

Comments – Jacob Miller
BIA Scoping Hearings
11 January, 2006

My name is Jack Miller, and I am Director of the Madison County Planning Department. On the basis of my experience I would like to address some related issues bearing on the conduct of the Environmental Impact Statement under NEPA for the proposed transfer to Federal trust status for the subject 17, 000-odd acres of land.

Last year's Supreme Court decision on the Sherrill case alluded to a "checkerboard" pattern of alternating state and tribal jurisdictions as posing a serious burden to local and state governmental administration and as adversely impacting neighboring landowners. That '*checkerboard*' accurately applies to the subject acreage may be demonstrated by noting that the total length of property lines between Oneida Nation-owned land and non-Nation-owned land is some 310 *miles*.

A general principle of local land use regulation in New York State is that a zoning jurisdiction may not zone *just part* of its territory. The basis of this principle in the concept of environmental justice should be obvious. Because 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. There is, of course, no requirement in New York State for a municipality to adopt zoning or subdivision regulations. However, every one, in both counties, in which the Oneida Nation has applied to place their land in Federal trust, *has* adopted zoning or a local land use law. None has rescinded such a law. There can be no doubt that, where the Oneidas own significant acreage, approval of the transfer of these 17,000-odd acres would undercut these laws. That the greater part of the land is presently undeveloped and open to new, and potentially unregulated, development makes this all the more alarming.

The NEPA checklist of potential impact categories for consideration in an Environmental Impact Statement lists some thirty-seven such categories—environmental, socioeconomic, and relating to community facilities and services. A peculiar aspect of the EIS for this proposed land transfer which the BIA will have to grapple with, to do its job responsibly, is that the actual impacts will not be the result of some objectively reviewable project or projects on the land to which those categories may *now* be applied. Rather, it will be from the removal from the purview of *all* the specific regulations—State, as well as local—that would serve to protect the interests of those owning, or living, or using land adjacent to, or nearby, or downstream or downwind of any and all future development on land placed in trust.

With all due respect, the Nation Representative's statement, in his cover letter to the application, that "there is no anticipated change in the use of any of the land that is subject of this request"—however sincere it may *now* be—cannot seriously be considered

a basis for such a sweeping removal of environmental and land use safeguards *in perpetuity*. In the absence of a crystal ball, it would seem the BIA must either develop worst-case scenarios for the development or redevelopment of all 450-odd parcels, or devote serious consideration in its EIS to alternatives to the requested land-to-trust application.