

**STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE
Room 1058, IGCN – 100 North Senate
Indianapolis, IN 46204**

IN THE MATTER OF THE REQUEST)
OF THE TOWN OF PENDLETON,)
GREEN TOWNSHIP, AND FALL CREEK) **IML22-008**
TOWNSHIP, MADISON COUNTY, FOR)
THE ESTABLISHMENT OF AN INITIAL)
MAXIMUM LEVY FOR A FIRE)
PROTECTION TERRITORY)

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the request of Green Township and Fall Creek Township (“Townships”) and the Town of Pendleton (“Town”), all in Madison County and hereafter referred to as “Units”, for an initial operating maximum levy for a fire protection territory (“Territory”). Having considered the issues, the Department now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana Code 36-8-19-5 allows the legislative bodies of at least two contiguous units to establish a fire protection territory for any of the following purposes:
 - (A) Fire protection, including the capability for extinguishing all fires that might be reasonably expected because of the types of improvements, personal property, and real property within the boundaries of the territory.
 - (B) Fire prevention, including identification and elimination of all potential and actual sources of fire hazard.
 - (C) Other purposes or functions related to fire protection and fire prevention.

2. Per IC 36-8-19-6, to establish or expand a fire protection territory, the legislative bodies of each unit desiring to become a part of the proposed territory, or expand an existing fire protection territory, must:
 - i. Adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township) that meets the following requirements:
 - (A) The ordinance or resolution is identical to the ordinances and resolutions adopted by the other units desiring to become a part of the proposed territory.
 - (B) The ordinance or resolution is adopted after January 1 but before April 1.

- (C) The ordinance or resolution authorizes the unit to become a party to an agreement for the establishment of a fire protection territory.
 - (D) The ordinance or resolution is adopted after the legislative body holds at least three (3) public hearings to receive public comment on the proposed ordinance or resolution. The legislative body must give notice of the hearing under IC 5-3-1.
 - (E) The ordinance or resolution includes at least the following:
 - (1) The boundaries of the proposed territory.
 - (2) The identity of the provider unit and all other participating units desiring to be included within the territory.
 - (3) An agreement to impose:
 - (A) a uniform tax rate upon all of the taxable property within the territory for fire protection services; or
 - (B) different tax rates for fire protection services for the units desiring to be included within the territory, so long as a tax rate applies uniformly to all of a unit's taxable property within the territory.
 - (4) An agreement as to how the property that is held by the territory will be disposed of if:
 - (A) a participating unit withdraws from the territory; or
 - (B) the territory is dissolved.
 - (5) The contents of the agreement to establish the territory.
- ii. Hold at least three (3) public hearings to receive public comment on the proposed ordinance or resolution, as follows:
 - (A) The first public hearing must be held at least thirty (30) days before adopting an ordinance or a resolution to form a territory.
 - (B) At least two (2) public hearings must be held after the first public hearing, with the last public hearing held not later than ten (10) days before adopting an ordinance or a resolution to form a territory.
 - iii. The legislative body must make available to the public the following information:
 - (A) The property tax levy, property tax rate, and budget to be imposed or adopted during the first year of the proposed territory for each of the units that would participate in the proposed territory.
 - (B) The estimated effect of the proposed reorganization in the following years on taxpayers in each of the units that would participate in the proposed territory, including the expected property tax rates, property tax levies, expenditure levels, service levels, and annual debt service payments.
 - (C) The estimated effect of the proposed reorganization on other units in the county in the following years and on local option income taxes, excise taxes, and property tax circuit breaker credits.
 - (D) A description of the planned services and staffing levels to be provided in the proposed territory.
 - (E) A description of any capital improvements to be provided in the proposed territory.
 - iv. The notice required for the hearings must include all of the following:
 - (A) A list of the provider unit and all participating units in the proposed territory.

- (B) The date, time, and location of the hearing.
- (C) The location where the public can inspect the proposed ordinance or resolution.
- (D) A statement as to whether the proposed ordinance or resolution requires uniform tax rates or different tax rates within the territory.
- (E) The name and telephone number of a representative of the unit who may be contacted for further information.
- (F) The proposed levies and tax rates for each participating unit.

3. According to IC 36-8-19-8, upon the adoption of identical ordinances or resolutions, or both, by the participating units, the designated provider unit must establish a fire protection territory fund from which all expenses of operating and maintaining the fire protection services within the territory, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, and all other expenses lawfully incurred within the territory shall be paid. The purposes described in this subsection are the sole purposes of the fund, and money in the fund may not be used for any other expenses. The provider unit, with the assistance of each of the other participating units, must annually budget the necessary money to meet the expenses of operation and maintenance of the fire protection services within the territory. The provider unit may maintain a reasonable balance, not to exceed 120% of the budgeted expenses. Except as provided in IC 6-1.1-18.5-10.5, after estimating expenses and receipts of money, the provider unit must establish the tax levy required to fund the estimated budget. The amount budgeted must be considered a part of each of the participating unit's budget.

4. Pursuant to IC 36-8-19-8.5, participating units may agree to establish an equipment replacement fund to be used to purchase fire protection equipment, including housing, that will be used to serve the entire territory.

5. The Department, when approving a rate and levy fixed by the provider unit under IC 36-8-19-9, must verify that a duplication of tax levies does not exist within participating units, so that taxpayers do not bear two levies for the same service.

RELEVANT PROCEDURAL HISTORY

6. On April 13, 2022, the Units submitted to the Department a petition for an initial maximum levy for the Territory. *Cover Letter, Record pp. 1-2*. The petition included the following documents:

- Procedure Checklist.
- Financial impact analysis, prepared by Baker Tilly, financial advisor to Units.
- Powerpoint presentations by Baker Tilly and the Pendleton Fire Department.
- Town of Pendleton Ordinance 2022-12.
- Green Township Resolution 2022-7.
- Fall Creek Township Resolution 2022-4.
- South Madison Fire Protection Territory Agreement.
- Proofs of publication of legal notices.
- Drafts of Budget Forms 1, 2, and 4B for the pay-2023 tax year.

All of the documents referenced above are included in the Record.

7. The notices of public hearings were published on January 13 and 20, 2022, in the *Anderson Herald* and in the *Pendleton Times-Post*. Both notices stated that the Town council and Township board will hold a public hearing on January 25, February 23, and March 8, 2022. The notices also state that the Units will vote on the establishment of the Territory after the March 8 public hearing. *Anderson Herald Publisher's Claim for the January 13 and 20, 2022, public notice, Record pp. 104-105; Pendleton Times-Post Publisher's Claim for the January 13 and 20, 2022, public notice, Record pp. 106-107.*

8. The notices also state the following:

- The Town and the Townships are the participating units. The Town is the provider unit.
- There will be a uniform property tax rate within the territory.
- The proposed budget, rate, and levy for the Territory, and the share of the levy and budget for each of the participating units for the next three (3) years.
- A copy of the proposed ordinance and resolution was made available for public inspection at the public hearing locations.
- Persons seeking additional information may contact the Fall Creek Township trustee, a designated Town councilmember, or Green Township trustee.

Anderson Herald Publisher's Claim for the January 13 and 20, 2022, public notice, Record p. 105; Pendleton Times-Post Publisher's Claim for the January 13 and 20, 2022, public notice, Record p. 107.

9. The Town adopted an ordinance, and the Townships adopted a resolution, on March 29, 2022, to establish the Territory. *Town Ordinance 2022-12; Green Township Resolution 2022-7; Fall Creek Township Resolution 2022-4.*

10. The ordinance and resolutions state the following:

- The Town and Townships join together under the provisions of IC 36-8-19 to establish the Territory.
- The area constituting the Territory include “the entire area of the Town of Pendleton, including all of Fall Creek Township and the unincorporated area of Green Township.”
- The Town is the provider unit. The Town and the Townships are the participating units.
- There will be a uniform tax rate on all taxable property within the boundaries of the Territory.
- There will be a Territory operating fund and equipment replacement fund maintained by the provider unit. The equipment replacement fund will have a tax at a rate not to exceed three and thirty-three hundredths cents (\$0.0333) per one hundred dollars (\$100) of assessed valuation.
- There will be an executive board to “perform certain administrative, planning, and operating business of the Territory.”
- The interlocal agreement for the establishment and operation of the Territory is incorporated by reference into each ordinance and resolution.

Town Ordinance 2022-12, Record pp. 99-101; Green Township Resolution 2022-7, Record pp. 96-98; Fall Creek Township Resolution 2022-4, Record pp. 93-95.

11. The Units also provide an Interlocal Agreement, pursuant IC 36-8-19-6(e)(5). The Interlocal Agreement reiterates several provisions of the ordinance and resolutions, but also includes other

administrative matters concerning the Territory, such as the responsibilities of the provider unit and the formation of an executive committee to oversee the Territory. The Interlocal Agreement also provides for the manner in which property used for the Territory will be disposed of if any of the participating units withdraw or the Territory is dissolved. *Interlocal Agreement, Record pp. 77-92.*

12. The financial impact analysis includes statements regarding the following:
- A schedule of assumptions.
 - Current funding for fire services in the Territory and in Hudson Township.
 - Estimated funding sources and requirements of the proposed territory.
 - Estimated tax liability impact.
 - Impact on selected revenues and circuit breaker credits.

Financial impact analysis, Record pp. 6-27.

13. The powerpoint presentations include information related to the need for the Territory, tax and circuit breaker credit impact, the needed budget for the Territory, and the proposed tax rates. *Powerpoint presentations, Record pp. 28-75.*

14. The Budget Forms 1, 2, and 4B provided by the Units state the anticipated expenses, miscellaneous revenues, and levies for the pay-2023 tax year, as well as proposed expenses and estimates for the pay-2024 and pay-2025 tax year. *Budget Forms 1, 2, and 4B, Record pp. 108-115.*

15. The Units state that the Town spends approximately \$154,443, or 17.6%, of its General Fund budget for fire services. *Record pp. 3, 11.*

16. The Department will dispose of the Territory’s equipment replacement fund establishment in a separate and subsequent order.

ANALYSIS

17. The Town’s ordinance establishing the Territory was adopted by a vote of 5-0. *Town Ordinance 2022-12, Record p. 102.* Green Township’s resolution by was adopted a vote of 3-0. *Green Township Resolution 2022-7, Record p. 99.* Fall Creek Township’s resolution by was adopted a vote of 2-0. *Fall Creek Township Resolution 2022-4, Record p. 96.*

18. The notices of public hearings state the proposed tax rates and levies, and Unit share of assessed valuation, as follows:

Proposed Budget	2023	2024	2025
Fire Operating	\$1,823,464	\$4,835,633	\$6,316,736
Fire Territory Equipment and Replacement	\$286,158	\$294,743	\$303,585
Totals	\$2,109,622	\$5,130,376	\$6,620,321
Proposed Property Tax Levy	2023	2024	2025
Fire Operating	\$1,583,620	\$4,173,946	\$5,529,336

Fire Territory Equipment and Replacement	\$262,049	\$269,911	\$278,008
Totals	\$1,845,669	\$4,443,857	\$5,807,344
Proposed Uniform Property Tax Rate	2023	2024	2025
Fire Operating	\$0.2012	\$0.5150	\$0.6623
Fire Territory Equipment and Replacement	\$0.0333	\$0.0333	\$0.0333
Totals	\$0.2345	\$0.5483	\$0.6956

Unit's Share of Levy Based on Net Assessed Value

Pendleton Town	\$613,066	\$1,476,092	\$1,928,994
Fall Creek Township	\$775,145	\$1,866,333	\$2,438,971
Green Township	\$457,458	\$1,101,432	\$1,439,379
Totals	\$1,845,669	\$4,443,857	\$5,807,344

Anderson Herald Publisher's Claim for the January 13 and 20, 2022, public notice, Record p. 105; Pendleton Times-Post Publisher's Claim for the January 13 and 20, 2022, public notice, Record p. 107.

19. In the Financial Impact Analysis, the Units represent the following assumptions made in their proposed budget, rate, and levies:

- The maximum levy growth quotients for the following years:
 - 2022 – 4.3%
 - 2023 – 4.5%
 - 2024 – 4.0%
 - 2025 – 4.1%
- Units will receive a distribution of vehicle excise tax equivalent to 9.2% of the property tax levy.
- There will be an operating balance of 10% raised in 2023.

The schedule of assumptions also include certified and estimated net assessed values for each Unit based on Policy Analytics analysis and estimated circuit breaker impact for 2022 through 2025. *Financial Impact Analysis – Schedule of Assumptions, Record p. 9.*

20. The Units' Budget Form 1 states the following totals for each budgeted category in the operating fund for 2023:

Operating Fund	2023	2024	2025
Personal Services	\$2,868,302	\$3,972,467	\$5,382,212
Supplies	\$173,500	\$178,705	\$199,980
Services and Charges	\$605,125	\$684,461	\$734,544
Total	\$3,646,927	\$4,835,633	\$6,316,736

Equipment Replacement Fund

Capital Outlays	\$291,936	\$305,583	\$319,565
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The Units state in the Form 1 under the operating fund expenses that the proposed 2024 and 2025 expenses are a “3% increase.” *Budget Form 1, Record p. 109-110*. The numbers themselves do not reflect a 3% increase year over year. The Pendleton Fire Department’s presentation states the Units plan to hire between 10 and 12 full-time firefighters and administrative staff in 2023, with an additional 12 to 15 personnel hired in 2024. *Pendleton Fire Department Public Presentation, Record p. 70*. At the bottom of the Form 1, there is a note that the transition to the Fire Department begins in July of 2023. Next to this note is a field that reads “\$1,823,464” and under it “6 months”. In addition, under the Operating Fund total for 2023, it reads “12 months”. *Budget Form 1, Record p. 110*. Although the Units do not explain this further, the Department believes this means that the necessary expenses the Territory will incur in 2023 is \$1,823,464, which is roughly half of the purported yearly total of \$3,646,927.

21. The Units’ Budget Form 2 states the following estimated non-property tax revenues to be distributed into the operating fund for 2023:

Revenue	2023	2024	2025
Vehicle Excise Tax	\$145,190	\$384,687	\$510,400
LIT Certified Shares	\$87,000	\$87,000	\$87,000
Contractual Payment (Ingalls Town)	\$190,000	\$190,000	\$190,000
Totals	\$422,190	\$661,687	\$787,400

Likewise, the Units anticipate \$24,595 from vehicle excise taxes to go into the equipment replacement fund in 2023, \$25,745 in 2024, and \$26,923 in 2025. *Budget Form 2, Record p. 112*. The growth in excise tax revenue is based on the assumption that the Units will receive excise tax as 9.2% of the levy; as the levy grows, so will the excise distribution. *Financial Impact Analysis – Schedule of Assumptions, Record p. 9*.

22. The Budget Form 4B states the following for the operating fund:

Revenues	2023	2024	2025
Property Tax Levy	\$1,583,620	\$4,173,946	\$5,529,336
Property Tax Cap Impact	(\$137,775)	(\$613,570)	(\$945,516)
Miscellaneous	\$422,190	\$661,687	\$787,400
Total Revenues	\$1,868,035	\$4,222,063	\$5,371,220
Expenses			
Budget Estimate	\$1,823,464	\$4,835,633	\$6,316,736
Outstanding Temporary Loans and Transfers	\$0	\$0	\$0
Total Expenses	\$1,823,464	\$4,835,633	\$6,316,736
Operating Balance as of December 31	\$44,571	(\$613,570)	(\$945,516)

Budget Form 4B, Record p. 114. The negative end of year balances for the later two years are the same as the circuit breaker impact anticipated for those years. This suggests the Units expect not to accrue or maintain an operating balance after 2023.

CONCLUSION

23. In reliance on the Record as documented above, the Department finds that the Units complied with the procedural obligations under IC 36-8-19 in establishing the Territory. The Units, after publishing notices under IC 36-8-19-6(b) and within information required by IC 36-8-19-6(d), conducted the required number of public hearings and within the timeframe under IC 36-8-19-6(b). The Units showed at that they made the information required under IC 36-8-19-6(c) to available to the public. Finally, the Units also adopted identical ordinances within the timeframe required by IC 36-8-19-6(b) and that contain the information required under IC 36-8-19-6(e).

24. The Department also finds that the Units have provided the Department with information sufficient to account for the Units' calculation of an initial maximum levy of \$1,583,620. Specifically, this figure reflects expenses for the second half of pay-2023 for personal services ($\$2,868,302 / 2 = \$1,434,151$); supplies ($\$173,500 / 2 = \$86,750$); and services and charges ($\$605,125 / 2 = \$302,562.50$); less non-property tax revenue ($\$422,190$) ($\$1,434,151 + \$86,750 + \$302,562.50 = \$1,823,464$; $\$1,823,464 - \$422,190 = \$1,401,274$); plus an operating balance of 10% of budgeted expenses ($\$1,823,464 * 0.10 = \$182,346$) ($\$1,401,274 + \$182,346 = \$1,583,620$).

25. The Department acknowledges that the Units requested levies for pay-2024 and pay-2025. It has not been the Department's practice to certify a maximum levy after the first year.

26. The Department hereby approves a Territory operating maximum levy of \$1,583,620 for Pay 2023. This figure does not include any dollars attributable to an equipment replacement fund. For pay-2024, this figure will be reduced by \$182,346, as the Department does not allow a levy for an operating balance after the first year.

27. For purposes of IC 36-8-19-9 and 12, the certified 2022 Budget Order for Madison County indicates that the Units Township has the following funds from which fire protection services can be paid:

Participating Unit	Fund Name	DLGF Fund Number
Town of Pendleton	General Fund	0101
Fall Creek Township	Township Fire	1111
	Cumulative Fire	1190
Green Township	Township Fire	1111
	Cumulative Fire	1190

28. Pursuant to IC 36-8-19-9 and 12, the township fire funds and cumulative fire funds for both Fall Creek Township and Green Township will be eliminated and their respective levies reduced

to \$0. In reliance on the representations of the Units, the maximum levy for the Town will be reduced by \$154,443.

Dated this 2nd day of August, 2022.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner