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March 1, 2006

BY FACSIMILE (615-564-6701) AND REGULAR MAIL

Mr. Franklin Keel
Director
United States Department of the Interior
Bureau of Indian Affairs
Eastern Regional Office
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 17,310.43 Acres

Dear Mr. Keel:

This letter supplements our letter dated January, 30, 2006 and is submitted on behalf of Madison and Oneida Counties in further response to Scott Meneely's letter dated September 20, 2005 inviting comments and other information on the Application described above.

Impact on the Counties and other local taxing jurisdictions and political subdivisions resulting from the removal of the land from the tax rolls – adverse effects on credit ratings and cost of borrowing. 25 C.F. R. §§ 151.10(e), 151.11(a).

The proposed acquisition in trust by the United States of the Oneida Indian Nation of New York ("OINNY") properties portends adverse effects on credit ratings and cost of borrowing of Madison and Oneida Counties and other local taxing jurisdictions.

Standard & Poor's Credit Ratings Implications

Standard & Poor's ("S&P") evaluates four basic analytical areas in order to determine the credit rating of a municipality's tax-secured debt: (i) the municipality's economic base; (ii) its financial performance and flexibility; (iii) its debt burden; and (iv) its management.¹ The economic base evaluation in turn relies heavily on analyses of (A) the demographic characteristics of the municipality, including age, education, labor skills and, especially, wealth

¹ Standard & Poor's Public Finance Criteria 2005—Tax-Secured Debt.

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characteristics (wealth characteristics are to S&P “a highly critical element of a demographic review”); and (B) the size, structure and diversity of the municipality’s real property tax base, which is analyzed on a historical trend basis with respect to assessed value. In its evaluation of a municipality’s economic vulnerability, S&P will pay particular attention to “significant changes in the tax base . . . to determine whether the causes are structural or cyclical.” In addition, S&P believes that it is “extremely important for an issuer to be able to capitalize on its primary economic strengths in terms of revenue collection.”

In light of the foregoing, there are reasonably foreseeable negative ratings implications of the proposal to have the United States take approximately 17,300 acres of OINNY land into trust. First, by removing the acreage from the jurisdiction of the host municipalities, and from their tax rolls, the “extremely important” ability of the host municipalities to collect revenue with respect to the properties in question would be not just challenged or limited, but eliminated altogether. Also, the action could be perceived to be a negative “significant change” in the tax base of many of the affected municipalities, particularly (i) because it would result from a “structural” cause as opposed to a “cyclical” cause, and (ii) since the OINNY could later apply to have after-acquired land similarly taken into trust by the United States, the risk of which might cause the present action to be perceived by S&P and other rating agencies as an adverse historical trend affecting the size, structure and diversity of the municipalities’ real property tax base. Finally, it seems reasonable to expect that the demographic characteristics of the host municipalities would likewise be prospectively adversely affected, since potential future residents with favorable “wealth characteristics” will likely be both (A) sophisticated in their analysis of the marginal increase in the real property tax burden that they would bear as a result of the presently proposed action, and (B) able to choose among several alternative domiciles, many of which could provide an equal or greater level of municipal services in return for a lower real property tax burden.

Correlation Between Credit Risk and Cost of Borrowing

Professor John Capeci, writing in the *National Tax Journal*, analyzed data from 136 municipal issuers in order to “investigate how the [general obligation bond] market reacts to changes in credit quality, both directly, and indirectly through changes in credit ratings.”² Capeci concluded first that “both the credit rating and the cost of borrowing are sensitive to [certain] changes in the fiscal condition of the issuer.” He further estimated, based on his research, that the independent effects on the issuer’s cost of borrowing of changes in its credit rating alone (i.e., without investigation by the market into the underlying causes of such changes) were “substantial.” Finally, Capeci candidly noted that one “shortcoming of the study lies in the limited range of rating changes that it analyzes. All of the bonds in the sample have investment grade ratings. However, the market’s reaction to a change in rating from investment grade to

² John Capeci, *Credit Risk, Credit Ratings, and Municipal Bond Yields: A Panel Study*, 44 *National Tax J.* 41 (1991).

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speculative grade . . . may well exceed its reaction to a change from one investment grade rating to another.”

Two of Capeci’s findings are particularly noteworthy in the context of the present proposal to have the United States take a substantial amount of OINNY land into trust, especially in light of the ratings criteria described above. First, as a practical matter, Capeci found that in his sample, the difference in the cost of borrowing between the highest investment grade rating category and the lowest investment grade rating category ranged between 115 and 148 basis points per year. In other words, for a hypothetical municipality that borrows \$5,000,000 through the issuance of general obligation bonds, a drop from the highest investment grade rating category to the lowest would cost the issuer between \$57,500 and \$74,000 of additional interest per year; and, Capeci surmised, a drop *below* the lowest investment grade rating category might result in an even more dramatic rate of increase in borrowing costs. Second, Capeci determined that “borrowing rates . . . seem to respond directly to certain changes in the issuer’s fiscal situation; [even] holding credit ratings fixed, the cost of borrowing declines with increases in the issuer’s property tax base. Surprisingly, however, the study finds no direct correlation between the cost of borrowing and many other indicators of fiscal stress.” In other words, in Capeci’s study, the relative size of the municipality’s real property tax base was perhaps the most important single economic factor in the determination of its cost of borrowing. Putting aside for the moment any additional effects that might result independently from changes in its credit rating, material changes in the size of a municipality’s property tax base should translate directly into fluctuations in its interest cost.

Given Capeci’s findings, if the United States takes OINNY land into trust as presently proposed, the resulting change in the affected municipalities’ property tax base could lead, in varying degrees, directly to increased borrowing costs. Because the proposed action may, for the reasons discussed above, also result in a change in the municipalities’ applicable credit ratings, such a disposition of OINNY land could reasonably be expected to translate into tens of thousands of dollars of additional interest each year.

These adverse impacts on the Counties’ are not academic or hypothetical. One result of OINNY’s unpaid tax levies is that Madison County’s investment grade credit rating has dropped from A to A3. The decline has increased borrowing costs on bond issues in the last five years. *See*, O’Brien & Gere, “Comments on the Oneida Indian Nation’s Land In Trust Application – Group 3 Parcels,” at 57; Center for Governmental Research, “Jurisdictional and Economic Impacts of Granting the Oneida Indian Nation’s Application to Take Land into Trust in Oneida and Madison Counties” (February, 2006) , at 36.

If and to the extent that the Secretary grants the Application, she must determine that the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status. 25 C.F.R. §§ 151.10(g), 151.11(a).

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The size, scope and complexity of the Application is unprecedented; and, as demonstrated in the comments and submissions by the State of New York, O'Brien & Gere, the Center for Governmental Research, Madison and Oneida Counties and others, the Application raises a large number of substantial environmental issues, jurisdictional problems and both actual and potential conflicts of land use. The intended use of certain parcels for a significant gaming and resort enterprise amplifies these issues. The lands in question are hundreds of miles from the Eastern Regional Office, and the distance alone will make it virtually impossible for BIA personnel to visit the property regularly in order to properly administer any trust lands. The BIA and the Secretary must determine whether the BIA has the staff, expertise and resources to assume the additional responsibilities that would result from taking the lands into trust, particularly in view of the multiple existing uses of the various properties and the likely future development and potential uses of the 444 parcels that are the subject of the Application. The inability of the BIA to properly administer the lands sought to be taken into trust, alone, weighs heavily against granting the Application and must be seriously considered and described in detail in the Secretary's decision on the Application.

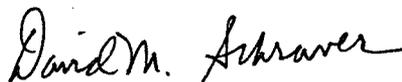
Revised CGR Report enclosed.

The Center for Governmental Research has revised and corrected certain tables attached to its January report, which is otherwise unchanged. We enclose the revised report as CGR's February, 2006, report.

Conclusion

The Counties of Madison and Oneida have worked closely with the State of New York and O'Brien & Gere in regard to their comments and submissions on the Group 3 parcels and cumulative impacts of the Application; and the Counties support, join in and incorporate by reference the comments and submissions of the State and O'Brien & Gere. Each of the Counties is also submitting its own comments and other information on the Group 3 parcels and cumulative impacts of the Application. Based on these and the comments and other information submitted on the Group 1 and 2 parcels by and on behalf of the Counties, the State of New York, O'Brien & Gere, and the Center for Governmental Research, the Counties respectfully request that the Application be denied. At the very least, alternatives to granting the Application in full must be developed and considered by the BIA and the Secretary.

Very truly yours,



David M. Schrauer

DMS/tsj
Enclosures

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cc: (with enclosure):
Randal B. Caldwell, Oneida County Attorney
S. John Campanie, Madison County Attorney
Michael D. Olsen, Esq.

(without enclosure):
Rocco J. DiVeronica, Chairman, Madison County Board of Supervisors
Joseph A. Griffo, Oneida County Executive
Hon. Charles E. Schumer
Hon. Hillary Rodham Clinton
Hon. Sherwood L. Boehlert
Hon. John M. McHugh
Hon. George Pataki
Hon. Raymond E. Meier
Hon. David J. Valesky
Hon. RoAnn Destito
Hon. William D. Magee
Hon. David R. Townsend