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January 27, 2006

David M. Schraver Esq.
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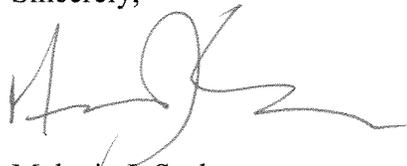
Re: Sherrill Fee to Trust Opposition Materials

Dear Mr. Schraver:

Enclosed please find a courtesy copy for of Sherrill's submission in opposition to the Oneida fee to trust application.

Please give me a call if you have any questions, and thank you again for your help.

Sincerely,



Melanie J. Sacks

Enclosure

January 27, 2006

VIA FEDERAL EXPRESS

Mr. Scott C. Meneely
Acting Director, Eastern Region
Bureau of Indian Affairs
545 Marriott Drive
Suite 700
Nashville, TN 37214

Re: Oneida Indian Nation of New York Fee to Trust Land Application

Dear Mr. Meneely,

We represent the City of Sherrill, New York ("Sherrill"), and submit these comments in opposition to the fee to trust application of the Oneida Indian Nation of New York ("OINNY"), dated April 4, 2005. As described more fully below, the OINNY fee to trust application (the "Application") should not be granted as to those parcels located within Sherrill (hereinafter, the "Sherrill Parcels").¹

OINNY currently owns the Sherrill Parcels in fee simple, and operates businesses in conformance with local zoning regulations. The Application indicates that OINNY does not expect any changes in its use of any land subject to the Application. Sherrill presently provides, and will continue to provide, its taxpayer-funded municipal services to the Sherrill Parcels, even if the land is taken into trust by the federal government. Under the circumstances, transfer of the Sherrill Parcels to federal government trust is unnecessary for the benefit of OINNY, and severely detrimental to Sherrill, and the health and safety of its citizens.

It is impossible for the federal government to effectively administer and provide municipal services to the isolated Sherrill Parcels, which are distant from the OINNY reservation

¹ The Sherrill Parcels within Group 2, and the subject of this opposition, specifically consist of Tax Map Nos. 322.014-1-23 (W. Seneca St.), 322.014-1-24 (W. Seneca), 322.014-1-25 (Prospect St.), 322.014-1-26 (Prospect St.), 322.015-2-40.3 (Rt. 5), 322.015-2-45.1 (Rt. 5), 322.015-2-47 (State St. & Rt. 5), 322.015-2-64 (Prospect St.) and 322.015-2-65 (212 Prospect St.). The specific characteristics of the Sherrill Parcels – including, but not limited to the size of each parcel, taxes assessed for each parcel, zoning restrictions and the services provided by Sherrill with regard to each parcel – are discussed in detail in the Addendum hereto.

lands. It is also contrary to the purposes of 25 U.S.C. § 465 (“Section 465”) and 25 C.F.R. § 151.11 to allow the Sherrill Parcels to be taken into federal trust. The Sherrill Parcels are centrally located within the City of Sherrill, and closely adjoined (and surrounded) by non-Indian owned properties and establishments. Furthermore, the Sherrill Parcels are currently used by OINNY to operate for-profit businesses, including a service station, enterprises which need to be closely regulated by local governments, and which pose a significant risk to neighboring residents and/or property owners in the case of an emergency situation. OINNY acknowledges that neither its activities, nor those of the local governments, will be affected by a conversion to trust status. As a result, that trust status is essentially illusory and meaningless for the Sherrill Parcels, and eviscerates the purpose and function of Section 465 trust land process. Furthermore, to require Sherrill to continue to provide municipal services for the Sherrill Parcels at no charge to OINNY is unfair to Sherrill and its non-Indian taxpayers.

In addition, OINNY can continue to own these properties and operate their businesses without jurisdictional and/or taxation disputes, and without conversion to trust status. All such disputes between OINNY and Sherrill have been resolved in a binding, 5-year compact, signed in October, 2005, after OINNY submitted this Application (the “Compact”, attached as Exhibit A). In light of the *Sherrill* Supreme Court decision, which specifically addressed the taxability of the Sherrill Parcels, OINNY agreed to pay amounts equal to or exceeding any outstanding real property tax assessments, and to pay amounts equal to or exceeding property taxes on the Sherrill Parcels going forward. Compact at ¶¶ 1-3. Although OINNY retains the ability to challenge real property taxes assessed by Sherrill, it agreed to refrain from asserting its tribal sovereignty as a defense to taxation in the future. *Id.* Sherrill and OINNY also agreed to cooperate with regard to municipal regulation of the Sherrill Parcels. While Sherrill was granted the power to impose its health, safety, zoning and signage regulations on the Sherrill Parcels, the city agreed to coordinate with OINNY officials in scheduling any required site visits and/or testing. *Id.* at ¶¶ 4-5. Finally, the Compact provides for binding arbitration to quickly and efficiently resolve any further disputes between Sherrill and OINNY, and minimizing the likelihood of further litigation between the parties. *Id.* at ¶ 8. Of critical importance, the Compact does not apply to trust land. *Id.* at ¶ 9.

In short, the Compact represents a workable method of having OINNY pay for the services it receives from Sherrill and the carefully negotiated settlement of any jurisdictional conflicts between OINNY and Sherrill in the wake of both the *Sherrill* Supreme Court decision, and OINNY’s Application to have land, including the Sherrill Parcels, taken into trust. In entering into the Compact, OINNY was represented by sophisticated legal counsel, who negotiated a mutually acceptable solution to any lingering issues in light of the prevailing law. Taking the Sherrill Parcels into trust would undo the solutions addressed by the Compact. It would leave Sherrill without compensation for the services it delivers. It would leave inherent jurisdictional disputes unresolved. It would leave the health and safety of the citizens of Sherrill unprotected.

I. Converting the Sherrill Parcels to Federal Trust Land Does Not Confer a Benefit Consistent With Section 465.

As more fully set forth in the attached addendum, converting the Sherrill Parcels to federal trust status does not confer a benefit consistent with Section 465. Under Section 465, the Commissioner of Indian Affairs may, in his discretion, “acquire . . . any interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians.” 25 U.S.C. § 465. The Commissioner is required to consider the factors enumerated in 25 C.F.R. § 151.11 in evaluating off-reservation acquisitions. The factors, which are analyzed and applied in detail with respect to the Sherrill Parcels in the addendum hereto, generally take into account the tribe’s need to have trust status conferred upon the land that is the subject of the application, and the impact of taking the land into trust on local governmental units, as well as the community at large. *See* 25 C.F.R. § 151.10 *et seq.* The regulations call upon the BIA to balance the expected benefit to the applicant tribe, against the detriment to the non-Indian community.

The general purpose of the Indian Reorganization Act (“IRA”), including the fee to trust procedure in 25 U.S.C. § 465, is to encourage tribal development and self-sufficiency. *See Mescalero Apache Tribe v. O’Cheskey*, 439 F. Supp. 1063, 1073 (D. N.M. 1977). More specifically, Section 465 “was enacted ‘to safeguard Indian lands against alienation from Indian ownership and against physical deterioration’”, and motivated, at least in part, upon the perceived inability of Indian tribes to manage allotted land. *South Dakota v. Dep’t of the Interior*, 314 F. Supp. 2d 935, 943 (D. S.D. 2004) (*quoting* H.R. 7902, 73rd Cong., tit. III, § 1 (1934)).

The only benefit to OINNY from conversion of the Sherrill Parcels to trust status is that OINNY will be able to inhabit and use the Sherrill Parcels without the burden of local property taxes, while receiving all local municipal services. Such mere freedom from taxes, without more, is not within the purposes of the IRA. OINNY purchased the Sherrill Parcels with its own funds, on the open market, and has independently operated the businesses on the Sherrill Parcels since that time. OINNY’s pattern of ownership in this case, therefore, is far outside the ills which Section 465 was designed to remedy – specifically, where Indians had been allotted property in the early part of last century, but frequently forfeited such property to local governments after unsuccessfully assimilating in non-Indian communities.

In addition, as noted above, Sherrill and OINNY have resolved the jurisdictional issues with regard to taxation and/or regulation of the Sherrill Parcels without conversion to trust status. The Compact entered into by Sherrill and OINNY solved the conflicts between the parties, without allowing OINNY to receive services for free, and without risking the health and safety of the citizens of Sherrill. Conversion to trust status would undo that solution.

II. Taking the Sherrill Parcels Into Federal Trust Severely Harms Local Governmental Interests and Non-Indian Property Owners.

There are dire consequences that flow from granting the Application with regard to the Sherrill Parcels, and include a confusing and inconsistent checkerboard pattern of local and

federal jurisdiction within the City of Sherrill, the creation of a public safety hazard from the failure to effectively regulate the Sherrill Parcels consistent with local policy and standards, and the loss of tax revenue.

First, the isolated and discrete location of the Sherrill Parcels makes it impossible for the federal and/or tribal governments to effectively and safely exert jurisdiction. Not only would such an arrangement create precisely the type of a confusing “checkerboard” pattern of jurisdiction that the United States Supreme Court has repeatedly counseled against (*see, e.g., Sherrill*, 125 S. Ct. at 1493; *Hagen v. Utah*, 510 U.S. 399, 420 (1994)), but it is logistically impossible for the federal and/or tribal governments to effectively exert day-to-day control over these parcels in isolation. In its decision with regard to OINNY-owned property within the City of Sherrill (including the Sherrill Parcels), the Supreme Court specifically noted that the resulting “checkerboard of alternating state and tribal jurisdiction in New York State . . . would ‘seriously burden the administration of state and local governments’ and would adversely affect landowners neighboring the tribal patches.” *Sherrill*, 125 S. Ct. at 1493 (*citing Hagen*, 510 U.S. at 421). The *Sherrill* Court also specifically noted the historically unbroken and unchallenged jurisdiction exercised by state and local governments over the Oneida-claimed lands, including the Sherrill Parcels. As the Court stated, “[t]here is no dispute that it has been two centuries since the Oneidas last exercised regulatory control over the properties here or held them free of local taxation. Parcel-by-parcel revival of their sovereign status, given the extraordinary passage of time, would dishonor ‘the historic wisdom in the value of repose.’” *Sherrill*, at 1492, *citing County of Oneida, New York v. Oneida Indian Nation of New York (“Oneida II”)*, 470 U.S. 226, 262 (1985) (Stevens, J., dissenting).

Furthermore, the negative consequences of the Federal government’s patent inability to effectively regulate and monitor the Sherrill Parcels, if taken into trust, fall squarely upon the owners of surrounding properties. First, Sherrill would continue to provide taxpayer-funded municipal services, such as fire and police protection, without receiving any tax revenue from OINNY with respect to the Sherrill Parcels. In addition, prohibiting Sherrill from exerting regulatory control over the Sherrill Parcels, and the activities that take place on the properties – particularly with regard to such hazardous activities as operating a gas station – raises a considerable risk that neighboring properties will be damaged if state and local codes are not enforced.

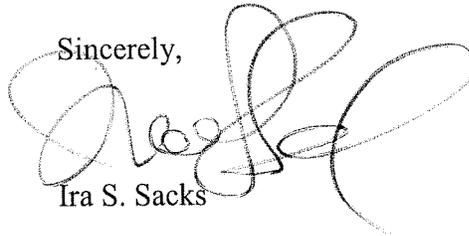
In conclusion, analysis and application of all of the factors in Section 151.11 to the particular characteristics of the Sherrill Parcels, and OINNY’s statements regarding its planned use and disposition of the properties, counsels against conferring trust status on the Sherrill Parcels. In light of the fact that Sherrill will continue to provide municipal services, and OINNY plans to continue to use the properties in the same manner as it already does, there is no benefit that will accrue to the tribe from attaining trust status, other than being freed from paying for services that it receives from Sherrill and endangering the health and safety of the citizens of Sherrill. In contrast, removal of local jurisdiction over the Sherrill Parcels will detrimentally affect the clarity of local-federal jurisdictional boundaries, the quality of municipal services

Mr. Scott C. Meneely
January 27, 2006
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provided to the Sherrill Parcels, and Sherrill's budget to provide municipal services to the Sherrill Parcels and other properties within the city.

In addition to relying on this letter and the addendum and Exhibit A hereto, the City of Sherrill joins in the submissions by the Counties of Oneida and Madison in opposition to the Application, and by the State of New York.

Sincerely,

A handwritten signature in black ink, appearing to read "Ira S. Sacks", with a large, stylized flourish extending to the right.

Ira S. Sacks

ADDENDUM

I. Properties, Services Provided and Community Characteristics.

The Sherrill Parcels categorized as Group 2 properties for the purposes of this Application are as follows:

<u>Tax Map No.</u>	<u>Acquired</u>	<u>Location</u>	<u>Use</u>	<u>Past Use</u>	<u>Adjacent Use</u>	<u>Size (acres)</u>	<u>Annual Taxes</u>
322.014-1-23	1996	W. Seneca St.	Warehouse/ apartment	Light mfg	Residential	.583	\$2812.05
322.014-1-24	1997	W. Seneca St.	Residential	Residential	Light mfg/residential	.316	\$ 483.98
322.014-1-25	1996	Prospect St.	Vac./Parking	Residential	Light mfg/residential	.270	\$ 28.35
322.014-1-26	1996	Prospect St	Vac./Parking	Residential	Light mfg/residential	.366	\$ 28.35
322.015-2-40.3	9/1/98	Rt. 5	Vacant	Vacant (former RR)	Gas sta./residential	.428	\$ 6.75
322.015-2-45.1	9/1/98	Rt. 5	Gas Station	Gas Station	Comm'l/residential	.788	\$4504.95
322.015-2-47	9/1/98	State St./Rt. 5	Vacant	Residential	Gas sta./residential	.322	\$ 48.60
322.015-2-64	1997	Prospect St.	Vacant	Residential	Residential	.190	\$ 25.65
322.015-2-65	1997	212 Prospect	Residential	Residential	Light mfg/residential	.190	\$ 455.63

The total annual property taxes levied on the Group 2 Sherrill Parcels is \$ 8394.31. The Group 2 Sherrill Parcels constitute 3.453 acres, in all. OINNY's Application indicates that no changes to the current use of the Sherrill Parcels are planned. App. at 1. All of the Group 2 Sherrill Parcels at issue are presently zoned as either commercial or residential properties. The properties are surrounded by other properties in the city of Sherrill.

Sherrill provides a number of taxpayer-funded services to the Sherrill Parcels. Those services cannot be provided by anyone other than Sherrill. Sherrill provides police and fire protection, as well as safety inspections of the properties. Sherrill also maintains the streets and sidewalks in and around the Sherrill Parcels, including, but not limited to the provision of snow removal services, street cleaning and street lighting. Sherrill provides refuse and garbage removal services to the Sherrill Parcels, and maintains storm sewers. Sherrill property taxes also fund general governmental and community support functions, including, but not limited to: assessment, engineering services, parks, library services and youth and cultural events. Finally, Sherrill arranges for water, sewer and electric service on a use basis to the Sherrill Parcels. Not only do the services provided by Sherrill inure to the immediate benefit of property owners such as OINNY, but they serve to enhance the value of properties within Sherrill's jurisdiction. Those services also protect the health and safety of users of the properties, as well as users of the surrounding properties.

As observed by the Supreme Court in *City of Sherrill v. Oneida Indian Nation of New York*, local government has exercised over 200 years of unbroken jurisdiction over the Sherrill Parcels, and the parcels are integrated with Sherrill's comprehensive city planning and regulatory scheme. 125 S. Ct. 1478, 1492 (2005). In the two centuries since the Oneida lost control of the Sherrill Parcels, Sherrill and its surrounding areas have been overwhelmingly developed and

populated by non-Indians. *Id.* The Sherrill Parcels, therefore, are both surrounded by and physically located in very close proximity to other non-Indian properties, and physically remote from any other Indian-owned lands.

II. Application of Factors in 25 C.F.R. 151.11.

Section 151.11 lists several factors the BIA must consider where, as here, a tribe seeks trust status for land that is “off-reservation”. 25 C.F.R. § 151.11. Off-reservation land is defined as “land located outside of and noncontiguous to the tribe’s reservation”. *Id.* The relative significance of each Section 151.11 factor varies based on the facts and circumstances of a particular case, and a request to take land into trust pursuant to 25 U.S.C. § 465 (“Section 465”) may be denied based fewer than all of the listed factors. *McAlpine v. Muskogee Area Dir.*, 19 IBIA 2, 6, 1990 WL 321075 (I.B.I.A. October 10, 1990). Application of the Section 151.11 factors, therefore, demands that the BIA carefully balance the benefit to the Indian tribe of acquiring trust land status in the subject properties, against the potential detriment to non-Indian property holders or residents of the area.

Analysis and application of the Section 151.11 factors in this case illustrates that the BIA should exercise its discretion to deny the Application with respect to the Sherrill Parcels. Sherrill also requests that the submissions of Madison and Oneida Counties be incorporated in full to Sherrill’s opposition to the Application, as many of the points raised therein are equally applicable for Sherrill. The following additional comments, however, are exclusively applicable to the Sherrill Parcels.

(a) The need of the tribe for additional land.

OINNY currently owns the Sherrill Parcels in fee simple, and indicates that it intends to continue conducting activities on the Sherrill Parcels that are consistent with local zoning regulations. Therefore, the tribe does not need additional land – it already has it! Conversion of the Sherrill Parcels to federal trust land, therefore, adds nothing to OINNY’s current land holdings, or to its ability to freely or fully utilize the properties as it desires. Under the circumstances, the only benefit of trust status that will accrue to OINNY as a result of the conversion of the Sherrill Parcels from property owned in fee simple and administered by Sherrill, to trust land within the jurisdiction of the Federal government, is the avoidance of local property taxes.

In contrast, and as described in greater detail below, removal of land from the tax rolls and regulatory scheme of the City of Sherrill poses serious financial and public safety concerns for other Sherrill residents and property owners. In addition, the minimal financial benefit to the tribe conferred by tax-exempt status of the Sherrill Parcels -- without more -- fails to bring the request within the ambit of Section 465, which was enacted so that Indian allotments would be protected from wrongful alienation due to the Indian’s presumed inability to effectively manage such lands. *See, e.g., South Dakota v. Dep’t of the Interior*, 314 F.Supp. 2d 935, 943 (D. S.D. 2004).

(b) The purposes for which the land will be used.

Although 25 C.F.R. 151.10 states that the Commissioner shall consider the proposed use of the land in all cases, the tribe's planned land use is of special significance and weight where (1) the tribe plans to use the land for "business purposes" (25 C.F.R. 151.11(c)); and/or (2) the parcels subject to review are remote from the tribe's reservation. (25 C.F.R. 151.11(b)). Both circumstances exist in this case.

OINNY uses, and plans to continue to use, the Sherrill Parcels for commercial, for-profit enterprises consisting of a service station and a textile manufacturing operation. There is nothing in the Application that indicates OINNY plans to utilize the Sherrill Parcels for any activity that furthers the Oneida tribal culture or community. On the contrary, it is clear that these commercial and residential properties are operated in the same manner as any non-Indian owned properties in the City of Sherrill. While Sherrill notes that the regulations do not require that land taken into trust by the federal government be dedicated to tribal cultural preservation or similar activities, the Application, as applied to the Sherrill Parcels, is easily differentiated from those instances in which trust land status was found to be meritorious based on the proposed cultural uses. *See, e.g., South Dakota v. Dep't of the Interior*, 423 F.3d 790, 801 (8th Cir. 2005) (declining to disturb BIA grant of fee to trust application where tribe presented a "comprehensive plan" to attract "heritage tourism" to the subject area, including a visitor center and large outdoor displays); *South Dakota v. Dep't of the Interior*, 401 F. Supp. 2d 1000, 1008 (D. S.D. 2005) (sustaining BIA grant of trust land application to accommodate residences for additional tribe members; Court specifically found that tribal membership increased by 20% in prior ten years).

In addition, the Sherrill Parcels are completely separate and remote from the remainder of the OINNY's current reservation, and the other lands covered in this Application. As the regulations provide, "as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition." 25 C.F.R. § 151.11(b). Application of this stricter standard further undercuts any perceived benefit to OINNY that could not be achieved by continuing to hold the Sherrill Parcels in fee simple.

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

The separation of the Sherrill Parcels from the OINNY reservation and the other lands covered by the Application, and their location within the midst of a non-Indian city, also bears on the significant risk of jurisdictional conflict and confusion that would result if the Sherrill Parcels were converted to federal trust land. Creating small pockets of federal jurisdiction within Sherrill creates an inconsistent pattern of checkerboard jurisdiction. Specifically, the imposition of federal and/or tribal jurisdiction upon a predominantly non-Indian populated area will severely disrupt the justifiable expectations of non-Indian residents of continuity and consistency in local government. Based on the long history of local government control and regulation of the Sherrill Parcels, and the "disruptive practical consequences" that would result from concurrent local and external jurisdiction in the same area, the potential for inconsistent jurisdiction within

Sherrill is highly undesirable, and constitutes a severe burden on state and local governments. *See Sherrill*, 125 S. Ct. at 1493.

Removing the Sherrill Parcels from local jurisdiction also would remove the properties from zoning and safety restrictions on the properties, which have been designated according to the general zoning scheme of Sherrill and exist for the protection of its residents and the preservation of property value. Removal of zoning designations would create a situation where OINNY could use the properties in a manner that was inconsistent with the use of neighboring properties (for example, operating a factory on property that was zoned for residential use, and was located in the midst of other residential properties). In addition, if serious fire or safety code violations were to exist on the Sherrill Parcels, trust land status would prohibit Sherrill from taking any action, even to protect the interests and property of neighboring residents. Such a situation is untenable and unworkable in the midst of a small town, with surrounding non-Indian properties in close proximity.

In addition, conversion of the properties to trust status is unnecessary. OINNY can continue to own these properties and operate their businesses without jurisdictional and/or taxation disputes. All such disputes between OINNY and Sherrill have been resolved in a binding, 5-year compact, signed in October, 2005, after OINNY submitted this Application (the "Compact", attached as Exhibit A). In light of the *Sherrill* Supreme Court decision, which specifically addressed the taxability of the Sherrill Parcels, OINNY agreed to pay amounts equal to or exceeding any outstanding real property tax assessments, and to pay amounts equal to or exceeding property taxes on the Sherrill Parcels going forward. Compact at ¶¶ 1-3. Although OINNY retains the ability to challenge real property taxes assessed by Sherrill, it agreed to refrain from asserting its tribal sovereignty as a defense to taxation in the future. *Id.* Sherrill and OINNY also agreed to cooperate with regard to municipal regulation of the Sherrill Parcels. While Sherrill was granted the power to impose its health, safety, zoning and signage regulations on the Sherrill Parcels, the city agreed to coordinate with OINNY officials in scheduling any required site visits and/or testing. *Id.* at ¶¶ 4-5. Finally, the Compact provides for binding arbitration to quickly and efficiently resolve any further disputes between Sherrill and OINNY, and minimizing the likelihood of further litigation between the parties. *Id.* at ¶ 8. Of critical importance, the Compact does not apply to trust land. *Id.* at ¶ 9.

In short, the Compact represents a workable method of having OINNY pay for the services it receives from Sherrill and the carefully negotiated settlement of any jurisdictional conflicts between OINNY and Sherrill in the wake of both the *Sherrill* Supreme Court decision, and OINNY's Application to have land, including the Sherrill Parcels, taken into trust. In entering into the Compact, OINNY was represented by sophisticated legal counsel, who negotiated a mutually acceptable solution to any lingering issues in light of the prevailing law.

Taking the Sherrill Parcels into trust would undo the solutions addressed by the Compact. It would leave Sherrill without compensation for the services it delivers. It would leave inherent jurisdictional disputes unresolved. It would leave the health and safety of the citizens of Sherrill unprotected.

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

The federal government's inability to effectively administer land that is the subject of an application under Section 465 is of critical significance, and alone constitutes a sufficient basis on which to deny the application. *Miami Tribe of Oklahoma v. Muskogee Area Director*, 28 IBIA 52, 55, 1995 WL 366101 (I.B.I.A. June 8, 1995); *McAlpine*, 19 IBIA at 9. As the Interior Board of Indian Appeals has stated, "[t]he ability of BIA to discharge the necessary trust functions on newly acquired trust property is an important consideration in determining whether or not a trust acquisition should be approved." *Miami Tribe*, 28 IBIA at 55. The remoteness of the land at issue is a factor bearing on the ability of the federal government to provide supervision and services to that parcel of land. *Id.*

In this case, as observed above, the Sherrill Parcels are not located near other Indian or OINNY-held lands, but rather are embedded among non-Indian properties that are regulated by Sherrill. In addition, OINNY uses at least a portion of the Sherrill Parcels to conduct business operations for a gas station and a textile plant -- activities which pose a significant risk of creating a public hazard, and for which it is critical that effective, day-to-day supervision and emergency support be available. Sherrill is undoubtedly far more able to provide such services than the federal government; indeed, neither the federal government nor the tribe can provide such services at all.

- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

OINNY owns the Sherrill Parcels in fee simple, and, pursuant to the recent decision of the United States Supreme Court in *Sherrill* (125 S. Ct. 1478 (2005)), OINNY is required to pay property taxes on the Sherrill Parcels. Therefore, the federal government's conversion of the Sherrill Parcels to trust land will result in the removal of the Sherrill Parcels from local tax rolls, and the loss of significant revenue by the city. Because of the seriousness of the potential consequences of a loss of property tax revenue for local and state governments, where a tribe is unable to present any "justification for removing [lands] from the local tax rolls," among other things, an application to take land into trust will not be granted. *McAlpine*, 19 IBIA at 9.

Sherrill is a small municipality. As stated above, the Group 2 Sherrill Parcels generate annual income of \$ 8394.31 for Sherrill. Furthermore, the proposed removal of tax revenue of the Sherrill Parcels is patently unfair in light of the fact that OINNY will continue to receive provision of essential safety, health and maintenance services from Sherrill, even though it would pay no taxes for such services if the Sherrill Parcels are taken into trust.

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

Sherrill is not aware of any limitations on the Federal government's authority to take the Sherrill Parcels into trust pursuant to 25 U.S.C. § 465.

COMPACT

WHEREAS the City of Sherrill (the “City”) is a political subdivision of the State of New York organized as a city with all the rights and powers attendant thereto;

WHEREAS the Oneida Indian Nation of New York (the “Nation”) is a federally-recognized Indian tribe with all the rights and powers attendant thereto;

WHEREAS the City and the Nation have had disputes with respect to certain real property taxation and health and safety regulatory issues, including disputes that have resulted in state and federal litigation;

WHEREAS the United States Supreme Court decided *City of Sherrill v. Oneida Indian Nation*, 125 S.Ct. 1478 (2005), on March 29, 2005; and

WHEREAS the City and the Nation share an interest in resolving the disputes between them and in promoting cooperation between them that will promote the general welfare with respect to issues involving public finance, health and safety;

NOW, THEREFORE, the City and the Nation make this compact (the “Compact”) and agree to the following terms.

1. The City has submitted real property tax bills to the Nation, from 1997 to the present, in amounts totaling \$59,814.07, exclusive of interest and penalties. Upon execution of this agreement by both parties, the Nation will pay the City an amount that equals or exceeds \$59,814.07, and the City will waive any further demand as to principal, penalties or interest with respect to previous property tax bills and will remove any tax liens that may be on the Nation’s properties.

2. With respect to future real property tax assessments during the life of this Compact and concerning land within the City that is owned by the Nation, and not otherwise, the

Nation agrees to forego arguments that its lands in the City have no taxable value under state law because of federal restrictions on alienation or for any other reasons relating to the Nation's status as a federally-recognized Indian Tribe, except for discrimination. The City agrees that otherwise the Nation is entitled to make all other legal challenges to future real property tax assessments.

3. With respect to future real property tax bills for properties owned by the Nation in the City, the Nation will pay the City amounts that equal or exceed the amounts shown on the bills. These payments will be made on or before the due date shown on the bill. Upon receipt of such payments, the City will waive any demand for further payment as to the property tax bills to which the Nation's payments relate.

4. The Nation agrees to meet or exceed all health, safety, zoning and signage standards and regulations generally applicable to properties within the City and that the City may conduct such site visits and testing as reasonably required to determine that such standards have been met or exceeded. With respect to zoning, existing non-conforming uses, if any, will not be deemed a violation of this Compact.

5. The City agrees that it will give the Nation reasonable notice of any request for site visits and testing, and the Nation agrees to permit such site visits and testing within a reasonable time. In a health or safety emergency, reasonable notice will consist of telephone or radio notice to the Nation police dispatcher immediately prior to or en route to a visit, if possible. Nation health and safety or other officials may accompany City officials or employees during any site visit. Further, Nation and City officials will, as appropriate, consult and cooperate regarding public health and safety issues of mutual concern.

6. The City acknowledges that the Nation and the United States Indian Health Service, a federal agency, inspects Nation properties and agrees that this Compact does not limit the right of the Nation or the Indian Health Service to do such inspections.

7. The City and the Nation agree to dismiss without prejudice all litigation now pending between them in any court.

8. The City and the Nation agree to binding arbitration to enforce the terms of this agreement. Any dispute, controversy or claim arising out of this Compact in whole or in part, including without limitation any claim of violation resulting from the site visits and/or testing referred in in paragraphs 4 and 5 above, shall be resolved by arbitration, and any resulting award will be enforceable in the United States District Court for the Northern District of New York. The party seeking arbitration will serve upon the other a notice of demand to arbitrate. The demand must describe with particularity the nature of the dispute and the relief that the demanding party seeks. Representatives of the City and the Nation will meet and confer within ten (10) calendar days of the receipt of the arbitration demand and will attempt in good faith to resolve the dispute. If the dispute has not been resolved within twenty (20) calendar days of the service of the arbitration demand, the dispute will be determined by arbitration by a single arbitrator, and the arbitration will be pursuant to the rules of the American Arbitration Association. The cost of arbitration will be paid by the losing party, unless the arbitrator's decision specifies otherwise, but the parties will bear their own costs and attorneys' fees. Arbitration shall occur in the City of Sherrill unless the parties agree otherwise.

9. This Compact does not apply with respect to any land that is taken into trust by the United States for the benefit of the Nation or set aside by the United States for the Nation by or pursuant to federal statute.

10. Any party to this Compact may withdraw from it effective September 1, 2010, by giving ninety (90) days prior notice of intent to withdraw. In the event no such notice is given, the Compact shall be automatically renewed for successive five (5) year terms.

11. The City and the Nation waive any immunities they may have, including sovereign immunity, for the sole purpose of enforcing the terms of this Compact by a party to this Compact pursuant to the enforcement provisions herein, and for no other purpose, and no other or third party has any rights on account of this waiver or under this Compact.

12. Any term of this Compact that may be invalid or unenforceable will be severed, and the remainder of this Compact will be enforced.

13. Notice required by or related to this Compact will be made in writing and served by FedEx or certified mail, return receipt requested: if by the Nation, to the Mayor of the City of Sherrill, 377 Sherrill Road, Sherrill, NY 13461; and, if by the City, to the Oneida Indian Nation Representative, 5218 Patrick Road, Verona, NY 13478.

14. This Compact constitutes the parties' complete agreement and is an integrated document. There are no other agreements, oral or written.

15. This Compact may not be modified or amended except by a writing of equal formality signed by both parties.

Made this 4 day of October, 2005.

Oncida Indian Nation of New York
By: [Signature]
Ray Halbritter
Nation Representative

City of Sherrill, New York
By: [Signature]
Joseph P. Shay
Mayor

15. This Compact may not be modified or amended except by a writing of equal formality signed by both parties.

Made this _____ day of October, 2005.

Oneida Indian Nation of New York

By: _____

Ray Halbritter
Nation Representative

City of Sherrill, New York

By: Joseph P. Shay

Joseph P. Shay
Mayor