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Notes on the History of Menominee Land Tenure and Management

The history of Menominee tribal land tenure begins before contact with European settlers in the 1600s. At that time the Menominee people occupied and used the lands, rivers and forests of what is now a substantial part of the State of Wisconsin for hunting, fishing, gathering of nuts, berries, medicinal plants, planting of crops, housing, burial of the dead and other tribal ceremonies. When seasons changed, many family groups moved from place to place.

As the new settlers moved across the continent, the U.S. Federal Government entered into several treaties with the Menominee. Some of these treaties defined the use of formerly Menominee lands by the US Federal Government for distribution to new settlers and accompanying fortifications while others provided for formerly Menominee lands to be used for re-settling tribes from the East displaced by settlers in those areas.

The following map shows the approximate areas occupied and used by the main tribes in Wisconsin in the early 1800s.



Source: Indian Country Wisconsin, a project of the Milwaukee Public Museum, from the web site: <http://www.mpm.edu/wirp/>, 2010

The Stockbridge-Munsee tribal entity secured 44,000 acres in 1856 for their Reservation from the Menominee. The Oneida from New York were given approximately 65,000 acres in 1838.

The treaty of 1854 between the U.S. and the Menominee resulted in Menominee tribal groups being confined to what is today the 276,000 acre Menominee Reservation (occupying all of Menominee County) northwest of Green Bay. The Reservation is mostly forested and contains many streams and lakes, but is a small percentage of lands, rivers and forests once used by the Menominee people before the coming of the European settlers. Most of formerly Menominee lands were opened for non-Menominee settlement. Access to traditional wild rice, hunting and forest product gathering areas was lost. Fish migrations were interrupted by dams. Past patterns of migration of family groups to winter

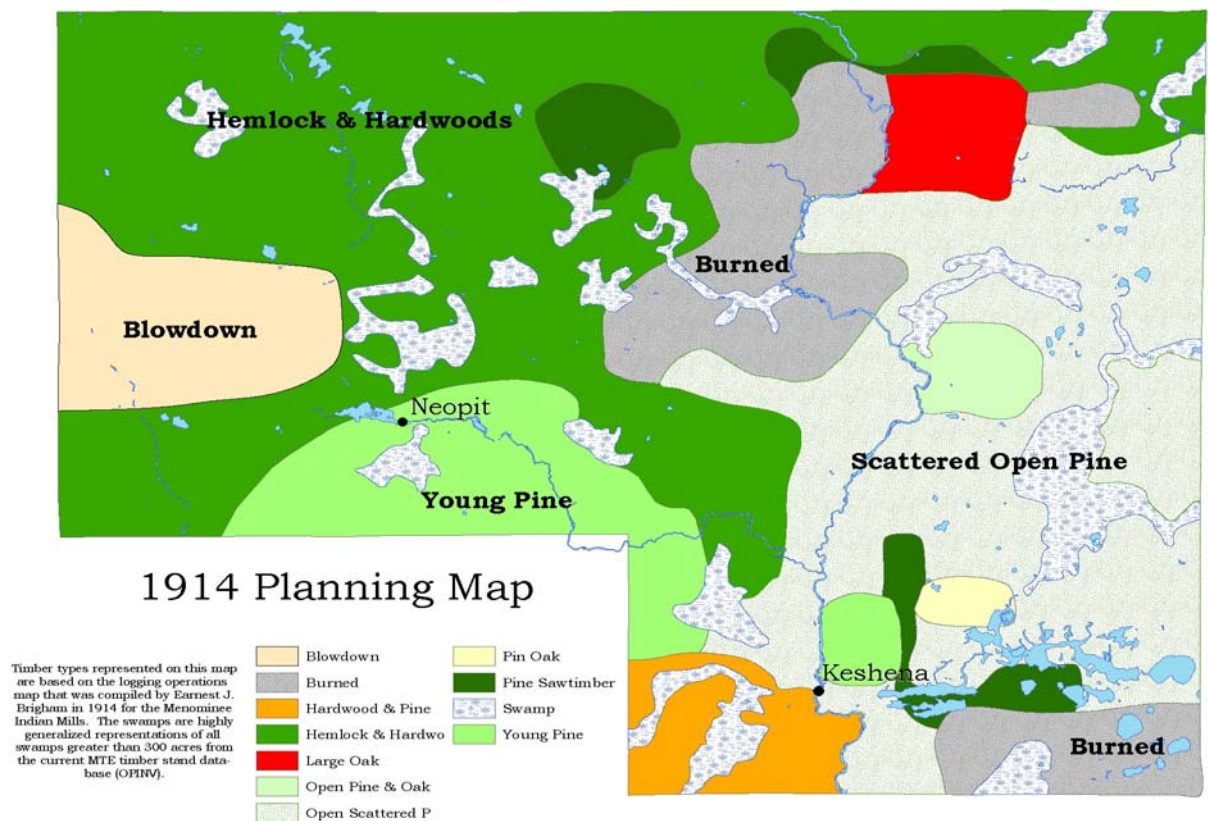
and summer lands were drastically restricted. These dramatic changes over a few decades resulted in dramatically increased impoverishment of the Menominee people.

The Menominee responded to such challenges to their survival by focusing on the sustainable management of the Reservation's lands and waters, and defending the Tribal rights to the Reservation.

1. Menominee Sustained Yield Management of Forests

Sustained yield means that forest growth should balance all removals over time. This concept promotes a timber harvesting practice that removes timber according to the vigor of the trees rather than their saleable size. Vigor is defined as the measure of the growth potential of an individual tree.

Forest managers use selective removal of individual trees in areas predominated by species that can regenerate in full shade—sugar maple, beech, hemlock and basswood.. They harvest a forest stand in other areas gradually over time so that the standing trees serve as a shelter and seed source for future generation, especially in areas of white pine. They use clear cutting in areas of 45 acres or less that need full sunlight to regenerate—red pine, jack pine and aspen.



Source: "Why the Menominee Are Here", Power Point presentation by Walter Cox, Conservation Department, Menominee Indian Tribe of Wisconsin, 2009

The recent discovery of this 1914 forest land use planning map indicated the predominance of scattered open pine and burned pine barrens which implied that the land was being managed more for wildlife, berries, and small scale gardening—the latter also supported by recent archeological discoveries.

These discoveries have introduced debates about the meaning of “sustained yield”, namely whether the restoration of historical land use and management practices could require other objectives than the sustained yield management of tree species.

There is opposition to the clear cutting and pine barrens reconstruction techniques such as shown in this photo:



Source: *ibid.*

Pine Barrens Restoration

2. Parcels in Trust or Fee

Prior to Termination of the Tribe following the 1954 Termination Act, the Menominee had successfully resisted the fragmentation of reservation land into privately owned parcels as undertaken in other tribal holdings after the 1887 Dawes Act. The 276,000 acres of reservation land were held in trust by the US Federal Government for the Tribe. Termination was a program championed by many federal policy makers between the late 1940s and early 1960s to end Indian tribes' status as sovereign nations. Reformers of the post-1945 era did not talk about "civilizing" the Indians but spoke instead of "freeing" and "emancipating" Indians from federal control.

The Menominee Nation was terminated as a tribe on April 30, 1961. In 1968 a Corporation called Lakes of The Menominees was formed specifically to turn the original nine lakes into a vacation home paradise. The Menominee Tribe turned over 5160 acres of land to the Corporation as its share of the venture capital, to be matched by resources of N. E. Isaacson Inc., a recognized large scale developer. The Corporation plotted out 2700 lots and over 1000 acres of "green lands" which are woven into the

project giving extra space to the "lots". The owners of off-shore lots, those without direct Legend Lake frontage, were given an "undividable fractional interest" in a specific beach club so that all owners had the enjoyment of beach frontage. There are 41 beach clubs strategically located on prime Legend Lake property.

Following Restoration of the Tribe in 1973 the Menominee Tribe terminated its agreement with the Corporation and sales were also terminated. The 707 unsold lots were acquired by the Tribe and placed in trust with the Federal Government. As of the year 2000, because of additional lots acquired by the Tribe there were 838 lots in trust. Individual Menominees can lease these lots from the Tribe for either recreational or residential uses. Menominees having a residential lot have a long term lease and build their own home, usually with some Tribal assistance. As of the year 2000, of the approx. 1750 lots are owned by mostly non-Menominee individuals although some lots are owned privately by Menominee families. About 700 have homes built on them. Approximately 200 of these homes are occupied by permanent residents.

The developer, N.E. Isaacson in 1968 built a sales office on the West end of the Lake which was headquarters for the operation. The deeds to property included a provision for the existence of a Lake Association which inherited the sales office upon completion of the project. That building is now the Legend Lake Property Owners Association Lodge and is owned by that organization. Membership in the Association was mandated for all private owners by a covenant in the deeds to the individual lots.

These covenants have since expired but courts have upheld the mandatory provision of the Articles and By-laws and membership is still mandatory to all property owners. The members adopted restrictions which control property use and building restrictions. Homes are designed to be year round, single family, residential. Just as the Charter of the Association originally expressed, the LLPOA continues to represent the land owners.

A Lake District was formed to monitor the quality of water and lands bordering the Lake. This is a taxing body recognized as part of County Government and has responsibility and authority over water related matters. Formally, this is the Legend Lake Protection & Rehabilitation District. The Lake District is managed by 7 commissioners, 5 of whom are elected by members of the district. All property owners are allowed one vote each in this organization.

Another organization that plays a significant roll in our community is the Menominee County Taxpayers Association. The MCTA is the largest taxpayers organization in the state of Wisconsin, boasting over 800 members. In the late 1990's this association was influential in getting State legislators to approve a grant totaling 2.5 million dollars for needed County improvements. Membership in this organization is totally voluntary. (Based on a report by *George Cobb, 2000 - Retired LLPOA Chairman*)

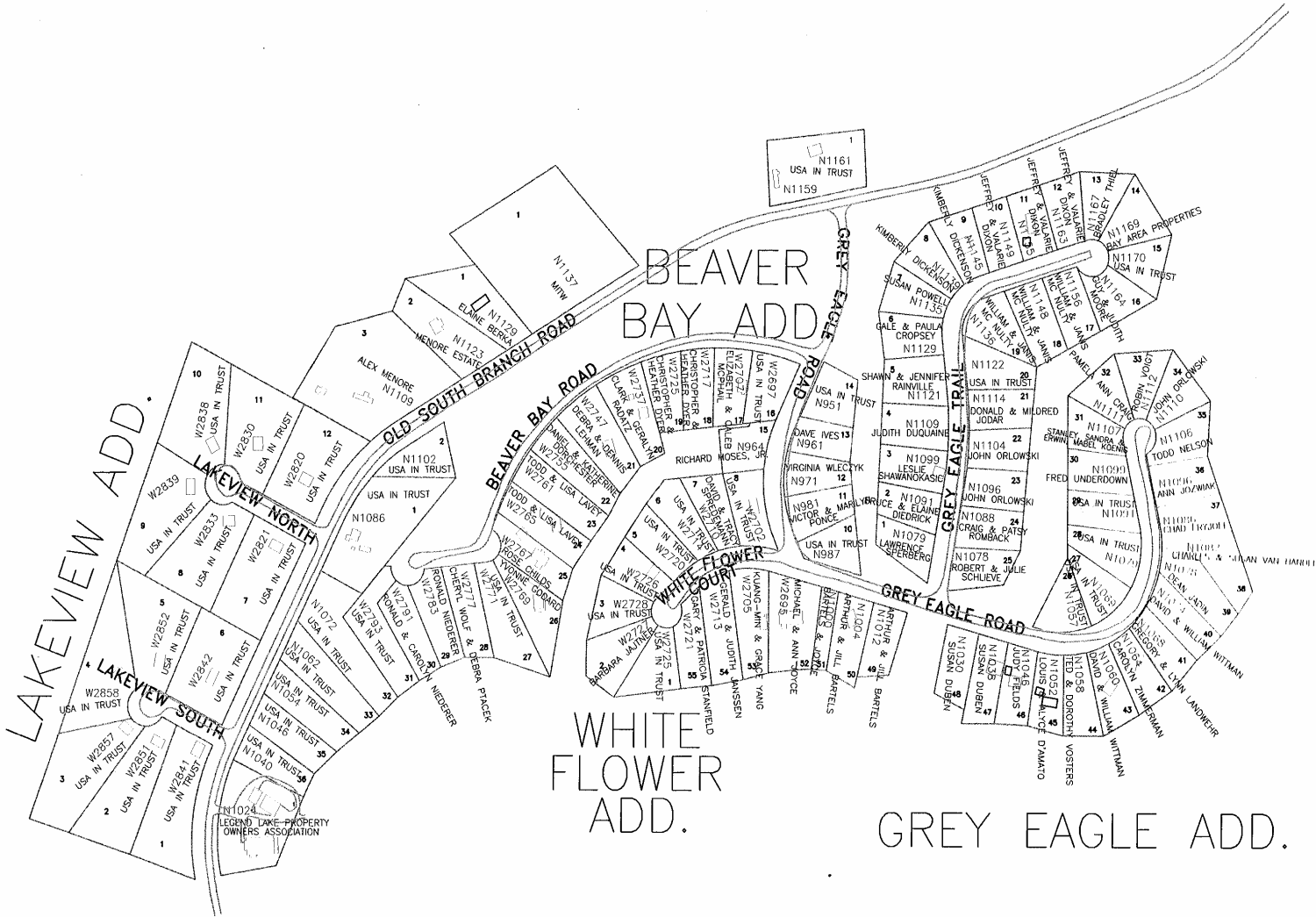
After termination in 1961, the former reservation land was converted to a new Menominee County and the land transferred into the ownership of Menominee Enterprises, Inc. (MEI). The Legend Lake and other privately owned parcels paid property taxes to Menominee County, one of the 72 counties in the State of Wisconsin.

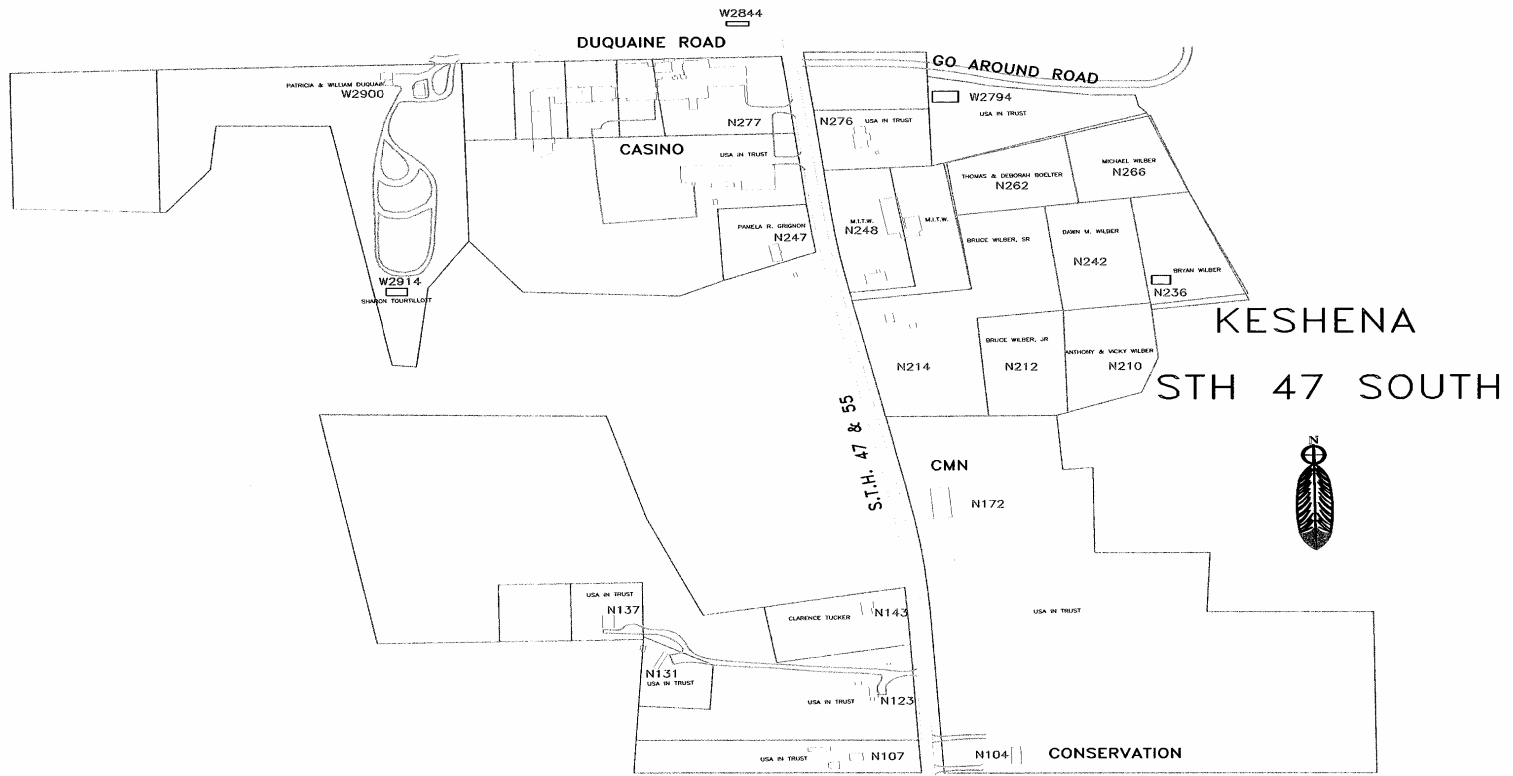
Following Restoration of the Tribe on 1 December, 1973, the lands which had formed the reservation prior to Termination were returned to the legal status as before termination, that is, as owned by the

U.S. Federal Government in Trust for the tribe. This reversion to trust status affected all tribal lands other than those which had been sold to private owners during the termination period.

Tribal acquisition of some of these “fee” properties subsequently occurred, followed by tribal application for the conversion of their legal status from “fee” into “trust”, thereby coming more directly under the tribal governance structures. The obligation of fee owners to pay property taxes to Menominee County implicitly recognized the authority of the County and thereby the State of Wisconsin over what had been clearly tribal lands before Termination. These taxes on fee properties were to provide revenues for the provision of County services, such as road maintenance and social services. After restoration, the Tribe began to convert some of these properties to trust status. The remaining private property owners became concerned that their property taxes would have to rise in order to meet their fiscal responsibilities to Menominee County.

The following figure show the ownership status of parcels in the Beaver Bay Addition in the Legend Lake development, a mixture of private and trust ownership. The next figure shows the private and trust ownership status of parcels in the Casino area of Keshena. (Source: Menominee County and Reservation Fire Number and Road Director, Menominee County GIS/Land Information Office-2009).





Menominee County GIS/Land Information Office - 9/24/08 1B

3. Land and Politics in Menominee County

Part of the revenues used by the County to carry out its functions and pay its functionaries comes from the property taxes paid to the County by private owners of land and improvements within the County. The County also receives funds from the State of Wisconsin due to its situation as one of the poorest counties of the State, and as part of the payments by the Tribe to the State from the profits of the Casino in Keshena.

The administrative structure of the Tribe and that of the County are separate for some functions, such as providing social services and police protection, while some are managed in common, such as the fire department. This situation is confusing and probably not as cost effective as would be a single administrative structure, or one "in common".

Restoration was not in the minds of the tribe nor the private owners of Legend Lake after termination, so the fact of restoration required a re-thinking of land relations. Some of the LL owners advocated the secession of Legend Lake from Menominee County and incorporation into one of the neighboring non-tribal counties. But that option would be yet a stronger attack on the historic claims of the Menominee than the original privatization of the Legend Laks lots.

If a non-tribal owner wants to sell a property within the County, the Tribe can meet the sale price and acquire the property, and subsequently convert the land into trust status—the "fee to trust" procedure. Once in Trust status, the land ceases to produce tax revenues for the County, being tax exempt since it is held as in Trust by the US Federal Government for the Menominee Nation.

The Tribe does not normally exercise this right of acquisition of land offered for sale by private owners, although it does occur. When it happens the tax obligations of the remaining private owners may increase to offset the loss of the revenues of the Trust lands. Even though the values of privately owned land on lakes in Menominee County tend to be lower than similar properties on other lakes in Wisconsin, private landowners are concerned about tax obligations which may increase at a higher rate than for property owners on other lakes in the State.

In June, 2009 a meeting of the members of the Legend Lake Property Owners' Association voted to record a restrictive covenant on the deeds of all privately owned lots on Legend Lake, which does not allow a transfer of any lot to a potential buyer of those lots who "could or would" take them off of the Menominee County tax rolls, such as through conversion to tribal land Trust status. A private owner, tribal or non-tribal (most are non-tribal), is not allowed to sell a lot to the Tribe.

Such a restriction has been resented by many segments of the Tribe and interpreted politically as an attack on Menominee sovereignty. Whether the covenant is legally enforceable has yet to be tested in court. If tensions are allowed to simmer, however, they can disturb relations among tribal and non-tribal residents of the County and increase the sense of insecurity of private owners as well as the Tribal enterprises, especially the Casino, which depends on non-tribal patrons to generate the revenues which the Tribe and the County need.

The political situation of the County is somewhat bizarre. The people who pay taxes on the property that they own in Menominee County to support the local schools and other County services are mostly not residents and mostly do not have children in those schools. As much as 75% of the Legend Lake

private owners do not reside year round on the Lake, and most of the permanent residents are retired. Nor do the majority of the property taxpayers vote in Menominee County, since they mostly have their legal residences elsewhere.

As one Legend Lake parcel owner put it, "Most residents (and thereby voters) of the County are not property taxpayers. Most property taxpayers of the County are not residents (nor voters) of the County."

For many Legend Lake owners, their only means for influencing local policies is through the LLPOA. It should be noted, however, that many other owners, particularly those who reside year round in the County, have established relations with the County through membership on the County Board and committees. They have also established relations with the Tribe through the College of the Menominee Nation, the Menominee High School, the Legend Lake Protection and Rehabilitation District, and through personal and family friendships and business relationships.

The Menominee County Taxpayers Association (MCTA) has adopted a position of being opposed to the incorporation of Tribe owned land outside of Menominee County into that County. This question arose when the Tribe purchased land in Shawano County for housing to Tribal members (referred to as the Middle Village). That property would add obligations to the Menominee County without bringing in property tax revenues. The MCTA has not been in favor of the restrictive covenant on privately owned lots. Some members are in favor of pressuring the Federal and State governments for a "payment in lieu of taxes" arrangement to supplement County revenues, in a way analogous to other Counties where the Federal Government owns property which is not subject to local property taxes.

4. Housing on the Reservation

The Menominee Nation has a Land Use Department for the leasing of land for housing, for 25 years renewable for another 25 years. Very few new leases are approved each year, mostly because most of the reservation land is zoned for sustained yield forestry. Changing the zoning to a housing category requires the approval of the US Federal Bureau of Indian Affairs, even when that change of use is approved by the tribe's agencies.

Once a parcel of land is approved for housing, the tribe's Housing Department has access to grant funds for financing the building of housing for tribal members. Problems have arisen about the affordability of such housing even at very low rents, and about the maintenance and rehabilitation of the housing.