." There is no reason this land cannot or will not be preserved in its natural state to benefit Elizabeth and her family if it is NOT placed into trust. The only ostensible gain to the applicant is that she will not have to pay real estate taxes. As it is, she has the right to continue to leave her property vacant in its "natural state" and share it with or pass it onto any of her family she sees fit. There is no pending issue that will imperil this absolute right that she already maintains on her fee simple property.

- d) If the land is to be acquired for an individual Indian, the amount of land owned by or for that individual and the degree to which he needs assistance in handling his affairs.

As this application does involve an individual Indian, this is an important factor in this case. Here, we are talking about a vast swath of land over 60 acres large. As stated above, there is nothing in the notice that provides even the slightest hint that the applicant needs assistance in handling her affairs. If the standard for such a transfer is merely that a tribal member asks for it, then what is to prevent all tribal members from placing their land in trust status, thereby depleting the property tax base for the Town? It would seem unfair to grant this application but deny the next (or the third, fourth, fifth, etc.). This applicant's justification is lacking entirely such that a finding can be made that placing this property in trust status is appropriate.

- 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 the land from the tax rolls.

Taxes of \$1,516.25 per year are gained by leaving this property in fee simple status. While that may seem a small amount, the Town of Russell has a relatively small tax base

and, over time, that amount of money lost by the State and its political subdivisions will mount.

f) Jurisdictional problems and potential conflicts of land use which may arise.

As noted above, there have already been jurisdictional conflicts in the Town of Russell regarding real estate owned by tribal members. While the applicant proposes to leave this land "in its natural state," it is unclear what would prevent her from building on this land a year or two down the line. If she wanted to leave it in its natural state, she can record a conservation easement, for example, that will be binding upon her heirs, successors and assigns. There are very likely to be jurisdictional issues down the line on this property, and a checkerboard of regulations since the surrounding properties (within and without reservation boundaries) are subject to county zoning.

g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

There is no information in the notice to help the Town assess this component.

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.....

There is no information in the notice to help the Town assess this component.

In sum, the Town of Russell objects to this parcel being placed in trust status. It is outside of reservation boundaries, though contiguous thereto. The applicant is not the tribe, rather an individual property owner. There is absolutely no justification provided as to why a transfer into trust is necessary, other than that the property owner wants it. There will be damage to the Town from lost tax revenue and there will likely be jurisdictional issues encountered by the Town, the County or the State at some point down the road. Lastly, what the applicant seeks to accomplish can be accomplished already. She owns the property and can decide to leave the property in its natural state. She can even bind heirs, successors and assigns to leave it in its natural state. There is no need, and no justification, for transfer into trust status.

Please advise if you have any questions regarding the above.

Regards,



Linda Coleman

CC: Office of the Governor, State of Wisconsin

Dennis Pocernich, Chairman, Bayfield County Board
Paul Tribovich, Chairman, Town of Russell,
Rick Peterson, Chairman, Red Cliff Band of Lake Superior Chippewa
Elizabeth Wagman

7/26/2016

Real Estate Tax Bill

TOWN OF RUSSELL TREASURER
 DAVID L GOOD
 94500 N LADD ST

BAYFIELD WI 54814
 Phone: (715) 779-3284
 E-Mail: townofrussell@centurytel.net

STATE OF WISCONSIN - BAYFIELD COUNTY
REAL ESTATE PROPERTY TAX BILL FOR 2017

ELIZABETH A WAGMAN
 TOWN OF RUSSELL

PAYMENTS should reference: **Tax ID: 28939**

DOCUMENT RECORDING, or anything Else should reference:

PIN: 04 046-2-51-04-04-2 01-000-10000

Alternate/Legacy ID: 046-1004-08 000

Ownership: ELIZABETH A WAGMAN

ELIZABETH A WAGMAN
 36686 W BRESETTE HILL RD
 BAYFIELD WI 54814

Important: Be sure this covers your property. Note that this description is for tax bills only and may not be a full legal description. See reverse side for important information.

Property Description / Location of Property

Site Address: N/A

Description: Sec 04 Tn 51 Rg 04 NE NW & NW NW LESS THE S
 32 ACRES IN V.1163 P.513

Please include self-addressed, stamped envelope for return receipt.
 Please inform your treasurer of any billing address changes.

Acreage: 64.230

Document: 2016R-564355 1163-513

Assessed Value			Average Assessment Ratio	Net Assessed Value Rate (Does NOT reflect lottery or first dollar credit) 0.015535429	Real Estate Tax: 1,516.25 First Dollar Credit: 0.00 Lottery Credit: 0.00 Net Real Estate Tax: 1,516.25
<u>Land</u>	<u>Improved</u>	<u>Total</u>			
\$97,600	\$0	\$97,600	1.08050		
Estimated Fair Market Value			An "X" means unpaid prior year taxes.		
<u>Land</u>	<u>Improved</u>	<u>Total</u>		School taxes reduced by school levy tax credit. \$173.43	
\$90,300	\$0	\$90,300	<input type="checkbox"/>		
Estimated State Aids			% Tax Change		
Allocated Tax District			2016	2017	
STATE	2016	2017	2016	2017	
COUNTY	0	0	15.81	0.00	-100.0
TOWN OF RUSSELL	8,722	10,419	358.77	353.91	-1.4
SCHL-BAYFIELD	170,939	175,758	391.04	352.61	-9.8
TECHNICAL COLLEGE	60,291	63,856	804.02	775.38	-3.6
	29,824	30,392	35.17	34.35	-2.3
Totals	269,776	280,425	1,604.81	1,516.25	-5.5
First Dollar Credit			0.00	0.00	0.0
Lottery & Gaming Credit			0.00	0.00	0.0
Net Property Tax			1,604.81	1,516.25	-5.5

For full payment pay to **TOWN OF RUSSELL** treasurer by **January 31, 2018**

Warning

If not paid by due dates, installment option is lost and total tax is delinquent and subject to interest and if applicable, penalty. (See reverse)

Pay 1st Instalment Of:

758.13 Pay 2nd Instalment Of:

758.12 For Payment In Full:

1,516.25

by **January 31, 2018**

by **July 31, 2018**

by **January 31, 2018**

Amount enclosed:

Amount enclosed:

Amount enclosed:

ELIZABETH A WAGMAN
 Tax ID: 28939 (046)

ELIZABETH A WAGMAN
 Tax ID: 28939 (046)

ELIZABETH A WAGMAN
 Tax ID: 28939 (046)

Make check payable and mail to:

Make check payable and mail to:

Make check payable and mail to:

TOWN OF RUSSELL TREASURER

BAYFIELD COUNTY TREASURER

TOWN OF RUSSELL TREASURER

DAVID L GOOD

DANIEL ANDERSON

DAVID L GOOD

94500 N LADD ST

PO BOX 397

94500 N LADD ST

BAYFIELD WI 54814

WASHBURN WI 54891

BAYFIELD WI 54814

Include this stub with your payment

Include this stub with your payment

Include this stub with your payment



Native American Property

Real Property

Native American owned real property on an Indian reservation is not subject to state and local taxation unless an Act of Congress provides for state and local taxation.

On February 8, 1887, Congress enacted the General Allotment Act which applies to all Wisconsin tribes. Under that Act, real property that an individual Native American owns on a reservation in fee simple is subject to property tax. However, due to certain language in the Treaty of 1854¹, real property located within the reservation boundary of Bad River, Lac Courte Oreilles, Lac du Flambeau, and Red Cliff Chippewa bands is exempt if:

- It was allotted before February 8, 1887 under that Treaty,
- It is owned in fee simple by the tribe or tribal members, and
- There has been no conveyance of the land to nontribal members since it was first allotted under the 1854 Treaty. For example, if the land had been exempt under the provisions of the 1854 Treaty, but was then sold to a nontribal member, the land would lose its exemption and be subject to property tax. Even if the land was later repurchased by an 1854 Treaty Tribe, the land would remain subject to property tax.

Assessors should review tax roll information at the Municipality and County along with ownership information at the Register of Deeds office. The information will assist in determining if a property has changed ownership, was subject to property tax, and remains subject to property tax even though re-purchased by an 1854 Treaty Tribe.

As with other exemptions, a property owner may contest a determination that their property is subject to tax under sec. 74.35(2m), Wis. Stats., by paying the alleged unlawful tax in a timely manner, and properly serving the Municipal Clerk with a claim to recover the unlawful tax, before January 31 of the year in which the tax is due. The procedure and details for filing such claims is outlined in sec. 74.35, Wis. Stats.

Non-Native American owned real property on an Indian reservation is subject to state and local taxation unless an Act of Congress expressly prohibits such taxation. It is the responsibility of the owner to provide evidence of the Federal law that prohibits taxation.

Personal Property

Personal property on land held in trust is not subject to tax unless: (1) owned by non-Native Americans and (2) not an improvement to real estate. Structures or buildings and other items of personal property owned jointly by non-Native Americans and Native Americans on reservation land not in trust are taxed according to the extent of non-Native American ownership.

For the purposes of determining Native American ownership, a corporation is considered to

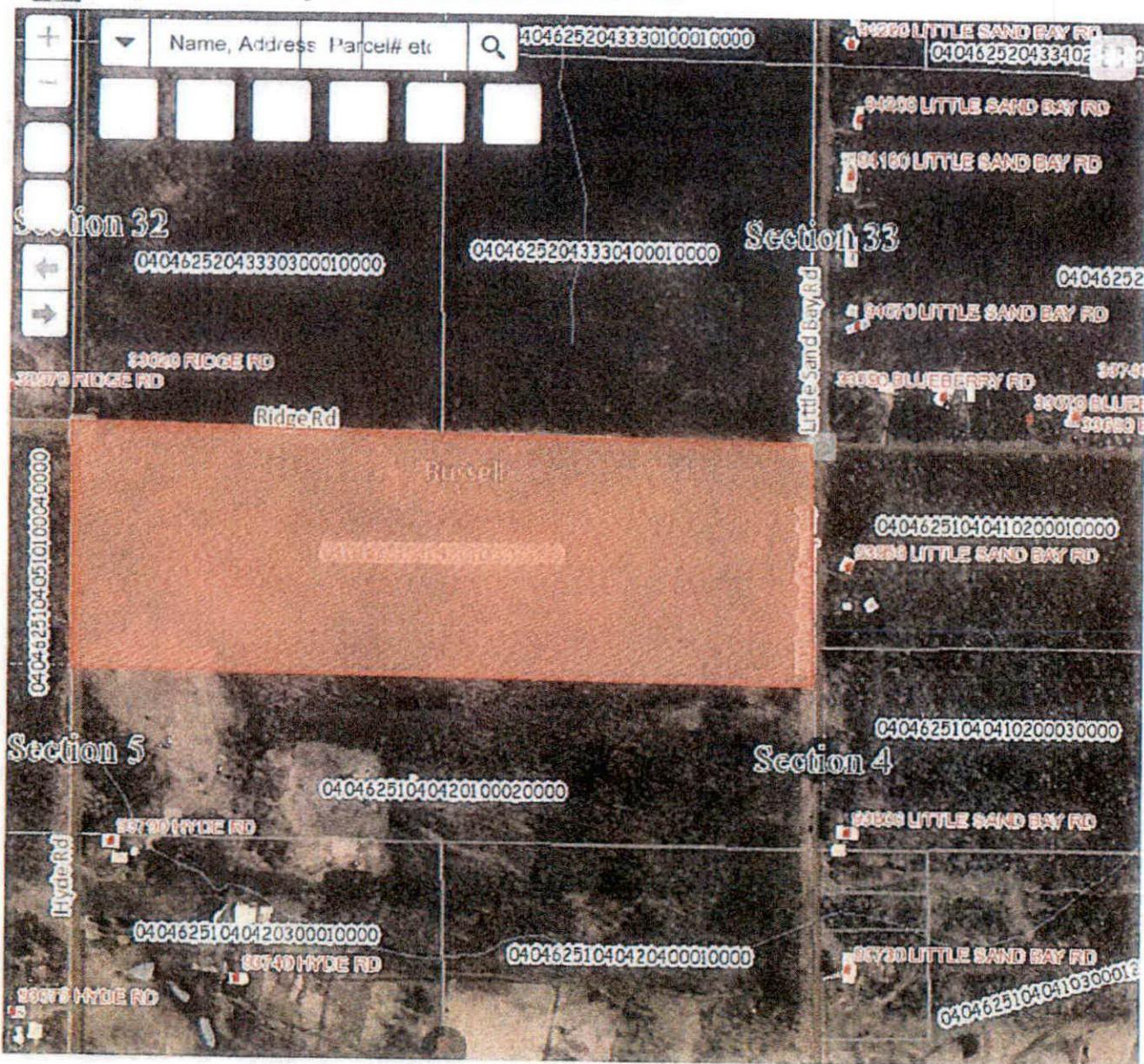
¹ See Wisconsin Attorney General Opinion 72 OP Atty Gen. 74 (1983).

7/26/2018

Bayfield County Land Records and GIS 1.2

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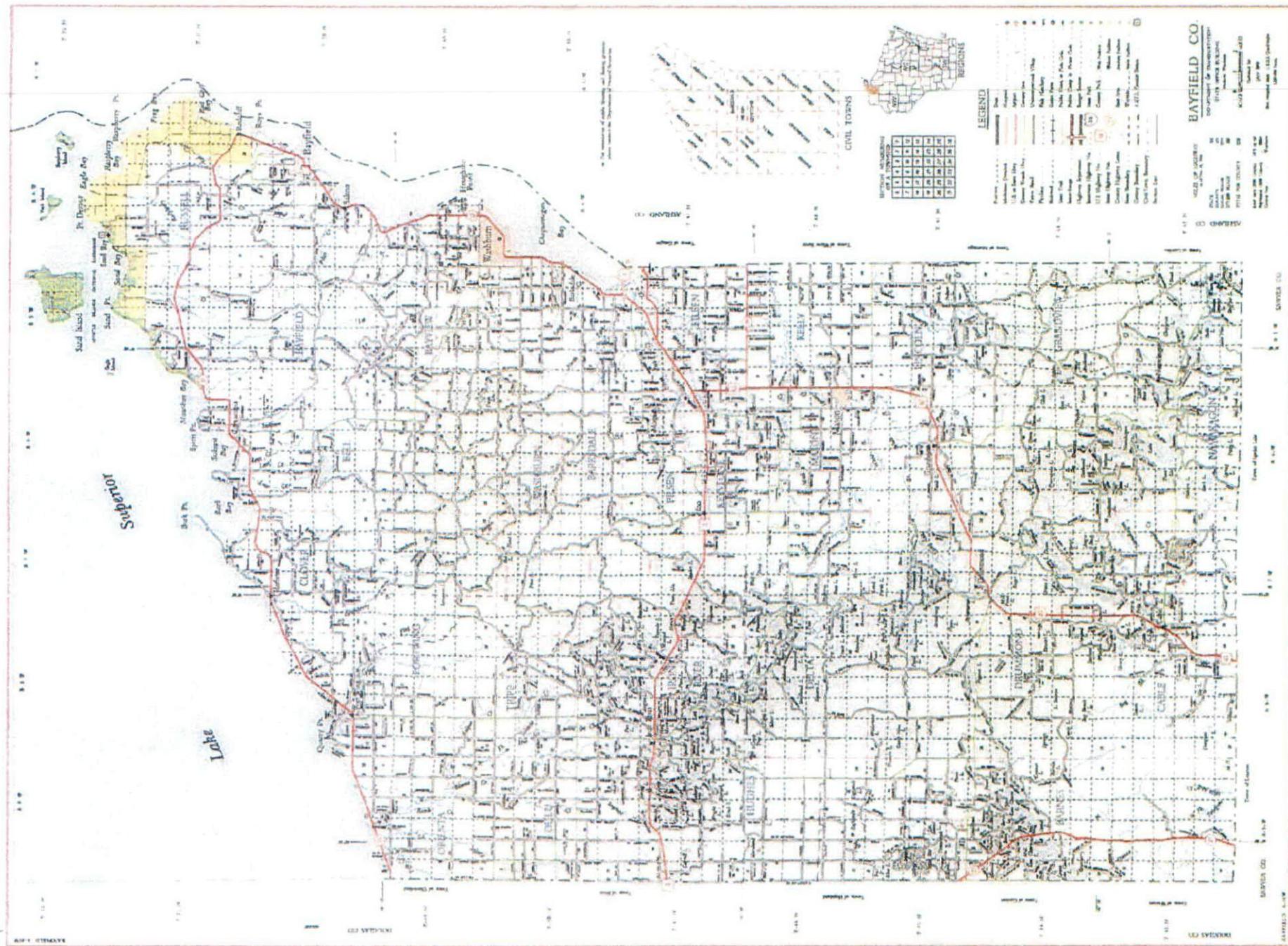
Bayfield County Land Records and GIS 1.2

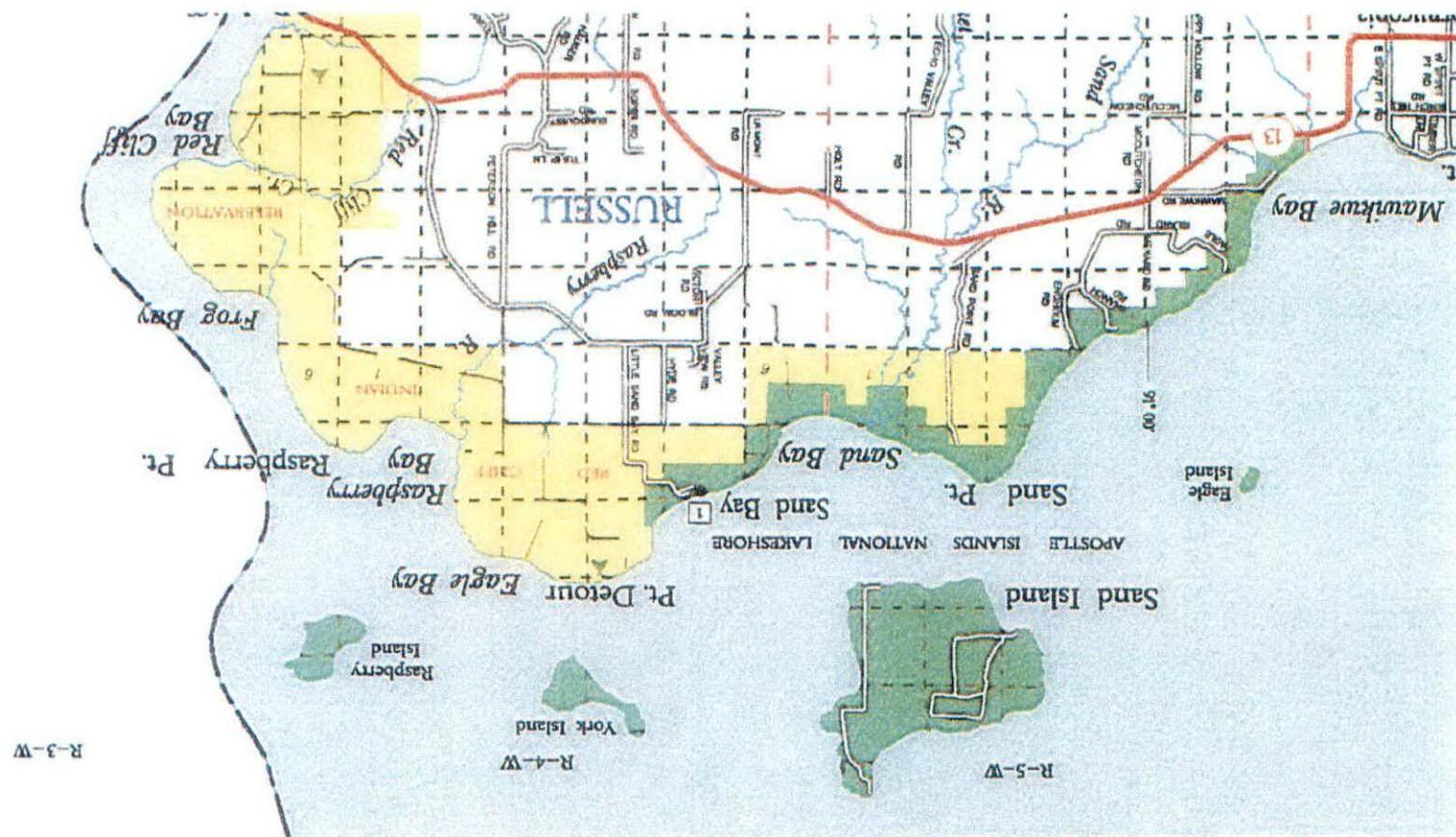


0 300 600 ft

EXHIBIT

103





CC: BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED:

Office of the Governor, State of Wisconsin 7004 2890 0004 4702 4465
State Capital
PO Box 7863
Madison, WI 53707-7863

Dennis Pocernich, Chairman 7004 2890 0004 4702 4458
Bayfield County Board
71115 Ondossagon Rd.
Ashland, WI 54806

Paul "Rocky" Tribovich, Chairman 7004 2890 0004 4702 4441
Town of Russell
93600 Little Sand Bay Road
Bayfield, WI 54814

Rick Peterson, Chairman 7004 28590 0004 4702 4434
Red Cliff Band of Lake
Superior Chippewa Indians
88385 Pike Rd., Hwy. 13
Bayfield, WI 54814

CC: BY FIRST CLASS MAIL:

Elizabeth Wagman
36686 W. Bresette Hill Rd.
Bayfield, WI 54814



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Great Lakes Agency
916 Lake Shore Drive West
Ashland, WI 54806-1357

JUL 02 2018

IN REPLY REFER TO:
4609 A&D Realty
435-RC-Elizabeth Wagman Property

NOTICE OF (NON-GAMING)
LAND ACQUISITION APPLICATION

Pursuant to the Code of Federal Regulations, Title 25, INDIANS, Part 151, notice is given of the application filed by the Elizabeth Wagman to have real property accepted "in trust" for said applicant by the United States of America. The determination whether to acquire this property "in trust" will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior, or his authorized representative, U.S. Department of Interior. To assist in the exercise of that discretion, we invite your comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments on the proposed acquisition. In order for the Secretary to assess the impact of the removal of the subject property from the tax rolls, and if applicable to your organization, we also request that you provide the following information:

- 1) If known, the annual amount of property taxes currently levied on the subject property allocated to your organization;
- 2) Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization;
- 3) Any governmental services that are currently provided to the property by your organization;
- 4) If subject to zoning, how the intended use is consistent or inconsistent with the zoning;

We provide the following information regarding this application:

Applicant

Elizabeth Wagman

Legal Land Description/Site Location:

A parcel of land in North One-half of Northwest quarter (N1/2 of NW 1/4), Section Four (4), Township Fifty-one (51) North, Range Four (4) West, Town of Russell, Bayfield County, less the South 32 acres thereof.

Containing 64.23 Acres

This property is located within the boundaries of the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin's Reservation, in the Town of Russell, Bayfield County.

Project Description/Proposed Land Use:

The Great Lakes Agency has under consideration an application for the transfer of real property held by the Elizabeth Wagman to be transferred to the United States in trust for the benefit of the Elizabeth Wagman.

The subject parcel will be preserved in its natural state to benefit Elizabeth and her family for future generations.

As indicated above, the purpose for seeking your comments regarding the proposed trust land acquisition is to obtain sufficient data that would enable an analysis of the potential impact on local/state government, which may result from the removal of the subject property from the tax roll and local jurisdiction.

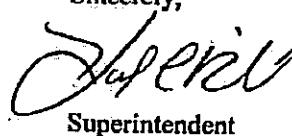
This notice does not constitute, or replace, a notice that might be issued for the purpose of compliance with the National Environmental Policy Act of 1969.

Your written comments should be addressed to the Bureau of Indian Affairs office listed at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record. You may be granted one thirty day extension of time to furnish comments, provided you submit a written justification requesting such an extension within thirty days of receipt of this letter. Additionally, copies of all comments will be provided to the applicant for a response. You will be notified of the decision to approve or deny the application.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy to said party.

A copy of the application, excluding any documentation exempted under the Freedom of Information Act, is available for review at the above address. A request to make an appointment to review the application, or questions regarding the application, may be directed to the Branch of Realty, at (715)-682-6436.

Sincerely,



A handwritten signature in black ink, appearing to read "Superintendent".

Superintendent