



Madison County Department of Law

S. JOHN CAMPANIE
County Attorney
TINA M. WAYLAND-SMITH
First Assistant County Attorney
ANTHONY M. WILMARTH
Second Assistant County Attorney

PO Box 635
N. Court Street
Wampsville, NY 13163
315/366-2203
or 315/361-8442
Fax: 315/366-2502

February 28th, 2006

Franklin Keel Regional Director
Bureau of Indian Affairs
Eastern Regional Office
Branch of Real Estate Services
545 Marriott Drive
Suite 700
Nashville, TN 37214

RE: Land-In-Trust Application of Oneida Indian Nation of New York per Letter dated September 20, 2005, Proposed Acquisition of over 17,300 Acres

Dear Mr. Keel,

I am the County Attorney for Madison County and write again¹ on behalf of Madison County to respond to the Notification of September 20, 2005, and to address the application (the "Application") of the Oneida Indian Nation of NY ("OIN") to have in excess of 17,300 acres of land comprised of approximately 450 parcels, owned by the OIN, taken into trust by the United States. The County of Madison continues to oppose this extraordinarily broad, unprecedented Application, and does so on legal, substantive and practical grounds, certain of which will be set forth in this letter, while others (including the availability of this mechanism) have been previously addressed in my letter of January 27, 2006; by our counsel David M. Schraver of Nixon Peabody LLP in his letter addressed to Scott C. Meneely (Acting Director, U.S. Department of the Interior, Bureau of Indian Affairs, Eastern Regional Office) dated January 30, 2006; the report of our consultants, The Center for Governmental Research (CGR) dated January 2006 and submitted with Mr. Schraver's letter; and the letter (and accompanying Memorandum and Report) to Franklin Keel (Regional Director, Bureau of Indian Affairs, Eastern Regional Office) from Counsel to the Governor, Richard Platkin dated January 30, 2006 (such Report having been prepared by the firm of O'Brien and Gere); and will be addressed by the same in correspondence and reports to be submitted contemporaneously herewith (including by Mr. Schraver with an updated report by CGR and by Mr. Platkin with an updated report by O'Brien and Gere).

¹My previous submission dated January 27, 2006, is incorporated herein by reference in its entirety, subject to any corrections and/or clarifications hereinafter set forth.

SHERRILL V. ONEIDA INDIAN NATION OF NEW YORK

The United States Supreme Court decision on March 29, 2005, in the landmark case of *City of Sherrill v. Oneida Indian Nation of NY*, 125 S.Ct. 1478, 161 L.Ed.2d 386, and the principles acknowledged and articulated therein, are central in the evaluation and determination of the Application. The importance of *Sherrill* in this analysis can not be overstated. While the Bureau of Indian Affairs may previously have evaluated and determined trust applications on bases different from those articulated by the Court, the Bureau may no longer do so. As recognized by the United States Circuit Court of Appeals for the Second Circuit in *Cayuga Indian Nation of New York et al v. Pataki et al*, 413 F.3d 266 (2d Cir 2005), *Sherrill* has “. . . substantially altered the legal landscape . . .” *Cayuga* at 273.

The Supreme Court in *Sherrill* began by recognizing “For two centuries, governance of the area in which the properties are located has been provided by the State of New York and its county and municipal units” and that the area today is “overwhelmingly populated by non-Indians.” *Sherrill* at 1483, 1493; see also 1489. The essence of its decision was the acknowledgement of the importance of the existing, longstanding governance of Central New York by the state, counties and local municipal units, and the need to preserve of such governance.² In reaching its decision the Court looked to the jurisdictional history, “the justifiable expectations of the people living in the area” and observed that “the appropriateness of the relief OIN here seeks must be evaluated in light of the long history of state sovereign control over the territory” *Sherrill* at 1490. The Court concluded that such justifiable expectations “grounded in two centuries of New York’s exercise of regulatory jurisdiction, until recently untested by OIN, merit heavy weight here.” *Sherrill* at 1490-91.

The Court repeatedly acknowledged the longstanding area governance, the disruption that the disturbance of that governance would engender, the “attendant dramatic changes in character of the properties” (*Sherrill* at 1491) that would result from the reassertion of OIN sovereign control; and the Court unequivocally rejected the reassertion of OIN sovereignty. In doing so, the Court recognized the unacceptability of checkerboard sovereignty³ and its adverse impact, including on “. . . local zoning or other regulatory controls that protect all landowners in the area.” *Sherrill* at 1493.

²“Today, we decline to project redress for the Tribe into the present and future, thereby disrupting the governance of central New York's counties and towns. Generations have passed during which non-Indians have owned and developed the area that once composed the Tribe's historic reservation. And at least since the middle years of the 19th century, most of the Oneidas have resided elsewhere. Given the longstanding, distinctly non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the Oneidas' long delay in seeking judicial relief against parties other than the United States, we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders.” *Sherrill* at 1483.

³“A checkerboard of alternating state and tribal jurisdiction in New York State-created unilaterally at OIN's behest-would “seriously burde[n] the administration of state and local governments” and would adversely affect landowners neighboring the tribal patches. *Hagen*, 510 U.S., at 421, 114 S.Ct. 958 (quoting *Solem v. Bartlett*, 465 U.S. 463, 471-472, n. 12, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984)).”

After establishing the fundamental importance of the preservation and protection of this longstanding state and local jurisdiction, the Court—near the conclusion of its opinion—suggests that if the OIN were to seek “sovereign authority over territory” there is a process under which it could be evaluated (*Sherrill* at 1493-94)—not a guarantee that it will be granted as the OIN appears to expect.⁴

The recognition by the Supreme Court of a process through which an application may be considered does not diminish the principles the *Sherrill* Court established, and the same factors must be considered and applied in the Secretary’s evaluation, including: (1) 200 years of state and local governance; (2) the overwhelming non-Indian population and its justifiable expectations; (3) checker-boarding as seriously burdening the administration of state and local governments and having adverse impacts on the landowners of neighboring patches; and (4) the attendant dramatic changes in the character of the properties should the Application be granted (including the freeing of the parcels from local zoning and other regulatory controls that protect all landowners in the area). As stated by the Court, in addition to these factors, among other things the Secretary must consider are “the Tribes’ need for additional land”; “[t]he purposes for which the land will be used”; “the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls”; and “[j]urisdictional problems and potential conflicts of land use which may arise.”⁵ *Sherrill* at 1493-94.

While the Court pointed to Title 25 U.S.C. §465 and the regulations promulgated thereunder, *Sherrill* requires an application of the principles established by the Court, and under such analysis the OIN Application must be denied.

GOVERNANCE

In addition to the practical benefits of comprehensive state laws, rules and regulations instituted and implemented by elected representatives (more fully addressed in the O’Brien & Gere report), the preservation of governance at the local level (which our citizens have enjoyed for nearly 200 years and have the justifiable expectation of retaining) preserves and advances important values, among them democracy and community.

“Localities are not simply arbitrary collections of small groups of people who happen to buy public services or engage in public decision making together. They are often communities, that is, groups of people with shared concerns and values, tied up with the history and circumstances of the particular places in which they are located. People live in localities, raise their children there, and share many interests related to their homes, families, and immediate neighborhoods. Much of the power of the idea of home rule is connected to the idea of locality as “home” and of the distinctive connection of government as “rule” with placed based association.”⁶

⁴ The OIN Application consists of a two page letter and is devoid of detail, neither establishing need nor addressing the considerations set forth in the *Sherrill* Decision and the Secretary’s regulations under the land into trust process.

⁵None of which are addressed in the Application.

⁶“Home Rule for the Twenty first Century,” *The Urban Lawyer*, *The National Journal on State and Local Government Law* (Spring 2004), p. 259.

Local communities and their citizens elect representatives that comprise their local governments. These representatives prepare master plans; determine zoning and other regulations; exercise general police

powers involving public health and safety; determine what public services are to be provided (including policing, fire protection, education, highway maintenance, and sanitation) and how to fund them. If the local elected officials and that which they implement do not reflect the values and priorities of the community, these officials can and are replaced, and acceptable programs and policies instituted.

Throughout this process, the actions and activities of these local governments are transparent and subject to review. Documents are subject to Freedom of Information disclosure. Budgets, revenues and expenditures are published; meetings must be announced in advance and are open to public scrutiny; actions are subject to judicial review and reversal. These are rights that are the cornerstone of our democratic system.

Recognizing the role of the people, the importance of their rights, and the need to protect both, the New York State Constitution established a bill of rights for local governments. With respect to the territory of a local government, the provisions of Article IX Section 1(d) are telling, providing in part:

“No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the over-all public interest.”

These fundamental rights are real and are exercised⁷. Through it, our democracy is preserved, protected and advanced.

“[T]he strength of free peoples resides in the local community. Local institutions are to liberty what primary schools are to science; they put it within the people’s reach; they teach people to appreciate its peaceful enjoyment and accustom them to make use of it. Without local institutions a nation may give itself a free government but it has not got the spirit of liberty.”⁸

In addition to political and legal considerations, governance has a physical dimension. Governmental entities are geographic. While subject to the power of the state (under laws, rules and regulations enacted by elected legislatures and/or implemented by those appointed by elected officers or bodies), to the extent authority is exercised under home rule, it is within rational, defined areas. Wards, villages, towns, counties, states and countries each comprise a recognizable area with a more or less regular shape and contiguous land mass. The jurisdiction of one ends at the recognized border of another and areas of governance are of necessity and practice compact and contiguous around the world, in all cultures and situations. The Supreme Court affirmed this notion in *Sherrill*.

⁷See City of Oneida and East Shore of Oneida Lake case studies, submitted with my letter of January 27, 2006

⁸Alexis de Tocqueville, *Democracy in America*, p. 62-63, (J.P. Mayer ed. 1969)

The area over which the OIN seeks sovereignty in its April 4, 2005 Application is anything but compact and contiguous. The following table provides a numeric comparison to demonstrate the fractured nature of the sovereignty contained in the OIN proposal (and the length of jurisdictional interface that would result).

Area	Area in Acres	Jurisdictional Boundary In Feet	Ratio of Boundary in Feet to Acres
Patches of land owned by the Oneida Indian Nation of NY	17,300	1,633,058	94:1
Town of Lincoln, Madison County	15,999	110,410	7:1
A perfect square of 5.15 miles per side	17,002	109,012	6:1

There is a reason governmental units are not set up in checker-board, non-contiguous fashion. It becomes practically impossible to manage infrastructure, zoning, codes, fire and police protection, etc. Approval of this application would create a geographically absurd tribal area as well as create the very jurisdictional chaos condemned by the Court.

PARTICULAR FACTUAL QUESTIONS RAISED IN LETTER OF SEPTEMBER 20, 2005

Specific questions regarding the property were raised in the Bureau’s letter of September 20, 2005, to be addressed in addition to our comments on the proposed acquisitions generally. Those questions are as follows:

1. The annual amount of property taxes currently levied on the property;
2. Any special assessments, and the amounts thereof, which are currently assessed against the property;
3. Any governmental services which are currently provided to the property by our jurisdiction;
4. If subject to zoning, how the property is currently zoned.

The answers to questions 1, 2 and 4 are provided in the attached Madison County Property Data Sheets (attached to and made a part hereof as Exhibit A) (“Data Sheets”)

as well as in the Reports by O’Brien & Gere and the Center for Governmental Research (incorporated herein by reference). The first segment of Exhibit A provides a key to these Data Sheets. Such sheets include information such as parcel identifiers, acres, location, zoning, use, historic sales information, assessed values, adjacent uses, taxes by tax type (including special districts), revenue impacts, contiguity to the 32 acre property on Route 46 in the City of Oneida, and certain delinquent tax information. There is a variety of parcel information that we have been unable to obtain or verify due to the limited time provided to respond and the extraordinary number of parcels to be considered⁹. Certain of the missing but necessary information is

⁹See City of Oneida and East Shore of Oneida Lake case studies, submitted with my letter of January 27, 2006

highlighted on these Data Sheets. In-depth parcel by parcel data collection and analysis is essential to the evaluation and processing of the Application. Additional data is provided (or identified as needed to be obtained) and issues raised in the O’Brien & Gere and CGR reports, as well as in our scoping comments (submitted to the Eastern Regional Office Director, Franklin Keel, by our counsel, David M. Schraver, on January 23, 2006), and those of New York State (Department of Environmental Conservation Commissioner, Denise M. Sheehan, also submitted to Mr. Keel the same date).

With respect to point 3, governmental services, the Data Sheets and the O'Brien & Gere reports address certain governmental services that are more parcel specific (for example, fire and water districts). Services applicable to all parcels are set forth on the attached [Exhibit B](#), as well as discussed in both the O'Brien & Gere and CGR reports.

Other parcel-specific data is set forth in Exhibit C,

namely photographs of the subject parcels identified by tax map parcel number and containing narrative information regarding each parcel. Lastly, additional data is contained in various exhibits referenced herein.

CONTEXT

The OIN has acquired over 17,000 acres, in a very short period of time¹⁰, scattered over two counties and twenty-two cities, towns, villages and school districts¹¹. Although covering a short period of time, we have significant experience with how the OIN acts and would govern those parcels and interact in the communities. This experience has come in the context of the OIN unilaterally, upon acquisition of the parcels, declaring the property to be Indian Country, free from local and state regulation and taxation.

The effects of these acquisitions have been profound. Our citizens lost their fundamental right to govern their own communities. It was the OIN's position that their checker-board of parcels was not subject to any local regulation, including local zoning, planning, building or environmental controls—and they operated in that fashion. While some properties have been developed (albeit, in certain instances contrary to local master plans and zoning) others have been neglected and left to deteriorate¹².

¹⁰Attached are two maps. [Exhibit D-1](#) is a Community Map, showing among other information the OIN properties (by BIA group number), municipal boundaries, hamlets, school district boundaries, and other relevant information.

[Exhibit D-2](#) shows the aggregate land currently owned by the OIN, plus the progression of acquisition. By any measure, the acquisition of lands has been very recent. Prior to 1990, only 52 acres were owned by the OIN. In the period 1990 to the agreement in 1998 to engage in "good faith" negotiations, lands were acquired at the rate of approximately 650 acres per year. It was during the period of such "good faith" negotiations that the OIN's rate of acquisitions soared. During that 18-month period the OIN acquired approximately 6,400 acres, at the rate of approximately 4,300 acres per year--despite repeated requests to desist by the state, the counties and the mediator. Approximately 77% of its holdings in both counties have been acquired beginning in 1998, while for Madison County alone the percentage is approximately 92%.

¹¹The target area of acquisition contains the critical infrastructure corridor of New York State, including the New York State Thruway, New York State Barge Canal System, rail, gas transmission, power and communications grids, covering the most populous one-half of Madison County and the westerly one-third of Oneida County, and having indirect but substantial adverse effects on the balance of the two counties outside of the land claim areas.

¹²See case studies, *infra*, including "Deteriorating and Fallow Properties."

Although receiving the benefit of services and municipal infrastructure on which their enterprises and people depend for their extraordinary success¹³, the OIN and its enterprises paid no real property taxes, refused to collect and remit sales taxes on sales to non-Indians, and made no other binding contributions except service agreements for discrete services in a few localities¹⁴. They provided, as some mitigation, “silver covenant gifts” to school districts but, as the small Stockbridge Valley Central School District learned from bitter experience, the OIN could and would revoke those gifts at their will¹⁵. The financial impact on the local municipal units has been severe. Given the size of Madison County’s budget, if accrued and current real property taxes and current sales taxes, were collected Madison County could cut its real property taxes dramatically and begin to restore essential services such as bridge and highway repairs¹⁶.

The OIN acquisitions and expansion have been predatory. Lands have been acquired not to assemble a contiguous, comprehensive and governable reservation, but for commercial advantage¹⁷. They have achieved a near monopoly in gas stations and convenience stores in the claim area¹⁸, and sell gasoline at 5 cents or more per gallon less than the local competition, keeping all of the taxes that should be collected and remitted (including excise taxes) in addition to the normal profit. Neither their tax advantage nor regulatory advantage is translated into materially lower prices. Meanwhile, their competition (those who remain) pay all real property taxes, are subject to ordinary regulation designed to protect the public such as environmental controls, weights and measures, public health provisions, etc., and collect and remit sales taxes to support the highway systems that bring customers to their door¹⁹. Additional business

¹³By their own account, the 1,000 member New York Oneida Tribe grossed \$200 million in the first year of operation of their Turning Stone Casino in 1993. More recent accounts derived from financial transactions put their annual net at \$70 million. Last year the Tribe itself announced that it now has assets in excess of \$1 billion. They continue to have the benefit of what has been judicially determined to be an illegal casino and the massive profits that the casino generates.

¹⁴Even those agreements were underfunded and subject to both revocation and terms of adhesion. See, for example, the Verona Fire Department’s submission attached to the O’Brien & Gere report.

¹⁵The OIN demanded the Stockbridge Valley Central School District fire a teacher with whom they had a political dispute. After thorough investigation and the District’s determination that there were no grounds to fire the employee, the OIN revoked its gift and plunged the School District into a period of financial chaos. The impact was dramatic, given that the Oneidas holdings represent 25% of the real property in the District, as is more fully explained in the affidavits of School Superintendent Randy C. Richards and Board President Michael P. Oot dated June 21 and 20, 2005, respectively, submitted in responding papers in tax enforcement litigation. Copies of these affidavits are attached to this submission as Exhibits [E](#) and [F](#). The OIN leadership’s wrath was also inflicted on the teacher and other members of the tribe, actions against each allegedly arising from political expressions in opposition to that leadership, ultimately resulting in the seizure and destruction of certain “dissidents’ ” homes. See *Shenandoah et al v. Halbritter et al*, 366 F.3d 89 (2d Cir. 2004)

¹⁶For further information regarding the impact, see the O’Brien & Gere and CGR reports, as well as the affidavits of Madison County Treasurer Harold Landers and Highway Superintendent Joseph Slivinski dated September 2, 2005, submitted with the County responding papers in recent tax enforcement litigation. Also see the statement of Joseph Slivinski at the January 11, 2006, NEPA scoping hearings. Copies of the affidavits and scoping submission are attached as Exhibits [G](#), [H](#) and [I](#), respectively.

¹⁷They own many of the key commercial properties and intersections throughout Madison and Oneida Counties land claim area, including strip malls, significant tracts at both New York State Thruway interchanges, intersections of major state highways, and at the intersection of the New York State Barge Canal with Oneida Lake, as well as most of the valuable marina properties along the southeast and east

shore of Oneida Lake. Purchases are of all types of properties and have continued.

¹⁸And a complete monopoly on the east shore of Oneida Lake.

¹⁹In contrast, the OIN has done what it wants, where it wants, recently clear-cutting and filling a densely wooded wetland in the hamlet of Verona Beach, near Oneida Lake, to erect a large scale convenience and grocery store in direct competition with a recently established non-Indian individual operator.

opportunities can be targeted to which the OIN could apply their immense advantages, with the likelihood of predatory competition in other lines of business increasing as their opportunity to devote their considerable excess capital to the local gaming and convenience store businesses reaches the point of diminishing returns²⁰.

CASE STUDIES

The following are not intended to be comprehensive, but illustrate and provide further insight into the impacts and potential impacts of the OIN exercise of checker-board sovereignty:

A) City of Oneida: The City of Oneida provides several examples of the impact and potential impact:

1) Map: Attached as [Exhibit K](#) is a map of the inside district of the City of Oneida, showing the municipal boundaries, zoning, currently owned OIN property, gas station and convenience store information and, in an inset, an area at the southerly entrance to the City's inside district.

2) Governance: The importance to a community of its master plan and the right of its citizens to affect how the community is constituted is demonstrated by the current updating of the City's master plan and zoning ordinance.

The elected officials of the City of Oneida, together with City staff, a twenty-five member steering committee comprised of City residents, and a consultant worked together to draft a proposed comprehensive plan, intended to guide the City's development over the next fifteen years. *Oneida Daily Dispatch*, September 13, 2005, attached as [Exhibit L-1](#).

From that effort, the new Comprehensive Plan was developed and, after a public hearing, it was adopted by the City Council, September 6, 2005, with the Council acknowledging "the efforts of many individuals and groups in the community."

Following the completion and adoption of the Comprehensive Plan, the City and its officials proceeded with its implementation. A new draft zoning ordinance was prepared, introducing revised mapping, new zoning classifications and other elements, amounting to

²⁰Contrary to the letter of Ray Halbritter conveying the Application that there is "no anticipated change of use of any of the land that is subject of this request. All uses have been in place for many years" (Letter of Ray Halbritter to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, dated April 4, 2005, at 1), the uses neither have been in place for many years nor is it reasonable to expect no future change. Mr. Halbritter's thrust for many years has been the development of economic power. In a law review article in 1994 he asserted "Economic power in this country, and in this world, is the real power . . ." Ray Halbritter & Steven McSloy, *Empowerment or Dependence? The*

Practical Value and Meaning of Native American Sovereignty, 26 N.Y.U. J. Int'l L. & Pol. 531, 564 (1994). In 1996, at Syracuse University's graduate school of business, he reiterated that economic power is the foundation for political power and advocated for Indian lands as free trade-zones, enjoying tax advantages to encourage businesses to locate there. *Syracuse Post-Standard*, April 4, 1996, attached as [Exhibit J](#). On November 8, 2002, that vision was further articulated by Nation lawyer Eric Facer in a presentation at Syracuse University College of Law, in which the locating of a businesses on tribal lands was advocated, touting tax and regulatory benefits, as well as potential benefits of Indian sovereign immunity. He advocated chartering entities under tribal laws and gave a specific example in which a New York State not-for-profit, educational and health organization, wanted to incorporate but did not want to face the required approvals by the State Education Department and New York State Health Department. He said we "avoid red tape" and that, in fact, is what the entity had done.

"hundreds of changes" throughout the City. The Mayor reached out via the press and at public meetings advising that those concerned should communicate with the City. *Oneida Daily Dispatch*, November 28, 2005, attached as [Exhibit L-2](#). A public hearing was called for and held December 6, 2005, and the Council chamber was "standing room only", with a variety of residents expressing different concepts and suggestions on a variety of aspects of the plan. *Oneida Daily Dispatch*, December 7, 2005, attached as [Exhibit L-3](#). The Mayor and the Common Council acknowledged their concerns, delayed implementation, and continue to interact with the citizenry to develop the final ordinance. *Oneida Daily Dispatch*, December 12, 2005, attached as [Exhibit L-4](#).

The rights of these citizens and communities to be self governing are real and are exercised. The imposition of a checker-board of OIN properties not subject to the master plan or zoning throughout this City deprives these citizens of that right and is detrimental to the City as a whole.

A concrete example of potential conflict exists at the southerly entrance to the City's inside district on Main Street between Route 5 and Elizabeth Street. See map inset, [Exhibit K](#). The City of Oneida's "calling card" is the entrance to the City along Main and Broad Streets from the south, improved by attractive nineteenth and early twentieth century homes, largely single family, in good repair and occupied by families, professionals and business leaders. The OIN has acquired, at the Main Street entrance, a strip center (until its acquisition, comprised of a mix of professional offices and retail), consisting of properties zoned manufacturing/industrial, and available for commercial use under the ordinance. They also acquired to the north, adjacent residential properties extending into the residential zone along Main and Elizabeth Streets. Acceptance of these properties into trust would permit the OIN to develop a project spanning all of the parcels and inconsistent with the City's master plan and zoning ordinance, such as a large commercial use, thereby disrupting the community. As it is, immediately before the OIN acquisition one these residential properties had under gone significant renovations to turn a once deteriorated property into a handsome, occupied residential property. Since the OIN acquisition, it has languished vacant and it and its grounds are in a state of disrepair (see map, [Exhibit K](#), item 3).

3)Deteriorating and under-utilized properties: The OIN has acquired three of six strip centers in the City of Oneida, two of the three having been active, commercial enterprises (Ames Plaza and Lynn's Plaza) (see map, [Exhibit K](#), item 4 and 5). Today, nearly all commercial tenants have been forced to vacate these plazas, along with their commerce which had benefited the community. The third plaza lies in

great disrepair and is an eyesore to the increasingly- important western entrance to the City (see map, [Exhibit K](#), item 2). Other properties are addressed in the case study “Deteriorating and Fallow Properties,” infra.

4) Unfair competition: The OIN aggressively targeted the convenience store and fuel business in the City of Oneida, achieving a near monopoly; and it reportedly used heavy handed tactics to achieve it (see case study “OIN convenience stores,” infra). For example, the Eisaman location on Route 365A (see map, [Exhibit K](#), item 1) was individually owned and operated. The OIN acquired a former gas station property immediately across the street (Mathalia property) and, reportedly, subsequently contacted Eisaman to purchase his convenience store. Upon his initial refusal, threats were made regarding the opening of a competitive store at the Mathalia property. Knowing that the OIN had significant resources, paid no real property tax, collected and remitted no sales or excise tax, and took the position was not subject to the ordinary regulatory scheme, with the ability to develop and underwrite a fiercely competitive installation, this small businessman had no choice but to sell out. Interestingly, the Mathalia property has been and today remains vacant (See Exhibit C , photo 564).

5) Other: For additional detail as to the impact on the City of Oneida including governance-related issues, the justifiable expectations of the people, serious burdens on the administration of local government and adverse impacts on the landowners of neighboring patches resulting from the checker-board nature of OIN holdings, see the letter from Mayor Leo Matzke to Franklin Keel, Eastern Regional Office Director of the Bureau of Indian Affairs of January 23, 2006, re “EIS Scoping Comments, Oneida Indian Nation of NY Trust Application.” In that submission the City addresses impacts on local infrastructure, community programs and services, including police protection, fire protection, water and sewer service, city planning and community development, Department of Public Works as well as fiscal, economic and social conditions. See also, Mayor Matzke’s letter of January 30, 2006 to Mr. Keel, re “Comments by the City of Oneida as to the Potential Impacts of the Oneida Indian Nation of New York’s Acquisition of Trust Land within the City of Oneida” and an update thereof anticipated to be submitted contemporaneously herewith.

B)East Shore of Oneida Lake: The circumstances on the east shore and southeast corner of Oneida Lake demonstrate the impacts of the acquisitions and activities of the OIN.

1) Map: Attached as [Exhibit M](#) is a map showing the populated east shore and southeast corner of Oneida Lake. As in the City of Oneida, properties have been acquired by the OIN in a checker-board fashion for commercial advantage. Affected are the Towns of Lenox (including the hamlet of South Bay) in Madison County and the Towns of Verona (including the hamlet of Verona Beach) and Vienna (including the Village of Sylvan Beach) in the County of Oneida. The map shows the shoreline, OIN properties (including marinas), and certain other features.

2) Governance: Population density, particularly in the summer, is high. The Village of Sylvan Beach also has been in the process of analyzing and establishing long term plans, and taking action pursuant to those plans including a significant updating of its zoning ordinance. The most recent update of the Village’s Comprehensive Plan was drafted largely in 1998 and adopted in 2001. The analysis was

undertaken, incorporating a planning process which was formally adopted.²¹ As described in the attached materials, citizen participation, intergovernmental consultation, and environmental reviews are critical.

“Citizen participation is encouraged throughout the planning process to insure that the plan responds to the needs of the community as effectively as possible. An advisory committee of Village residents appointed by the Mayor and chaired by the Planning Board Chair has been formed to review drafts of planning reports. Public presentations, discussions, and hearings provide opportunities for involvement of any other citizens who are interested in taking part.”

²¹Attached as [Exhibit N](#) is the Table of Contents from the Village’s Comprehensive Planning effort; the section entitled “Introduction-Planning Process” (pp. 1-7); the section entitled “Summary” describing the major village goal and general land use goals (p. 106); and the section entitled “Implementation,” describing further the goals of the Comprehensive Plan and methods of implementation (pp. 166-169).

Citizen involvement is most important in identifying major issues and opportunities, identifying community goals, evaluating alternate plans, and selecting the preferred alternative.”

Public hearings were held and the Plan ultimately adopted.

Further analysis and planning has been undertaken utilizing the NYS Local Waterfront Revitalization Program²². As stated therein:

“While state governments can promote development and provide protection for critical resources, New York State recognizes that individual local towns and villages are in the best position to determine their own waterfront objectives and to adapt statewide approaches to specific local needs. Therefore, New York State’s program was created to promote development and provide protection for critical resources in accordance with statewide approaches, but is adapted to fit local needs and objectives.”

Again, citizen participation was encouraged and received.

Pursuant to these various plans, the Village of Sylvan Beach is presently in the process of comprehensively rewriting its local zoning ordinance. A hearing was held to involve the public in January, 2006.

Likewise, the Towns of Verona and Lenox have developed their plans and implemented their zoning ordinances, which are periodically updated with similar citizen involvement.

The presence of scattered parcels, not subject to state and local jurisdiction and to the zoning and planning essential to these communities, unacceptably and adversely impacts these communities; creates jurisdictional problems and potential conflicts of land use; and unacceptably disrupts the justifiable expectations of their citizens.

3) Unfair Competition: The southeast corner and east shore of Oneida Lake represents a striking example of the adverse impacts of checker-boarding and unfair competition.

Prior to the OIN's acquisitions, the convenience store, marina and fuel business was disbursed over a variety of competitors²³. After acquiring these scattered parcels and businesses, today the OIN has a complete monopoly in the land and marine fuel business and the nearest non-Oneida marine fuel facility is located halfway across Oneida Lake; while the nearest Madison County land facilities are many miles away in the hamlet of Lakeport, City of Oneida and Village of Canastota.

The community on the east shore of Oneida Lake has languished for a number of years without a modern grocery store. After years of inadequate or non-existent facilities, Sunshine Market opened for business in 2004 (shown at [Exhibit M](#), item 1). In order to do so, a cleanup of

²²Attached as [Exhibit O](#) is the narrative introduction to the Village of Sylvan Beach draft Local Waterfront Revitalization Program, dated August 10, 2005, together with its Table of Contents.

²³Map at [Exhibit M](#), items 1, 4 and 7 were land operations, each owned by a different competitor. Items 2, 3 and 6 were marine operations.

the petroleum-contaminated site, under the purview of and in accordance with the regulations of the NYS Department of Environmental Conservation, was first undertaken. Appropriate zoning approvals and building permits were obtained, as well as inspections completed during the course of remediation and construction. The location, financed by a local village businessman, opened and began to serve the community. It is subject to continued regulation, pays real property taxes and collects and remits sales tax.

In contrast, the OIN in 2004-2005 chose to close an existing store, acquired previously (Map at [Exhibit M](#), item 4), and to develop a new "mega store" on an adjacent lot. Unlike the owners of Sunshine Market, the OIN applied for no zoning or building permits, had no municipal inspections, and in fact clearcut and filled a heavily wooded, six acre federal wetland without state or federal permits, regulation or oversight. The new facility greatly expanded the "grocery store" -like offerings as compared to the OIN's prior location, in direct competition with the new Sunshine Grocery, a short distance away. This "mega-store" was announced and opened in the Spring of 2005. In the course of dealing with the closed and adjacent properties, petroleum contamination was apparently found, tanks removed and soils excavated without DEC oversight or permits. This new "mega-store" operates apparently very successfully, has not been subjected to ordinary regulation, does not collect and remit sales and excise taxes, and is delinquent in the payment of real property taxes.

With respect to the marina business, the OIN also has operated without reference to applicable regulations. In the spring of 2000 at Marion Manor ([Exhibit M](#) at item 6) the OIN conducted dredging and filling activities without obtaining required permits, and did not face repercussions therefore. In contrast, other marine operators must comply with the permitting process, protective of the sensitive lake environment, or face repercussions.

C) OIN Convenience Stores—Case Study in Unfair Competition:

The OIN has established a chain of twelve(12) SavOn™ convenience stores on properties it has purchased since 1992. Seven (7) of those stores (58 percent) are located in Madison County and are within the most populated, northeast portion of the County. All are included in Group 2 of the properties requested to be taken into trust by the Nation’s April 5, 2005, Application.

In Madison County, these stores represent approximately \$5.1 million of assessed value (\$4.75 million in the Town of Lenox and the remainder in the City of Oneida; Oneida assessments have not been updated during the pendency of the Oneida land claim and the actual fair market value of these properties is likely to be several times their current assessment of \$1.254 million).

The annual property tax impact to Madison County taxing jurisdictions from taking these properties in trust is currently \$204,528. The OIN SavOn™ stores generate huge volumes of business and put a heavy load on local highway infrastructure yet the OIN has not yet paid taxes due on these properties. Trust status will further exacerbate this inequity and burdens on local governments and taxpayers.

All but one of the OIN stores are located far from any residential or OIN properties supporting OIN members. Most of these establishments sit on single, isolated parcels surrounded completely by non-Indian properties and occupy strategic locations along the busiest

arteries entering and leaving the communities where they are located. Photos of these properties are provided in Exhibit C as indicated in the table below. These locations represent prime, if not the best, business commercial locations in the area.

Tax Map Parcel Number	Photo Number	Location
13.6-1-1	114, 135-137	Intersection of NYS Route 13 and NYS Route 31, two heavily traveled state highways
55.-1-3	206,209	NYS Route 46, adjacent to 32 acre “Territory”; southern entrance to City of Oneida
38.57-1-19	522	Intersection of westbound NYS Route 5 and NYS Route 46, two heavily traveled state highways
38.65-1-14	538	Eastbound NYS Route 5, City of Oneida
37.44-1-3	521	Stone Street and Route 365 A near Oneida Walmart and western entrance to the City of Oneida.
30.81-1-69	564	Lenox Ave, City of Oneida and eastern entrance to City of Oneida.
36.38-1-3	576-579	NYS Route 13, Northern entrance to Village of Canastota and adjacent to NYS Thruway (I-90) Interchange 34.

Of the seven OIN stores;

- One replaced a OIN operated store that was closed
- Five stores were purchased from competitors.
- One was newly constructed by the OIN.

In addition to the five stores purchased by the OIN, at least four nearby Madison County competitors

closed in the face of competition. Six other nearby non-Indian stores serving the northeast portion of Madison County remain open. As a consequence, the percentage of convenience stores collecting and remitting taxes in this part of Madison County has decreased from 94 % to 46 %. The percentage decrease in sales tax revenues is much larger since the 54% of the stores owned by the OIN have an even greater share of the market because of their unfair advantage.

A major portion of convenience store business in New York State is the highly taxed tobacco products and motor fuels. Nationwide, the tobacco and fuels generate two-thirds of convenience store revenue. In New York, the excise and sales tax generated by these products would make the percentage of tax revenue generated from sale of these items much higher than the percentage of store revenue. Despite US Supreme Court decision in *Department of Taxation and Finance of New York et. al. v. Milhelm Attea and Bros., Inc., et. al*, 512 U.S. 61 (1994), New York State has exercised forbearance in collecting state sales and excise in an effort to avoid violence and to facilitate resolution of New York tribes' longstanding land claims.

This policy grants tribal businesses a huge competitive advantage in the convenience store market²⁴. This advantage coupled with the number and location of stores and the loss of tax collecting stores forced out of business by unfair competition greatly impacts County of Madison sales tax revenues.

Estimating the tax revenue lost to New York State and local governments is difficult without accurate data on the volume of products sold. Federal and state regulations cover the reporting of these volumes by distributors and retailers but neither New York State nor the OIN have released reliable figures. Local estimates calculated without hard data set the loss to local governments for sales tax alone at several million dollars. Disclosure by the OIN of actual, verifiable sales data should be required as part of the evaluation of this Application.

The New York State Association Convenience stores website (www.nyacs.org) documents the impact of this situation across New York State. The actual impact is likely to be tens-of-millions of dollars in Madison and Oneida Counties due to the number and competitive advantage to the OIN enterprises that have avoided paying taxes. Taking these properties into trust will forever cripple competitors and deprive local governments of revenue intended for their benefit by New York State tax structure and regulations.

D) Deteriorating and Fallow Properties:

Of the 88 Group 2 parcels requested to be held in trust by the United States for the benefit of the Oneida Indian Nation of New York, approximately one third of them (31 of 88 parcels) have large acreages that lie fallow or have buildings that are not being used. Of the 73 parcels in Group 3, approximately 40 percent (29 of 73 parcels) are fallow, have unused or deteriorating buildings. In many cases, those buildings are creating a public nuisance and life-risk hazard. This situation calls into question any tribal need for ownership or justification for these properties to be held in trust.

The photographs and observations in Exhibit C provide a mid-May 2005 snapshot of the condition and use of the properties in Group 2. and Group 3. The table below lists parcels with unused, deteriorating buildings or which have fallow land. A spot-check of some of these properties during January 2006,

reveals little if any evidence of use of the buildings and indeed, most continue to lay vacant, unused and are falling into poorer condition. In addition to safety and aesthetic concerns, they affirmatively diminish the communities and neighborhoods in which they are located and prevent others from putting them to effective, productive use to the benefit of the community as a whole. Even where such properties are maintained to some degree, their disuse is especially damaging to communities where the properties once were occupied by families, active commercial businesses, or working farms.

²⁴That competitive disadvantage is exacerbated by the inability to enforce regulatory standards which are so important to the health, safety and welfare of our citizens. See letter, New York Association of Convenience Stores to Franklin Keel, January 10, 2006, and “Drowning in Double Standards,” attached as [Exhibit P](#). The latter, compiled by NYACS, illustrates the various discrepancies between tribal and non-tribal stores.

Tax Map Parcel Number	Photo Number.
Group 2 Properties	
19.-1-25	001-013
19.-1-27	032
13.22-1-7	076-098
13.22-1-8	076-098
13.22-1-9	076-098
13.22-1-11	076-098
13.23-1-6	109,111
13.-1-37	122-133
91.-1-51	186-189
54.-1-29.1	192
54.-1-32.1	198
55.-1-4.1	201,202
54.-1-31	203,204
54.-1-30	207,208
47.-1-42	224-227
54.-3-4	237
54.1-1-21.11	238-242
38.49-1-65	533
38.49-1-67.2	535
38.49-1-69	536
37.44-1-1	553,554
38.29-1-3	559
30.81-1-69	564
27.20-1-6	584,586
35.8-1-6	597-599
35.-1-28.1	601-604

35.-1-26	605, 606
28.-1-77.2	611
28.-1-77.1	613
28.-2-13.11	615
Group 3 Properties	
18.-1-9.1	014 – 018
18.-1-14	022-028
12.-2-25.12	052-066
13.-1-1.13	052-066
13.-1-1.14	052-066
13.-1-1.11	052-066
13.22-1-3	67-74
61.-1-27	145-147
61.-1-28	149-156
70.-1-17	No Photo
89.-1-5	162,163,165
73.-1-4	169,173
54.-3-8	245-248
54.-3-5.11	253-261, 263
63.-1-3	295
63.-1-2.1	296-297
63.-1-2.2	298, 299
55.-2-7	358
64.-1-1	365,367, 368,370, 373
64.-1-18	414, 415, 417, 418
64.-1-15.2	422
54.-1-14.2	430
74.-1-16.1	483-489
92.-1-15.2	507-513
92.-1-16	516-517
38.49-1-65	532-533
27.-3-21	593
21.-3-22	593
27.-3-23	593

E) Water Systems Impact: Fundamental to a community is the availability and distribution of water. New York State has had a longstanding program of regulating and managing water resources²⁵.

In 1926 a cooperative effort, among the Cities of Oneida and *Sherrill* and Oneida Ltd. (located in *Sherrill* and in the Kenwood section of Oneida), was undertaken to find a reliable source of water for Oneida and for Sherrill-Kenwood and its enterprises. Three hundred thousand dollars (\$300,000)—an

enormous sum in those times—was provided by Sherrill-Kenwood’s Oneida Ltd. to develop the source in Taberg and underwrite the transmission infrastructure costs. For the next 80 years there has been a series of agreements between the City of Oneida and the Sherrill Kenwood Water District (SKWD), renewed periodically without serious controversy. This Florence Creek Water System presently serves over 20,000 people in two counties, three cities, five towns, and four villages. See: “Oneida Water Letter,” City of Oneida Water Department, Spring 2005.

A problem has now arisen regarding capacities, in which the City of Oneida (due to over commitment of an inadequate supply) seeks to diminish system co-founder Sherrill Kenwood.

²⁵As described in the NYS Department of Environmental Conservation web site regarding its Water Supply Program (which encompasses a permitting process regulating the state’s water systems):

Conserve and Develop for Beneficial Uses

"To conserve and develop the waters of the state for all beneficial uses for the public" is the stated public policy of the State of New York. The state's waters must satisfy domestic, municipal, agricultural, commercial, industrial, power and recreational needs and other beneficial public purposes. The legislature has adopted programs to protect our water resources and regulate their use to ensure that our water resources remain adequate to meet these present and future needs.

Public Water Supply Program

Among the oldest of these efforts is the Public Water Supply Program, first established in 1905 and now administered by the New York State Department of Environmental Conservation (DEC). This program protects and conserves available water supplies by ensuring equitable and wise use of these supplies by those who distribute potable (drinkable) water to the public for domestic, municipal, and other purposes.

Water District and City of Sherrill’s water allocation by 60% (currently permitted by DEC at 2.20 million gallons per day (MGD)) to .900 MGD, in part to shift allocation to the benefit of the unplanned and unregulated golf course and casino development in Verona by the OIN (reportedly unilaterally using 400% of its allocation viz. .600 MGD vs. permit allocation of .150 MGD).²⁶

Certain details of the problem are illustrated in the following documents, attached as Exhibit Q

:

- Letter, City of Oneida to Sherrill Kenwood Water District (SKWD) 7/20/05
- Article, “Oneidas pay \$40,000 for water pump,” Syracuse Post Standard, 8/3/05
- Letter, SKWD to City of Oneida 10/12/05
- Letter, City of Oneida to SKWD 11/9/05
- Article, “Verona Rejects New Water Contract,” Syracuse Post Standard, 1/6/06

As was pointed out in the October 12, 2005 letter from SKWD Chairman Nick Vanderwall to City of Oneida Mayor Leo Matzke,²⁷ the loss of allocation is crippling to the Sherrill-Kenwood community, which has essentially just lost the greater region’s most important taxpaying employer²⁸ --leaving extensive first class facilities, in Empire Zones, with available low cost municipal power ready to be occupied. Historically, Sherrill-Kenwood’s use of water—due greatly to these enterprises—has

exceeded 1.00 MGD, peaking at approximately 1.60 MGD in the 1990's, only diminishing more recently as the local industry fell on hard times. The factories have recently been closed and are now being actively remarketed, with interested parties including industries typically utilizing large quantities of water. This redevelopment would greatly benefit eastern Madison and western Oneida counties.

The unregulated growth by the Oneida Indian Nation and its impact on the natural resources of the state is testimony to the adverse consequences envisioned by the United States Supreme Court in *Sherrill*.²⁹

New York State has a comprehensive program of longstanding for regulating the water supply, which integrates with the other state and local institutions (municipal governments, local and regional planning boards) to help assure rational growth and use of resources. To grant the trust application and introduce an unregulated sovereign into the midst of these longstanding, developed communities is inappropriate, and is illustrative of “Jurisdictional problems and potential conflicts of land use that may arise...”³⁰

F) Solid Waste and Recyclables: Solid waste management has always been, and still remains, a topic that garners a great deal of time and attention in Madison County, from both county

²⁶ This use by the Oneida Indian Nation has not only adversely impacted the full water system, but has dangerously jeopardized the local Verona community (See Syracuse Post Standard, 8/3/05 “Oneidas pay \$40,000 for water pump”); attached as part of Exhibit Q

²⁷ In which SKWD offered to accept a 1.00 MGD reduction, meeting the then known full system wide shortfall; and seeking to retain a 1.20 MGD allocation which, while problematic, is believed sufficient to meet immediate demand.

²⁸ Oneida Ltd., once employing over 4,000 and the worlds largest manufacturer of flatware, has eliminated domestic manufacturing and closed all of its local manufacturing facilities in 2004 and 2005.

²⁹ A checker-board of alternating state and tribal jurisdiction in New York State—created unilaterally at OIN's behest—would “seriously burde[n] the administration of state and local governments” and would adversely affect landowners neighboring the tribal patches. [Citations omitted]. 125 S.Ct. at 1493.

³⁰ *Sherrill* at 1493-94, 25 CFR 151.10(f)

officials and citizens alike. The County has put forth a great deal of effort over the years to ensure the safe disposal of solid waste within its borders, as is illustrated by Section 2 of Local Law No. 3 of 2004, set forth below:

The safe and proper disposal of the solid waste generated by the people of the County of Madison has long been and remains a matter of serious public concern. In the 1960's, virtually every municipality in Madison County provided a dump for use by local residents and businesses, as a traditional local government service. In response to growing concerns and increased public awareness of adverse environmental impacts caused by the operation of unlined dumps – such as drinking water contamination, disease carrying vectors, open burning, landfill gas migration, and the potential for other public health and environmental problems associated with historical waste disposal practices at unlined local dumps -- by 1974 all sixteen town, village and city dumps then operating in Madison County were phased out of service and replaced with a county owned and operated centralized sanitary landfill in the Town of Lincoln and three rural residential waste transfer stations located in the towns of Cazenovia,

Hamilton and Sullivan. In the late 1980's Madison County re-examined its long-term solid waste management plan to decide on an economically viable and environmentally sound long-term management program. This resulted in the adoption of a plan to pursue a comprehensive countywide recycling program in 1989 and a Comprehensive Solid Waste Management Plan approved by the New York State Department of Environmental Conservation on March 15, 1993 that is periodically updated by the County. Since the adoption of the Plan, the County has implemented an integrated system of waste management to achieve the objectives of the plan, which are to reduce, reuse and recycle so much of the waste stream of Madison County as is feasible, and to landfill the remainder in an environmentally secure public land facility.

Madison County has incurred significant debt and invested millions of dollars in the development, operation, and maintenance of the County's integrated waste management system; spending approximately \$3,000,000 each year on the system. Waste management is a matter that is vitally important to the citizens of Madison County and will remain the focus of public concern. This being the case, it is essential that the County be able to continue to regulate the flow of all solid waste within its borders, as well as assure the necessary, predictable revenue stream provided by its local laws.

Based on information available to Madison County, it is believed that the OIN currently contracts with private garbage haulers to dispose of its waste, and that waste is now disposed of at an appropriate county facility. The implementation of the County's flow control law as to OIN's waste—so important to fiscally sustain this environmentally sound, comprehensive integrated waste management system—required litigation.

The litigation involved a dispute between the County, the OIN and one of the OIN's contracted private waste haulers—Riccelli Trucking, Inc. Madison County commenced a lawsuit in NYS Supreme Court against Riccelli Trucking alleging seventy violations of the flow control law. The bulk of these violations related to waste removal from OIN lands and subsequent hauling of these wastes to a landfill located outside of Madison County, the commingling of recyclables and solid waste materials, and the unpermitted operation of a solid waste business in the County. The lawsuit was ultimately settled in August 2002. During the Riccelli dispute, the OIN took the position that it is entitled to control the disposal of its waste free from regulation by the County, believing it was therefore not subject to the flow control law.

The granting of land into trust status for 17,300 acres throughout the County, would increase the exposure to the Madison County integrated waste management system, with the potential that the OIN would renew its argument regarding "sovereign" garbage, potentially establish its own private waste hauling business with respect to the same, and otherwise diminish the system.

G) Town of Stockbridge: As a community, the circumstances in Stockbridge demonstrate the adverse impact of the OIN's acquisitions, unilateral assertions of sovereignty and exercise of economic might, as well as the jurisdictional chaos, burden and dramatic changes which would be made permanent if this application is granted.

1) Map: Attached as [Exhibit R](#) is a map showing the OIN properties in the Town, the location of certain key landmarks, and illustrations such as deteriorated properties, locations of violations of zoning and local ordinances. Also shown is the boundary of the six mile square Stockbridge-Munsee Community

claim.

2) Stockbridge-Munsee Community: The vast majority of the Stockbridge properties sought in this application by the OIN are within an area claimed by another tribe, the Stockbridge-Munsee Community. While Madison County contests both tribes' claims to the area and opposes the granting of any trust status therein, given the fact that approximately 4000 acres of the OIN application are alleged to be located within the boundaries of the Stockbridge-Munsee claimed 1788 Stockbridge Reservation (a six-by-six mile square, illustrated on the attached map), and that the U.S. Solicitor's office has apparently concluded that any OIN interest therein was extinguished at the end of the 18th Century and that the relative interests should be determined in the pending litigation (86-CV-1140(N.D.N.Y.)), it is inappropriate to consider any trust application in such area until such litigation is concluded.³¹

3) General Impacts: The OIN presently owns 48 parcels, comprising approximately 18% of the land mass of this Town, and has had a dramatic impact.

Much of the impact has been described in the submission of Stockbridge Valley Central School Superintendent Randy Richards in his letter of November 1, 2005, to Franklin Keel, BIA Eastern Regional Office Director (attached hereto as [Exhibit T](#)). Mr. Richards details the patchwork nature of the holdings, the failure of the OIN to maintain or develop the properties and their deterioration, the adverse impacts on real estate values and tax revenue.

³¹ Letter dated August 12, 2002, from Philip N. Hogen, Associate Solicitor, Division of Indian Affairs to Honorable Tom Sansonetti, Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice attached as [Exhibit S](#).

The community of Stockbridge and its school system have been particularly damaged by the OIN's punitive revocation of "silver covenant gifts" (referenced supra at page 6, with details set forth in footnote 15 and the exhibits referenced therein and attached hereto). Even today, although in light of *Sherrill* and the demands of the Department of the Interior the OIN has paid the 2005-2006 school taxes, it has done so under protest, thus continuing the uncertainty and fiscal chaos.

The annual loss of real property taxes for the Town alone is equivalent to nearly its entire annual contracted fire services spending (99.6%) or 124% of the Town's annual debt service.³² The annual real property taxes for the Stockbridge Valley Central School System (for lands affected by the application in both Madison and Oneida Counties) is approximately \$137,000 per year, enough to employ three beginning teachers or several teaching assistants or aides. Without these revenues the "choice" is between untenable tax increases or further crushing cuts in programs and services.

4) Deteriorating and Under-Utilized Farmland: Deterioration of property under OIN ownership is evident across both counties and in every town where they have purchased land. Nowhere has the impact of Oneida ownership of land been more evident than in the Town of Stockbridge and especially with regard to family farms. Stockbridge is a vibrant farming community with numerous family farms located throughout the township. The Oneida Creek valley has been dedicated to farming for over 200 years.

The OIN purchases of large acreage in Stockbridge have removed five (5) family dairy farm operations from the business of agriculture and a sixth has been replaced with one huge concentrated animal feeding operation to support beef production. Much of the purchased land lies fallow. Most barns, silos, pastures, and all homesteads associated with these farms sit vacant.³³ Some have been turned into many-acre colonies of tribal housing where homes have been constructed in violation of land use laws on a portion of once active farmland.³⁴

This practice, which has changed the face of Stockbridge, perhaps forever, is facilitated by the OIN's practice of non-payment of taxes. Although discredited by the Supreme Court in Sherrill, the Nation continues not to acknowledge the clearly stated decision of the Court. The benefit of not having to pay taxes resulting from trust status will perpetuate disuse and neglect across this town to the detriment of neighboring properties and the community.

The impact of lost farmland goes beyond deteriorating barns, empty homes and beyond the change of bucolic scenery of the Town of Stockbridge. (*See Madison County Agriculture and Farmland Protection Plan*).³⁵ The existence of open farmland across the county has facilitated development of two wind farms creating over forty megawatts of renewable, sustainable wind generated electricity while the properties that contain the wind farms remain in production. These wind energy facilities could not have been built where residences are nearby.

³² See, O'Brien and Gere report at p. 56.

³³ See [Exhibit T](#), Stockbridge Valley Central School submission dated November 1, 2005, referenced above, and relevant photos in Exhibit C.

³⁴ See, *infra* p. 23, H - Zoning and Planning.

³⁵ Published July 2005 by Madison County Farmland Protection Board; adopted July 2005 by the Madison County Board of Supervisors, and approved January 2006 by the New York State Department of Agriculture, a copy of a portion of which is attached as [Exhibit U](#).

All of the agricultural properties purchased by the Oneida Nation in Stockbridge were enrolled in State-certified agricultural districts. A neighboring county estimates the loss of 100 acres of farmland to create an economic loss of \$33,000 whereas the same 100 acres in farm production provides a net gain of \$2,383. In Madison county the value of farm products sold in 2001 was \$81,000,000 which, circulated through the economy would produce \$240,000,000 of business in other sectors. Agri-business throughout the County, including two active dairy product processors, depend on active farming and are made less profitable when farm operations close. Loss of farms prevent the County from achieving goals set for the community in the above referenced *Madison County Agriculture and Farmland Protection Plan*. The following specific goals will be compromised by removal of farmland from private ownership due to purchase by the OIN.

Goal 1) Protect farmland

1.1 Prevent urban and rural sprawl by encouraging non-agricultural development elsewhere. 1.2 Incorporate farmland protection into local plans. 1.5 Promote participation in state certified Agricultural Districts.

Goal 2) Agricultural Economic Development

2.1 Create new and expand existing agricultural opportunities 2.3 Ensure the continuation of businesses necessary for the success of farming

Goal 4) Prepare Madison County agriculture for the future.

4.1 Establish stable farm ownership and recruit new farm owners.

5) Governance: As do all Madison County Towns affected by these claims, Stockbridge has local land use laws. These were developed and are maintained with input from local citizens and have been established and are implemented by locally elected officials or public officers appointed by such elected officials. As more fully detailed elsewhere in this letter and other reports referenced herein, the granting of the trust application deprives this community and its citizens of their rights, and would free the parcels from local zoning and other regulatory controls that protect all land owners in the area. That these controls are meaningful and relied upon can not be questioned, nor can the OIN's disregard of them. For example, in 2001 the Town Attorney contacted Nation Representative Ray Halbritter regarding illegal, open burning in violation of §406 of the Town's Land Use Law (letter from Steven Jones to Ray Halbritter, January 11, 2001, and §406, attached as [Exhibit V](#)). In January 2002, the Town Attorney wrote again to Mr. Halbritter in connection with the illegal dumping of up to thirty truck loads of construction debris in the Town brought from outside of the Town (letter of Steven Jones to Ray Halbritter, January 10, 2002, attached as [Exhibit W](#)). It has been, and apparently remains, the OIN position that they are exempt from state and local regulatory enforcement. According to Stockbridge Town Supervisor Alexander Stepanski, the dumping continues.

6) Mining: One issue demonstrating the need for regulatory enforcement is operation of the Oneida Nation's sand and gravel mine on Pratt's Road, in the southern part of Stockbridge (Tax Map Parcel Number 91.-1-51). A portion of this 123 acre property was designated as a sand and gravel mine in 1986 after a previous owner obtained a permit from the New York State Department of Environmental Conservation under State environmental law. Issuance of the permit required review and comment by the Town of Stockbridge and a permit was issued with conditions appropriate to the site. The areal extent of the disturbed area was less than 10 acres while the mine was operated by the previous owner.

The mine was purchased by Snug Harbor Resorts, a corporation that has been involved in several transfer of land to the Oneida Nation. A deed was filed transferring ownership from Snug Harbor to the Oneida Nation on July 30, 1997. No update or re-issuance of the mining permit was ever completed and the permit obtained by the previous owner expired in 1999. The result is that the local community lost any opportunity to comment on hours of operation, traffic, off-site impacts such as sedimentation and water quality as would normally be the case with other mining operations.

The Oneida Nation began operating the site without any permit and without any regulatory oversight by an outside agency. Hundreds of truckloads of material were removed from the area and transported to the Turning Stone Casino Resort complex.³⁶ Problems ensued.

a) In early 2002, the Town Attorney complained to the OIN of illegal dumping (above described) which continues to date.

b) Local roads and ditches have been impacted with stone, mud and dust from the operation and from truck traffic.

c) Local citizens complain about sedimentation of a nearby stream classified as trout habitat, and about traffic and visual impacts.³⁷

d) Operations have been conducted at unusual hours, disturbing the community nearby and communities along the routes traveled by trucks going to and from the site.

Over time the mined area has expanded to approximately 25 acres. The estimated reclamation cost (based on \$3,000 per acre) would be about \$75,000 but there is no financial security to ensure that this cost of operation is covered with the risk that the site would be abandoned when the minerals are depleted. While visual impacts are already severe, and will continue to worsen, an abandoned mine site will be an eyesore, a public nuisance, a health and safety hazard, and a potential repository for solid waste. Two nearby gravel beds suffer in competition due to the burden of complying with appropriate regulatory oversight, paying an

³⁶ Estimates of 200 truck loads per day of gravel in such construction demonstrate the extent of activity, the impact on the local rural community, and further illustrate the unfairness of the current OIN position sought to be made permanent by this Application. The OIN has paid no county and town taxes and collects and remits no sale taxes on sales to non-Indians (which include taxes dedicated to road improvement), yet utilizes the infrastructure and exposes it to loads in excess of normal, shortening its useful life. Use of this mine for construction activities at Turning Stone, which it is believed to have included the filling of wetlands, has continued to the present.

³⁷Blue Creek, a tributary of Oneida Creek, runs through this property and is one of the pollution impaired stream segments that is tributary to Oneida Creek and discussed in paragraph I(3), infra

annual regulatory fee that is likely to be thousands of dollars. Without some regulatory oversight, in addition to environmental harm, there is no assurance that employees working at the mine are protected under applicable safety standards.

H) Zoning and Planning: Land use and zoning regulations are indispensable tools in the community planning process. Zoning allows municipalities to make the most efficient use of the community's available land, while working toward the development of a balanced and cohesive community.³⁸ In addition, zoning regulations work to eliminate land use conflicts and preserve the integrity of the community as a whole. Moreover, land use and zoning laws provide a process of review for land development activities to help ensure the health, safety, and general welfare of the community.³⁹

The regulation of land use plays an extraordinarily vital role in every community, and the communities of Madison County are no exception. The importance Madison County's municipalities place on the regulation of land use is evidenced by the fact that each municipality has adopted local zoning or land use regulations, despite the fact that the adoption of such regulations is not required by New York State.⁴⁰

The Oneida Indian Nation (OIN) has disregarded these land use and zoning regulations on many occasions. One telling example concerns the construction of multiple houses on single OIN parcels. This

has occurred on 5 parcels of land owned by the OIN, which are located in 3 different municipalities within Madison County. The tax map numbers of the parcels, zoning information, and their location is given below:

54.-3-8: Town of Lincoln – AR-2 (residential zoning district)

19.-1-25: Town of Lenox – RB (residential zoning district)

55.-2-21.12: Town of Stockbridge – ARC (residential zoning district)

63.-1-2.1: Town of Stockbridge – ARC (residential zoning district)

64.-1-18: Town of Stockbridge – ARC (residential zoning district)

On each of the above parcels, the OIN has constructed 2 residential dwellings, in violation of the respective land use laws in each of the above municipalities. All of the municipalities in Madison County have provisions in their land use laws prohibiting the construction of more than one dwelling on a single parcel. For example, §301.2 of the Town of Lincoln’s Land Management Law sets forth the permitted uses in the Agricultural Residential Zone 2 (AR-2), the relevant language from this section provides:⁴¹

A. This district is envisioned as mixed agricultural and residential in the interest of maintaining and enhancing open land for its aesthetic qualities and for its economic value in agricultural production. The following uses are permitted:

1. Farms and farm buildings for related agricultural activities
2. One or two family residential use
3. Home occupation
4. Mobile dwellings
5. One private garage
6. One accessory building (in addition to private garage)
7. Hobby farm use
8. Wildlife refuges
9. Private stables

³⁸ *Berenson v. New Castle*, 38 N.Y.2d 672 (1975).

³⁹ N.Y. Town Law §261

⁴⁰ Statement of Jacob Miller, Director of the Madison County Planning Department, NEPA Scoping Hearing, (January 11, 2006), attached as [Exhibit X](#)

⁴¹ Town of Lincoln: Land Management Law, §301.2 (April, 1999).

According to the Town of Lincoln’s Land Management Law, in an AR-2 district it is only permissible to have either a one or a two family residential dwelling on a single parcel. Allowing establishment of more than one single family dwelling per parcel would make it possible to establish a housing subdivision without zoning approval or adherence to state and local laws regarding review of subdividing land. Such a practice places unplanned burdens on the delivery of local services and creates a situation that is contrary to zoning and development practice around the country. Additionally, unilateral establishment of such subdivisions and dwellings may conflict with town and county priorities, such as the preservation of farmland or the desire to concentrate residential development

consistent with a rational, community developed plan.⁴²

Zoning regulations such as the one adopted by the Town of Lincoln are in no way unique, and have been developed to regulate the location and use of buildings; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to prevent the overcrowding of land; and to avoid undue concentration of population. Furthermore, such regulations are made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to encouraging the most appropriate use of land throughout such municipality.⁴³

These are the types of interests that zoning and land use regulations are designed to protect, and these are the interests that the OIN has unilaterally decided to ignore, to the detriment of neighboring landowners who must deal with whatever development decisions the OIN may make (without the availability of any remedial measures). The fact is that “what one landowner does with his or her or its land may well have an impact on that of a neighbor, exempting a part of a municipality’s territory from the entire purview of land use law applying to the rest of the municipality would in effect divide it into first-class and second-class landowners, with the latter receiving no regulatory protection from the development actions of the former.”⁴⁴ If the OIN’s property is taken into trust, the property will be claimed to be eternally free from state and local land use regulations; regulations that are an essential part of community living; regulations that provide for the orderly growth of municipalities, encourage the appropriate use of land, protect and conserve the value of property, prevent the overcrowding of land, and

⁴²See Madison County Agriculture and Farmland Protection Plan, portions of which are attached as [Exhibit U](#)

⁴³N.Y. Town Law §261 and §263

⁴⁴Statement of Jacob Miller, Director of the Madison County Planning Department, NEPA Scoping Hearing, (January 11, 2006), attached as [Exhibit X](#)

preserve community character – among other things.⁴⁵ At the end of the day, if the OIN’s land in trust application is approved, the OIN will assert it can develop all of its land as it sees fit, thereby undermining and compromising that which zoning and land use regulations are rightfully designed to protect.

I) Oneida Lake and Watershed Management Plan: The Oneida Lake Watershed management planning process provides several examples of the how OIN’s lack of cooperation in environmental management has led to gaps in local and regional water quality improvement efforts.

1) Map: Attached as [Exhibit Y](#) is a map showing OIN owned property within the Oneida Creek watershed and vicinity. Also shown are the results of a stream segment analysis project as discussed in 3 below.

2) Oneida Lake Watershed Management Plan: In September of 2004 the Central New York Regional Planning and Development Board published “A Management Strategy for Oneida Lake and its Watershed”, which was the culmination of a 5 year multifaceted watershed planning effort for Oneida

Lake.⁴⁶ The planning process involved 6 counties, 69 cities, towns, and villages, numerous local and State agencies, and a variety of watershed stakeholders including not-for-profit groups, lake associations, and interested citizens. Defiantly absent from the process was the Oneida Indian Nation of New York. Numerous overtures and invitations were made to the OIN to participate in the program throughout the entire process, and although OIN staff had attended one or two of the earliest meetings, they never again participated in any aspect of the planning effort. The management strategy serves as a guiding document for interagency and intermunicipal cooperation and watershed restoration in the future. Without cooperation on behalf of the OIN, water quality improvement activities such as Agricultural Environmental Management (AEM), streambank stabilization, natural stream restoration, stormwater management, shoreline restoration, and more will be hampered by the gap created by the 17,000+ acre “void” in our ability to cooperatively manage water quality within the watershed of Oneida Lake. All downstream waters are affected by activities taking place on the properties owned by the OIN, thus impacting not only the properties themselves, but surrounding properties and waterbodies which are hydrologically connected by both surface water and ground water. Without continuity in watershed management, the concept of “whole watershed planning” is fundamentally compromised.

3) Oneida Creek Water Quality: In 2002, a multi-county water quality monitoring effort was undertaken to ascertain the health of the waters flowing into Oneida Lake. Through this process, one of the most pollutant-laden waterbodies entering Oneida Lake was determined to be Oneida Creek. Oneida Creek, for much of its length, serves as the boundary between Madison and Oneida Counties. Its watershed encompasses 101,167 acres, 9% (9,204 acres) of which is made up of OIN property. After determining that Oneida Creek was one of the tributaries delivering a high percentage of nutrients and sediment to Oneida Lake, a study was commissioned to sample multiple points along Oneida Creek and its tributaries to try to

⁴⁵ Town of Lincoln: Land Management Law, §100.4 (April, 1999).

⁴⁶ A Management Strategy for Oneida Lake and its Watershed, September 2004.

Central New York Regional Planning and Development Board and the Oneida Lake Watershed Advisory Council.

<http://www.cnyrpd.org/oneidalake/ManagementStrategy.asp>

determine sources of the nutrient and sediment pollution. The results, as published in the report “Segment Analysis of Oneida Creek, the Locations and Sources of Pollution”, identified certain tributaries and stream segments that were responsible for contributing higher than average amounts of pollution compared to other areas within the watershed.⁴⁷ Certain identified stream segments were either wholly encompassed by or passed through OIN property. For example, Mud Creek is a tributary (site 9c, Middle Road) of Oneida Creek and appeared to be a source of soil and nutrient loading. Results were not conclusive as to a single source, but Total Kjeldal Nitrogen (TKN), Total Phosphorus (TP) and nitrate were elevated at sites 9c1, 9c3, and 9c4. Nitrate was particularly high at site 9c2, which is near a large farm operated by the OIN. All of these tributaries begin and flow entirely through property owned by the OIN. Additional sites of concern include 14b and 14d. Site 14d at South Quarry Road drains a small sub-watershed that moves from east to west before entering segment 14 (Figure 1). Levels of TKN (800ug N/L) were slightly elevated but nitrate (1.6mg N/L), Soluble Reactive Phosphorus (SRP) (18.7 ug P/L) and TP (108.9 ug P/L) were high compared to upstream sites within the segment in October.

Similarly, in April nitrate levels were again elevated with concentrations just below 3mg/L. The high losses of nitrate and the slightly elevated levels of TKN suggested an animal source. The intent of this stream analysis effort was to identify potential areas of increased sediment and nutrient pollution so that cooperative efforts could be organized to remedy the problems by obtaining funding and working cooperatively with the landowner(s). The lack of cooperation on behalf of the OIN has precluded that from happening. Therefore, these problems remain unabated and may continue as long as the OIN remains an unwilling partner in the Oneida Lake Watershed management planning process, and remediation will be precluded completely should the OIN properties be taken into trust and Indian Country status achieved.

4) Conclusion: From this the following can be concluded:

a) As the OIN has a history of and continues to fail and refuse to participate in essential, regional cooperative planning efforts, it is clear they will not be willing participants in future, necessary activity to address community wide concerns, to the detriment of their neighbors.

b) Remedies ordinarily employed to address actions by such unwilling participants involve the exercise of state and local governmental power (e.g. to mandate correction of adverse environmental conditions), which remedial action by such governments would be precluded by taking the OIN properties into trust.

c) While adverse even if concentrated in a compact and contiguous area, this adverse impact is exacerbated when the properties not subject to remedial action are scattered throughout the region in checker-board fashion.

d) Reliance on the prospect of voluntary efforts by the OIN (asserted but not implemented) to act for the common good is misplaced, and it is critical for the health, safety and welfare of the region that governance remain with New York State and its municipal units.

⁴⁷ Segment Analysis of Oneida Creek, the Locations and Sources of Pollution, September 2004. Department of Environmental Science and Biology State University of New York at Brockport. <http://www.cnyrpd.org/oneidalake/SegmentAnalysis2004.asp>

J) Economic Development Programs: In support of its application, the OIN continues to argue that the net effect of trust status, and the resultant exemption from real property tax, is no different than incentives provided to business firms by the state and local governments of New York. This argument, like the argument that all 17,300 acres are necessary to protect the jobs at Turning Stone Resort, is absolutely false and without merit.

In New York, there are a variety of economic development programs, designed to encourage the establishment of, to support and to maintain businesses beneficial to our communities. A brief overview of the salient features of key programs is set forth on the attached [Exhibit Z](#).⁴⁸ These include Empire Zones, Industrial Development Agency Programs, Real Property Tax Law §485(b) tax benefits, Governor's Office for Small Cities Grants Program, and the Revolving Economic Development Loan Program. Most economic development incentives are not available for retail operations, although there are some exceptions, for example when the retail activity is in support of downtown development of

distressed areas. Also such incentives generally do not include benefits for entertainment activities.

In contrast with the effect of taking lands into trust, which would result in the permanent exemption of the property from real property tax (as well as the assertion by the OIN of exemption from state and local regulatory jurisdiction), each of these programs provides benefits of finite duration to, in effect, prime the economic pump. Moreover, they have stringent requirements, applied consistent with state and community standards and goals.

For example, Empire Zones benefit a very small area in a county, designated with community input. No more than six contiguous “distinct and separate areas,” totaling no more than 1,280 acres, and requiring both county and local government approval can be designated. The uses proposed must meet local zoning; and the beneficiary is required to apply and meet additional stringent qualifications requirements (e.g. capital investment, projected employment increases, etc.). Again, in contrast with the effect of trust status, the implementation and use is controlled by the state, county and local governments.

Once approved, the benefits received are of finite duration (no more than ten years), and the standards must be met during that period to continue to qualify and receive those benefits.

The benefits provided are not detrimental to the local community—for example the real property tax benefit is provided to the business in the form of a New York State tax credit. The business is required to pay all the local real property taxes and, provided the business continues to qualify and meet its standards, the State returns to the business an amount equal to the real property taxes paid.

In contrast, land held in trust will never incur real property tax (although it will have the benefit of the municipal infrastructure and services), and it will be argued by the OIN not to be subject to community master plans, zoning, building codes, etc.

Other programs (e.g. IDA financing and RPTL §485(b) real property tax credits), assuming certain qualifications are met, provide real property tax benefits on a declining basis for no more ten years. Turning Stone, the enterprise most cited by the OIN as a business that

⁴⁸ Memorandum dated February 17, 2006, from John A. Reinhardt, Economic Development Coordinator to S. John Campanie, entitled “Economic Development Programs” (Attached as [Exhibit Z](#))

should enjoy tax exemption, was established in 1993 and has unlawfully enjoyed tax free status for longer than either of these programs would have provided. Grant and revolving loan programs provide funding consistent with community priorities and, as such loans are repaid, provide such communities with funds to be relaned to others in support of these local goals. Establishment of trust status would perpetuate unfair competition, deprive state and local governments of necessary revenue to provide the community with essential services, and permit development inconsistent with the localities’ standards and goals. It is in no way equivalent to that which is provided other businesses in our community.

Assuming the establishment of a compact and contiguous, governable area, and assuming further that this OIN leadership is properly constituted,⁴⁹ the OIN readiness to govern is questionable. By every measure of responsible and democratic government, they are deficient. There are political, environmental and public safety concerns of great magnitude.

The OIN allegedly has utilized its police force to conduct surveillance of persons labeled as “dissidents,” and has taken aggressive action to retaliate, including stripping all OIN benefits from those who have spoken out against the leadership. Furthermore, they have taken actions, including the design and implementation of a narrowly drafted housing ordinance, to forcibly evict “dissident” members from and destroy their homes.⁵⁰

In the context of *Shenandoah v. Halbritter*, Senior Circuit Judge VanGraafeiland, clearly frustrated by his conclusion that Congress had not given the Court power to act despite compelling facts, was moved to quote the Court in *United States v. Brown* (381 U.S. 437, 444), warning Alexander Hamilton: “If [a] legislature can disfranchise any number of citizens at pleasure by general descriptions, it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy; if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense.”

⁴⁹See, memorandum of Michael T. Smith to Director, Office of Indian Services, entitled “Report of the History of the New York Oneida Indians,” February 24, 1982 (attached as [Exhibit AA](#)); See also, *Shenandoah et al v. United States Department of the Interior, et al*, 159 F.3d 708 (2d Cir. 1998).

⁵⁰For a complete statement of facts alleged, see the Brief for Plaintiffs-Appellants, 2003 WL 24072371 (2d Cir.) *Shenandoah v. Halbritter* 366 F.3d 89 (2d Cir. 2004) (attached as [Exhibit BB](#)), reflecting, among other allegations, the arrest and seizure of single-mother Danielle Shenandoah-Patterson in October 2002; transport seven hours to a Pennsylvania prison (where she was strip searched and “body cavity” searched); separation thereby from her three minor children; allegations that she was told she would remain in custody until she “consented” to the demolition of her home and thereafter the immediate demolition of her home. See also, “Dissidents Reserve Right to Sue,” Syracuse Post-Standard, March 10, 1998 (attached as [Exhibit CC](#)). See also, affidavit of Edward C. Fike dated August 17, 1999 (*Peterman et al. v. Pataki et al.*) Supreme Court, Oneida County, Index No. 99-533), attached as [Exhibit FF](#)

With respect to environmental transgressions, the record is replete. The following represent just some of the examples provided throughout the body of material provided by the Counties herewith and in the report of O’Brien and Gere provided by the State of New York:

- Failure to comply with the State Environmental Quality Review Act (SEQRA) (Report of O’Brien and Gere dated February 28, 2006 (hereinafter OBG), p. 41);
- Failure to comply with mining regulations (*supra* p. 22 #6);
- Failure to follow dumping and landfill regulations (*supra* p. 18 “F - Solid Waste and Recyclables,” OBG p. 32 “Case Study (C&D Debris),” OBG p. 32 “Case Study (Madison County Flow Control),” and *supra* p. 22 #6);

- Burning violations (*supra* p. 22);
- Failure to comply with state or federal regulations in the construction of its cogeneration facility (OBG p. 19 “Case Study”);
- Wetland dredging and filling (*supra* p. 12, OBG p. 15 “Case Study,” and OBG p. 26 “Case Study”);
- Potential water quality violations (*supra* p. 23 “H – Oneida Lake and Watershed Management Plan,” *supra* p. 23 letter “c,” and OBG p. 26 “Case Study”);
- Planning and zoning violations (*supra* p. 6, *supra* pp. 8-9 A – City of Oneida, *supra* p. 23 #5, OBG p. 40 “Case Study (Comprehensive Plans)”);
- Failure to comply with petroleum bulk storage regulations (*supra* p. 12, OBG pp. 34-38);
- Water supply issues (*supra* p. 16 E – “Water system impact,” OBG p. 51 “Case Study (City of Oneida Water System)”);
- Failure to comply with agricultural regulations (*supra* p. 23 “H – Oneida Lake and Watershed Management Plan,” OBG p. 29 “Concentrated Animal Feeding Operation (CAFO)”

As to public safety, while continuing to assert that it meets or exceeds all applicable codes, the refusal to permit inspections, the continuation of litigation against enforcement of reasonable health and safety regulations (such as the ban against smoking in public places), and the failure to make proper provision for fire protection for the safety of its work force and customers is revealing.⁵¹ Consistent with Ray Halbritter’s perspective that “economic power is the real power,” the Halbritter-lead OIN has focused on acquiring a scattered group of commercial properties and operating them for maximum gain, rather than assembling a governable area with a higher priority being given to the health, safety and welfare of his neighbors and customers. There are serious concerns as to whether a leadership so motivated and constituted can govern and avoid the other dangers arising elsewhere in Indian Country.⁵²

⁵¹ In a recent investigative article, the Syracuse Post-Standard on February 26, 2006, reporting on dramatic inadequacies in fire protection for the OIN Resort at Turning Stone (copy attached as [Exhibit DD](#)). Among other concerns, the article disclosed that in the six fires occurring since 2000, the contracted fire fighters failed five times to bring in the minimum manpower recommended by the National Fire Protection Association. It further reported as to the inadequacy of the plan, manpower and equipment to fight a fire at the ten story Turning Stone hotel tower. It is contrasted with a similar size tower in the City of Syracuse, and the superior insurance ratings and fire protection available to that facility. That such a tower at Turning Stone was built in the first instance is a result of the failure of the Oneidas to abide by applicable state and local regulations designed to protect the public. That they would do so, even acknowledging their assertion that they believed themselves exempt from such regulations, without applying like regulations and without underwriting adequate fire protection (as, according to the articles, other Indian-run resorts have done) demonstrates that their interest in financial gain exceeds their interest in public safety.

⁵²The New York Times has recently reported that there are serious concerns about the acceptance of crime in Indian Country, with an increased exposure tied to the influx of casino money. “Drug Traffickers Find Haven in Shadows

It remains questionable as well whether the BIA is equipped to discharge its additional responsibilities from the acquisition of the land in trust status (see 25 CFR 151.10(g) and 151.11(a)). We are advised that the Eastern Region, located approximately 900 miles from Central New York, is handling the OIN application; while the Mid-Western Region, located in Minneapolis, MN, some 1100 miles away, is handling the Oneida Tribe of Wisconsin application.

We note further, for example, the *Matter of Miami Tribe of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs* (28 IBIA 52, (June 8, 1995)). In this case, in the application of the above referenced regulations, upon an appeal from the decision of the Muskogee Area Director declining to acquire certain land in Boone County, Indiana, in trust for the Miami Tribe of Oklahoma, the Interior Board of Indian Appeals affirmed the Area Director's decision. The essence of the decision was that the Bureau had inadequate resources to administer the trust land. In his decisions, the Area Director stated in part

"The subject property is approximately five hundred miles from the Miami agency and well outside the former reservation and current jurisdictional boundaries of the Miami Tribe of Oklahoma. The Miami agency has neither the resources nor staff to properly administer the property. The distance alone makes it virtually impossible for agency personnel to regularly visit the property." Area Director's May 23, 1994 Decision.

"We can appreciate your reasons for wishing to acquire these properties, but we are still unable to support the acquisition of the land in trust in Indiana. While a show of support for the acquisition by local officials is not insignificant, it is our determination that it does not outweigh our inability to adequately supervise the property." Area Director's July 28, 1994 Decision on Reconsideration.

The inadequacies of the current leadership, the proposed extensive, checkerboard trust lands, the distance from and limited resources of the agency, compel the conclusion that the granting of this application be denied.

CONCLUSION

While we have appreciated receiving an extension of time to provide these comments, the magnitude of this Application and its impact on these established communities make it clear that our time was inadequate. We reserve the right to supplement and clarify this submission, and understand that as the OIN submits their supplemental or any responsive materials, we will have the opportunity to review and reply.

of Indian Country," New York Times, February 19, 2006 (Attached hereto as [Exhibit EE](#)) Preferential treatment and gambling influence has been cited as having occurred within the OIN (see affidavit of Edward C. Fike, attached as [Exhibit FF](#), paragraph 6(b), identifying three instances, one related to unlicensed driving; others relating to possession and disposal of illegal drugs, and unlawful consumption of alcohol while gaming, and (f) a cover up of an environmental spill.)

Nevertheless, given the principles established by *Sherrill*, a fair application of the Secretary's regulations, and common sense, the materials submitted herewith amply justify the denial of the Application.

Very Truly Yours,

S. John Campanie

CC (with enclosures)

Honorable Charles E. Schumer

Honorable Hillary Rodham Clinton

Honorable John M. McHugh

Honorable Sherwood L. Boehlert

Rocco J. DiVeronica

Michael Olsen, Esq.

David M. Schraver, Esq.

Randal B. Caldwell, Esq.

Gregory Allen, Esq.

CC (without enclosures)

Honorable George Pataki

Honorable Raymond E. Meier

Honorable David J. Valesky

Honorable RoAnn Destito

Honorable William D. Magee

Honorable David R. Townsend, Jr.

Joseph A. Griffo

Scott Henderson

[Back To Top of Page](#)