



COUNTY OF ONEIDA  
*Office of the County Executive*

ONEIDA COUNTY OFFICE BUILDING  
800 PARK AVENUE ♦ UTICA, NEW YORK 13501  
(315) 798-5800 ♦ FAX (315) 798-2390

JOSEPH A. GRIFFO  
County Executive  
ce@ocgov.net

February 28, 2006

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: Oneida Indian Nation of New York Fee to Trust Land Application-Group 3  
Parcels**

Dear Mr. Keel:

Oneida County is writing to respond to your department's letter, dated September 20, 2005, requesting comments on the proposed acquisition of approximately 17,310.43 acres of land by the United States to be held in trust for the Oneida Indian Nation of New York (OIN). The County of Oneida is incorporating, by reference herein, the comments submitted by the State of New York, including the reports prepared by O'Brien & Gere, the letters prepared by our counsel, David M. Schraver, Esq. of Nixon Peabody LLP opposing the application and the scoping comments and attachments prepared pursuant to the National Environmental Policy Act (NEPA), and the "Report of Jurisdictional and Economic Impacts of Granting the Oneida Indian Nation's Application to Take Lands Into Trust in Oneida and Madison Counties," prepared by Kent Gardner, PhD., Center for Governmental Research, dated January 2006 and all supplemental reports.

Oneida County opposes the application because the effects of granting a patchwork of tribal trust land throughout Oneida County would create the practical disruptions to governance which the United States Supreme Court in the *City of Sherrill vs. Oneida Indian Nation of New York*, 544 U.S. 197, 125 S.Ct. 1478 (2005) rejected. "A checkerboard of alternating state and tribal jurisdiction in New York State – created unilaterally at OIN's behest – would seriously burden the administration of state and local governments and would adversely affect landowners neighboring the tribal patches" 125 S.Ct. at 1493. Although the Supreme Court suggested a possible mechanism for the OIN to apply to acquire lands in trust, it was quick to point out that such process must be conducted carefully, taking into account the "area's governance and well-being". 125 S.Ct. at 1493. The Supreme Court suggested the Land-Into-Trust process as an option, not as a guarantee.

The County further objects generally to the application being reviewed pursuant to 25 U.S.C. Section §465 and 25 CFR §151.10 as “on reservation” lands based upon the rationale in *City of Sherrill* case. More specifically, two parcels in Group 2 numbered 323.000-1-1.3 and 323.000-1-2, and three parcels in Group 3 numbered 322.000-2-19, 322.000-2-28, and 323.000-1-1.1 are located within the Treaty of 1798 (Treaty with Oneidas) boundary, which was approved by the United States Senate and proclaimed by the President. The Oneida Nation has conceded that these parcels are not within what they consider their reservation.<sup>1</sup> Moreover, seven parcels in group 2, listed in the table below are outside the Oneida’s historic reservation described in the Treaty of 1788 between the State of New York and the Oneida Nation, and as such should not be considered as “on reservation lands”:

**TABLE 1-Properties located outside Historic Reservation as described in Treaty of 1788**

Address	Tax ID #	Acreage	County	Town	Village
Pioneer Ave.	252.007-3-32.2	6.13	Oneida	Vienna	Sylvan Beach
804 Harbour Dr.	252.007-3-32.272	0	Oneida	Vienna	Sylvan Beach
1109 Pioneer Ave.	252.007-3-32.267	0	Oneida	Vienna	Sylvan Beach
805 Pioneer Ave.	252.007-3-32.269	0	Oneida	Vienna	Sylvan Beach
909 Pioneer Ave.	252.007-3-32.270	0	Oneida	Vienna	Sylvan Beach
Pioneer Ave.	252.007-3-29	0.313	Oneida	Vienna	Sylvan Beach
Pioneer Ave.	252.007-3-30	0.168	Oneida	Vienna	Sylvan Beach

In response to Mr. Meneely’s Letter of September 20, 2005, Oneida County submits the following answers to the four questions posed therein. Please also refer to the letters provided by David M. Schraver, Nixon Peabody LLP, Counsel for Oneida and Madison Counties, the Center For Governmental Research reports attached thereto, and the comments submitted by the State of New York and O’Brien & Gere, all of which Oneida County joins in and incorporates by reference.

1. **Annual Property Tax:** As of March 31, 2006, there will be unpaid real property taxes, beginning with the year 1994 and through and inclusive of 2006, levied in various jurisdictions against properties owned by the Oneida Indian Nation of New York in the amount just over \$26,549,666.02. This amount increases monthly due to non-payment. The above sum includes unpaid taxes on the 2006 tax roll of just under \$21,500,620.45

<sup>1</sup> Attachment A. Declaration of Peter D. Carmen in Support of Oneida Indian Nation’s Motion For Summary Judgment. *Oneida Indian Nation v Oneida County, New York* 6:05-CV-0945. Signed December 9, 2005. Page 8. Paragraph Numbered “28.”

and unpaid real property taxes for the years 1994 through and including 2005 in an amount just over \$5 million.<sup>2</sup>

Since 1984, Oneida County has assessed a 2% Hotel/Motel Bed tax that is earmarked for tourism promotion. According to a December 19, 2002 Syracuse Post Standard article, the Nation collected in 2002 \$180,000 through the assessment of its own hotel tax. Placing Land-Into-Trust would severely impact the County's ability to fund tourism promotion (a major component of the local economy).<sup>3</sup>

2. **Special Assessments:** There are 99 parcels in Group 1 located within the Towns of Vernon and Verona. These parcels are included in various fire, water, and lighting districts in said towns. The special district tax for Group 1 parcels for 2006 is \$1,179,961.82.

There are 155 parcels in Group 2 located in the Towns of Augusta, Vernon, Verona, and Vienna. The parcels are included in various fire, sewer, water, lighting, and library districts. The special district tax for Group 2 parcels for 2006 is \$29,267.21.

There are 31 parcels in Group 3 located in the Towns of Verona, Vernon, and Augusta. The parcels are included in various fire, sewer, water, and library districts. The special district tax for Group 3 parcels for 2006 is \$2,232.16.

3. **County Services:** The County provides a multitude of governmental services to the real property which the OINNY is requesting to be placed into trust. Our County Department of Public Works provides services on all county roads in the Towns of Augusta, Vernon, Verona, and Vienna, including but not limited to, snow removal, mowing, striping, tree removal, pothole patching, signs, related traffic controls items, surface treatments, pavement overlays, culvert maintenance/replacement, ditch cleaning, shoulder cutting, brush removal, sweeping, stump grinding, litter/trash removal, carcass removal and guide rail repair/replacement. It is undisputed, that the Turning Stone Casino & Resort and its golf courses and other properties have created an increase in vehicular traffic in and over County highways (see CGR report). Commensurate with such increase in traffic is an increase in repair and maintenance of such roadways.

The County of Oneida further provides communication services through our Oneida County 911 Center to the Nation for law enforcement, fire and emergency medical services. Our Sheriff's Department also provides law enforcement functions such as patrol, traffic and accident investigations. The Sheriff's Department further provides special services as requested by the Nation such as criminal investigations, forensic, accident reconstruction, emergency response team, transportation, K-9, hostage negotiation, underwater search and rescue, and the mounted unit.

---

<sup>2</sup> Please see Attachment P. On April 1, 2006, the 2006 tax will increase by approximately \$1 million as a result of statutory penalties and interest.

<sup>3</sup> Attachment B. Coin, Glenn, Turning Stone's One-Year Profit: \$70 Million, Syracuse Post Standard, A6

The Sheriff's Department also conducts undercover underage Tobacco investigations at local area businesses that sell tobacco products. Due to the lack of the County's ability to conduct such sting operations on Nation owned properties, it is conceivable that tobacco is being sold to underage patrons at Nation-owned establishments.

The Environmental Division of the Oneida County Health Department provides a variety of services throughout Oneida County including townships with properties owned by the Oneida Indian Nation of New York. The services provided are aimed towards protecting and promoting the health and safety of residents and visitors of those properties and facilities.

One important service provided within these townships is the education and regulatory oversight of permitted public facilities such as restaurants, public swimming pools, hotels, and public campgrounds. The facilities receive an annual health permit, education and advisement, as well as an annual inspection to ensure compliance with the New York State Sanitary Code. The Health Department has the authority to require immediate corrective action for any serious violations which may potentially impact public health. Some violations, such as improper food handling at a restaurant may only impact the patrons of that facility. However, some violations, such as septic failure at a hotel, campground, or restaurant, have the potential to affect adjacent properties.

The Health Department also has a regulatory responsibility for public water supplies within Oneida County. These facilities are also provided technical expertise as well as an annual inspection to ensure compliance with the New York State Sanitary Code.

Another significant responsibility of the Health Department is plan review and approval of realty subdivisions. The Health Department reviews plans to ensure adequate consideration of factors which may impact public health. The major emphasis of this type of plan review is placed upon the provision of safe and sufficient potable water, provision of adequate wastewater disposal, as well as sufficient storm water management. Without the involvement of this Department, and consideration of these issues, this type of land development may have a significant negative impact on neighboring properties.

The Environmental Division provides many other services throughout Oneida County including to the townships in question. Some of these services include the Rabies Prevention Program, West Nile Virus Prevention Program, Childhood Lead Poisoning Prevention Program, and the Healthy Neighborhoods Program. All of these efforts are geared towards promoting and protecting the health of residents of and visitors to Oneida County. The Environmental Division also works collaboratively with other agencies such as Law Enforcement, Fire and EMS agencies, among others, to enhance existing Emergency Preparedness Plans for Oneida County.

It is important to consider that public health hazards do not stop at property lines or political boundaries. When a hazard exists on one property, the Environmental Division

must attempt to prevent the spread to adjoining properties. This may prove extremely difficult if this region becomes a checkerboard of regulatory oversight.

The Environmental Division of the Oneida County Health Department is also responsible for the enforcement of amendments to the New York State Clean Indoor Air Act. This legislation requires that all workers in New York State be provided with a smoke-free workplace. This responsibility requires that this Department ensure compliance at bars and restaurants. The Department also has the ability to issue a waiver to a facility based upon careful review of qualifying criteria. The amendment to the NYS Clean Indoor Act was enacted in 2003.

The County of Oneida also provides the entire range of additional services offered to Oneida County taxpayers, including, but not limited to:

- a. Services of the District Attorney's Office;
- b. Oneida County Office for the Aging and Oneida County Mental Health;
- c. Oneida County Youth Bureau;
- d. The entire range of services offered by the Oneida County Department of Social Services;
- e. Services provided by Oneida County Soil and Water Conservation District;
- f. Oneida County Office of Veteran's Affairs;
- g. Services of the County Clerk and Commissioner of Finance.

Please refer to reports provided by CGR and O'Brien & Gere for further discussion of County services.

4. **Zoning:** The parcels included in Group 1, 2, and 3 are predominantly located in a rural (agricultural) designated zone. Additional parcels are subject to commercial and residential use.

Much of the property has either been located within the boundaries of a state designated agricultural district, or borders an agricultural district. Agricultural operations within the district are the priority land use, and as such are offered benefits and protections. Clearly, the parcels contained in Group numbers 1, 2, and 3 are within a prime agricultural area, an area which the State of New York and the local municipalities have attempted to protect in a manner that is least disruptive to agriculture and the environment. The direct and cumulative impacts of a casino complex and a high-rise hotel in the heart of an agricultural area have and continue to be experienced by the municipalities and their citizens. Moreover, several of the Oneida Indian Nation properties violate current zoning uses in their respective districts. For example, the Turning Stone Casino Resort complex was developed in an agricultural district without consultation with the Town of Verona and without regard to the zoning process.

Furthermore, it is evident that the appropriate municipal entities have attempted to foster and maintain the economic viability of agricultural uses by their zoning designations. Clearly, such zoning did not contemplate the abandoning of said agricultural uses,

leaving unsightly buildings and structures, as can be seen for example on parcel numbers 270.000-1-33.3, 268.000-1-31, and 270.000-1-35.5.

Such situations are compounded by the fact that the Oneida Indian Nation of New York refuses to comply with local building codes and ordinances choosing instead to leave said structures in a state of deterioration and disrepair.

It is evident that the extensive planning efforts of the State and local governments have been ignored by the Nation.

**GENERAL DISCUSSION**

The review of the Oneida Indian Nation of New York’s application under 25 U.S.C. §465 and 25 C.F.R. §151 for 17,310-acres to be accepted in trust by the United States must be carefully reviewed, taking into consideration the impacts upon the local governments in Oneida County.

The application includes parcels in the towns of Verona, Vernon, Augusta, and Vienna, which contain one city, three villages, four school districts, various hamlets, a number fire districts, and other special districts. These municipalities depend heavily upon property taxes to fund services, which are derived based upon assessment. The total acreage for Verona, Augusta, and Vernon amounts roughly to 86,529-acres, of which the Oneida Indian Nation of New York currently seeks 10,758± acres to be placed into trust. The table’s below highlight the severe impact upon the local communities through a significant percentage of Oneida Nation ownership, especially in the Towns of Verona and Vernon.

**TABLE 2-Percentage of Oneida Indian Nation owned Acreage**

<b>Town</b>	<b>Total Town Acreage ±</b>	<b>Total Acreage ± Requested for Trust</b>	<b>Percent of Acre’s/Total Town Acreage Proposed in for Trust</b>
<b>VERONA</b>	44,352	8564	19%
<b>VERNON</b>	24,448	1923	8%
<b>AUGUSTA</b>	17,728	261	1%

**TABLE 3-Percentage of Oneida County Taxable Value Per Town**

Town	Oneida Nation Taxable Value 2006 Per Town	Total County Taxable Value Per Town	Percent of Taxable Value Proposed in Trust
VERONA	\$399,292,000	\$585,347,202	68%
VERNON	\$8,794,300	\$306,068,058	3%
AUGUSTA	\$366,400	\$51,926,531	1%
VIENNA	\$822,200	\$193,754,334	0.42%
<b>TOTAL</b>	<b>\$409,274,900</b>	<b>\$1,137,096,125</b>	<b>36%</b>

**Groups 1, 2 and 3:**

Group 1 consists of 99 parcels for a total of 3428.278 acres, located within the jurisdictional boundaries of Oneida County, and within the Towns of Verona (80 Parcels, 2,196 ± acres) and Vernon ( 19 parcels, 1, 232 ± acres).

Although the majority of the Group 1 properties are not scattered throughout Oneida County, the impacts of placing those parcels into trust for the benefit of OIN are extremely significant.<sup>4</sup>

Group 2 consists of 155 parcels for a total of 4,558± acres, checkerboarded across Oneida County, within the Towns of Verona (122 parcels, 4,298.43), Vernon (22 parcels, 250.81 acres), Augusta (4 Parcels, 1.58-acres), and Vienna (7 parcels, 6.61 acres).

Group 3 consists of 31 parcels for a total of 2,330.739± acres, located within the jurisdictional boundaries of Oneida County, and within the Towns of Augusta (2parcels, 260.01 ± acres), Vernon (9 parcels, 20.177 ± acres), and Verona (20 parcels, 2,050.52 ±) acres.

Of the above Group 3 parcels, two are located within the City of Sherrill, parcel #322.015-2-1 and 322.014-1-22 (Town of Vernon) and two parcels are within the hamlet of Durhamville, parcel #283.000-1-3 and 283.000-1-2 (Town of Vernon).

<sup>4</sup> As discussed in this document, there are tremendous economic, financial, public safety and jurisdictional impacts to the County should the Group 1 properties be placed into trust. (lack of zoning and building code review, total assessment, etc.)

## USE

The Nation has indicated that the uses for the properties in Groups 1, 2, and 3 will remain the same, to wit, “please be advised that there is no anticipated change in any use of any land that is subject of this request.”<sup>5</sup> Many of the subject parcels contain abandoned houses, vacant agricultural lands, deteriorating buildings, parking lots, wooded and brush properties, or unusable swamp lands. Specifically, approximately 30% of the Oneida Indian Nation of New York’s properties have either vacant or abandoned structures located on them, and approximately 65% of the parcels are completely vacant, abandoned, or inactive. Furthermore, approximately 90% of the Group 3 properties are vacant, abandoned, or inactive.

Highlighted in the attached photograph/data sheets are examples of such abandoned or vacant properties.<sup>6</sup> These pictures are illustrations which highlight the condition of many of the Nation’s structures and properties. Many are in poor condition and pose health and safety hazards to the community (for example, Parcel # 298.000-1-59.1, is currently boarded up and dilapidated). Should Oneida County, the Towns of Vernon, Augusta, Vienna, and Verona, the residents, and neighbors expect these properties to remain in their current state? If so, BIA has a responsibility to reject these properties for trust status.

If the use of the properties is expected to remain in the current form, and example, a SavOn convenience store is closed, will the local community be forced to live with potential pollution and decay of that site? Since these communities will lose jurisdictional control, they will not be able to respond to potential hazards. Who guarantees the communities’ safety in these situations? Who offers the remedy that would otherwise exist? This is a clear disruption of community harmony, and is an example of what the Supreme Court of the United States expressly rejected in *Sherrill*.

The cumulative effects of these properties remaining in their current state present a hazard and eyesore to the community. Deteriorating houses are a clear violation of the County Sanitary Code,<sup>7</sup> which if invoked, would allow the County to secure and, if necessary, demolish these buildings and assess the cost to the owner. If these properties are placed in trust, Oneida County would no longer exercise jurisdiction, and the neighbors would be helpless in obtaining relief from the potential health and safety hazards.

Furthermore, the checkerboard nature of said parcels, scattered throughout the Counties of Madison and Oneida, adds to the practical disruptions and uncertainties that would exist in the affected communities, communities which have been self-governed for the past two centuries.

The United States Supreme Court in *City of Sherrill* recognized the state and local government’s ability to impose its regulatory controls over the Oneida Indian Nation of New York’s property

---

<sup>5</sup> Attachment C. Letter of April 4, 2005, Page 1 from Ray Halbritter to Franklin Keel

<sup>6</sup> Attachment D and M. Photographs of Group 1, 2, and 3 Parcels. Groups 1 and 2 photographs were provided in Groups 1 and 2 comments, and are being resubmitted in Group 3.

<sup>7</sup> Attachment E. Oneida County Sanitary Code

holdings. “If OIN may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls that protect all landowners in the area.” 125 S.Ct.. at 1493 citing *Felix v. Patrick*, 145 U.S. 317 (1892).

Oneida County has attempted to assert its regulatory controls over OINNY post *Sherrill*, but OINNY has refused to comply. An action was recently commenced against Oneida County, pursuant to the New York Clean Indoor Air Act, N.Y. Pub. Health L. §§ 1399-n seq. (the “Act”), *Vickers et al. v. Oneida County’s Designated Enforcement Officer*, Index No. CA 2005-001404.

Although, the action was ultimately dismissed against Oneida County, the County still has the obligation by law to enforce the Act. The County recently served OINNY with a Notice of Violation and Administrative Hearing, but the Nation refuses to subject itself to the jurisdiction of the County’s process. See letter of Peter D. Carmen, Esq. to Ray Bara, Esq. dated February 21, 2006.<sup>8</sup>

Even though the Nation indicates that “...it shares the New York legislature’s goal to preserve and improve the health, comfort and environment of the people of this state by limiting exposure to tobacco smoke” it chooses to do so only on its own terms and conditions. The Nation’s refusal to abide by the law flies in the face of the *Sherrill* decision.”

On October 4, 2005, the Oneida County Bureau of Weights and Measures attempted to inspect the Oneida Nation’s SavOn Station, located at 5527 State Rt. 31 in the Town of Verona. The Director of Weights and Measures was denied access to the SavOn facility. Oneida County has the duty under New York State Agriculture and Markets law to inspect and seal all fuel pumps located within said County, to ensure the safety of our residents and visitors. To date, the Oneida Indian Nation of New York has repeatedly refused all access.<sup>9</sup>

In April of 2003, an Oneida Indian Nation Police officer engaged in a high speed chase following a report that a suspect had stolen eight cartons of cigarettes from the Oneida Indian Nation’s SavOn store located within the boundaries of the City of Sherrill.<sup>10</sup> The pursuit occurred through two counties and several jurisdictions, and ultimately ended in the suspect crashing the vehicle. The incident showcased the potential problems that patchwork sovereignty causes, endangering public safety by creating uncertainty over jurisdictional roles and responsibilities.<sup>11</sup>

In 1995, the Oneida Indian Nation began construction of a SavOn convenience store on the corner of New York State Route 365 and County Road 88, Patrick Road. Included in Attachment G are letters between Oneida County, Nation representatives, and the State of New York, which describe the jurisdictional conflict over the creation of the access driveway for the SavOn. Route 365 is a busy four lane highway located in the Town of Verona that provides the main transportation access to Turning Stone Casino, and the SavOn station in question. It is also

---

<sup>8</sup> See Attachment O

<sup>9</sup> See Attachment N Weights and Measures Report

<sup>10</sup> OIN police vehicle was not registered or licensed by the State of New York.

<sup>11</sup> Attachment F. Please see attached Articles describing the police chase.

the main exit and entrance to the New York State Thruway Exit 33, which, according to the Syracuse Post Standard in a April 21, 2003 article, witnessed an increase in traffic from 914,256 vehicles in 1989 to 2.44 million in 2002.<sup>12</sup> Issues and conflicts such as these will severely impact the local municipalities, the County, and the State of New York in road maintenance, traffic flow, and public safety.<sup>13</sup> Trust status would sanction the Nation's ability to construct access roads and other projects without local and state approval, and, as these letters show, nobody wins.<sup>14</sup>

Trust status for these lands would also remove developable parcels from the tax rolls, limiting the County and Towns of Vernon and Verona from having the ability to secure future development. Many of these properties are located in strategic areas for development, and placing them in trust will ensure these lands never change hands. An unfair competitive advantage would be endorsed by the Federal government, exempting these parcels from state and local control and taxation, thus creating an unlevel playing field for non-Indian businesses.

These are just some of the examples of the jurisdictional problems and potential conflicts of land use which have arisen and which would in all likelihood continue if such lands were taken into trust.

Although the Nation continues to both publicly and privately indicate its willingness to resolve these issues through agreement, the County views these representations as insincere. The County and State have a duty to enforce its laws to protect the health, safety and welfare of all the citizens of Oneida County. To permit the Oneida Nation to avoid enforcement would not only endanger the County's citizenry, but also would create the practical disruptions that the Supreme Court condemned in *Sherrill*.

### **TRIBAL NEED**

A tribe requesting land be taken into trust must demonstrate need. The tribe has failed to justify its need for the parcels included in Group's 1, 2, and 3. The Tribe states in Ray Halbritter's April 4, 2005 letter that "[t]he transfer of this Land-Into-Trust to the United States for the benefit of the Oneidas will clarify uncertainties existing in the wake of the City of Sherrill decision, is needed to preserve the Nation's sovereignty and its lands, which have been threatened with foreclosures and transfers to local governments, and is necessary to facilitate the Nation's self-determination, its economic development and its ability to provide housing, jobs, education and health care for its members."<sup>15</sup>

In a letter from James E. Cason, Associate Deputy Secretary, to Ray Halbritter, Cason stated, "[w]e are especially interested in the Nation's views as to why particular parcels need to be held

---

<sup>12</sup> See Attachment B. Mannion, Brian, Thruway Traffic Jumps at Verona, Syracuse Post Standard, April, 21, 2003

<sup>13</sup> Attachment G. Please see attached letters.

<sup>14</sup> Included in Attachment H are Newspaper clippings that provide examples of jurisdictional conflicts, tribal conflicts, and the community division as a result of checkerboard sovereignty. Granting trust status on 10,750± acres will perpetuate the community division that has plagued Western Oneida County for the past decade.

<sup>15</sup> Attachment C. Letter of Ray Halbritter to Franklin Keel, April 4, 2005

in trust.”<sup>16</sup> The Oneida Nation has failed to provide any substantive justification for taking the lands, or particular parcels, into trust.

The *Sherrill* decision held that checkerboard sovereignty was detrimental to local community health, resulting in jurisdictional chaos. The uncertainties that the Nation claims as a result of the *Sherrill* decision in the April 4<sup>th</sup> letter do not exist; the definition of jurisdiction is clear. The lands are subject to local taxation and jurisdiction, and it was the Department of Interior, in a letter written by Associate Deputy Secretary Cason who stated “[t]hus, it is our opinion that [the] Court in *City of Sherrill* unmistakably held that the lands at issue (property interests purchased by OIN on the open market) are subject to real property taxes. In the event these taxes are not paid, we believe such lands are subject to foreclosure.”<sup>17</sup>

Clearly, the Nation has submitted a blanket application, with no justification as to why these properties must enjoy the benefits of Trust status, free from local taxation and jurisdiction. The Nation fails to present plans for limiting the burdens placed upon localities as a result of the checkerboard nature of the application. What is the justification for the tribe to have an employee parking lot placed into trust and ultimately enjoy the sovereign benefits that trust land provides? Why does the Nation need the abandoned houses, vacant agricultural lands, deteriorating buildings, parking lots, wooded and brush properties, or unusable swamp lands to be placed into trust status, especially since they have indicated that the use will not change? What benefit does parcel # 298.002-3-15.3 offer to the membership of the Nation in regards to health care (Group 1, which is an abandoned wooded lot)? Is parcel # 285.000-1-2 (abandoned barns and silos) located in Group 3 necessary to facilitate jobs or housing for the Nation? How do parcel # 282.000-1-2.1 (Group 2, which houses an abandon trailer in poor condition), parcel # 298.000-1-59.1 (Group 2, a home which is currently boarded up), offer to the Nation’s ability to provide education? How does parcel # 310.000-2-12 preserve the Nation’s sovereignty (Group 2, which is currently used as a parking area)? Granting trust status would eliminate a locality’s ability to exercise planning and use designations (normal procedure would require property owner to apply and successfully receive use review for parking an excessive number of vehicles on property).

Oneida County does not discount the economic impact the Oneida Nation has had on Central New York, and recognizes that it has successfully created employment opportunities. The Nation’s argument that denial of their request for 10,750± acres to be placed into trust in Oneida County will threaten the 4,500 Nation jobs is untrue, and is disingenuous at best.

According to a December 19, 2002 Post Standard article titled, “Turning Stone’s One-Year Profit: \$70 Million,” the Oneida Indian Nation of New York brought in \$232.3 million in revenues for 2002, of which \$70 million was profit.<sup>18</sup> This was prior to the expansion that was recently completed. It is conceivable that OIN’s revenue has increased since 2002, and may currently exceed \$300 million. Denial of trust status may affect OIN’s profit line, and reduce its monopolistic competitive advantage, but it will not impact its ability to succeed.

---

<sup>16</sup> Attachment I. June 10, 2005 Cason letter to Ray Halbritter

<sup>17</sup> Attachment I. June 10, 2005 Cason letter to Ray Halbritter

<sup>18</sup> Attachment B. Coin, Glenn, Turning Stone’s One-Year Profit: \$70 Million, Syracuse Post Standard, A6

There is no correlation between a denial of trust status for the parcels included in Groups 1 and 2 and the Nation's claim it they will be forced to lay off employees.

### **COMMUNITY DISRUPTION**

The acceptance of 10,750± acres into Federal Trust would heavily burden the operations of all municipalities in the following ways:

- Assessments and taxation
- Comprehensive Planning
  - Future growth
  - Inconsistent Use
- Environmental Concerns

#### **Assessment:**

Future property tax stabilization for local governments depends upon the ability of the Counties to anticipate that real property values and assessments will increase over time. Transferring 17,310-acres located in Oneida and Madison Counties from fee title to trust status would severely impact assessment growth, removing \$400 million in assessment from Oneida County's tax rolls.<sup>19</sup> The net effects of this removal would be as follows:

1. The taxpayers throughout the County would be responsible for covering the taxes that would have been paid on the Oneida parcel assessments under fee title. As a direct result of the Oneida Indian Nation's refusal to pay property taxes, the County, local municipal, school, and special district tax rates are higher than they should be.

Oneida County was forced to implement the highest sales tax rate in the State of New York in March of 2005. If the Nation paid property taxes, and remitted sales tax on goods sold to non-Indians (estimated \$3-\$5 million loss in uncollected sales tax revenue), Oneida County may not have been forced to increase its sales tax rate.

2. The Oneida County sales tax distribution for the towns is predicated on assessment. Removing the Nation's assessment to exempt status would decrease the amount of sales tax revenue due to the towns of Verona, Vernon, Vienna, and Augusta. This could cause a need for property tax increases in these municipalities to cover the loss in revenue.

---

<sup>19</sup> Attachment L: Please see 9/20/2005 document of Assessment Figures for Oneida Nation Properties located in Oneida County.

3. Reductions in assessments will also affect the tax rate for special districts and fire districts, leaving shortfalls in revenue, which must be passed on to the remaining taxpayers through rate increases.<sup>20</sup>
4. Education: School districts within Oneida County would suffer from the loss of assessed value from the tax rolls. Removing assessments will shift the property tax burden to the residents, increasing their payments. Secondly, it has the potential to drastically affect the district wealth ratio, causing dramatic fluctuations in state aid.
5. As the properties are removed from the property tax rolls, the County and other municipal jurisdictions will still be required to provide services to the parcels placed into trust. As previously discussed, Oneida County is responsible for a number of services, including roads, environmental health and safety, Social Services, as well as others. Removing these properties will place an added burden on the already overtaxed residents of Oneida County.

### **Comprehensive Planning**

The ability of communities to control future growth is contingent upon the development of comprehensive growth and master plans. Transferring 17,310-acres into trust will limit municipal planning capabilities. Trust lands enjoy certain sovereign rights which may exclude these lands from local control and future planning. The checkerboard nature of the parcels included in the Oneida Indian Nation of New York's application will only increase the difficulty in planning for future growth.

The checkerboard nature of its application will, if granted, present situations of inconsistent uses for Oneida Nation properties as compared to local zoning and planning uses. For example, neighboring residents may find their residential parcels adjacent to Oneida Nation parcels that are used for commercial purposes. It is impossible for our communities to implement their vision and comprehensive plan for zoning and land use regulations when there is uncertainty surrounding neighboring parcels. Granting trust status, based on the application's current form, fails to balance the needs of the Oneida Indian Nation and the local communities. On those grounds, the application should be rejected.

### **Environmental Concerns**

Trust lands present a number of environmental concerns. The ability to avoid state environmental laws and local laws such as the County Sanitary Code presents a number of jurisdictional questions and conflicts. For example, in 2003, Oneida County received a number of concerns over the development of the Oneida Nation's golf course located on Beacon Light Road in the Town of Verona. Pictures submitted as attachments in the Group 1 and 2 comments

---

<sup>20</sup> Attachment J: Verona Fire District letter dated October 2, 2005, explaining effects of trust status

disk shows dust from construction dirt piles blowing across the road.<sup>21</sup> The dust covered the road, and was reported to disrupt neighboring properties. Placing lands into trust would limit the local and state ability for oversight and enforcement, perpetuating instances such as this. Please refer to the reports prepared by O'Brien & Gere for a comprehensive discussion of environmental concerns.

Additionally, the Nation is applying for a number of vacant and fallow lands. Many of these parcels may be in violation of the County Sanitary Code, which is intended to protect the public from nuisance properties. Taking parcels which may be in violation of this law limits the County Health Department's ability to protect the public from environmental health and safety concerns.

### CONCLUSION

It is clear that jurisdictional conflicts and problems will exist if the current application for Land-Into-Trust is approved. Such approval would cause a loss of community as local controls over zoning, public safety, and environmental issues would be non-existent. Furthermore, public fear and mistrust would be elevated as the jurisdictional chaos that the Supreme Court warned against in *City of Sherrill* would come to pass.

Communities are built on commonalities not chaos. We respectfully request that the Department of Interior deny the Oneida Indian Nation of New York's request for trust lands in its entirety. Based upon the scope and complexity of the Oneida Nation's application for Land-Into-Trust, Oneida County respectfully reserves the right to submit additional information and documentation relative to Groups 1, 2, and 3.

Very Truly Yours,

  
Joseph A. Griffo  
Oneida County Executive

JAG/mpb  
Enclosures

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

(without enclosure):  
Rocco J. DiVeronica, Chairman, Madison County Board of Supervisors  
Hon. Charles E. Schumer  
Hon. Hillary Rodham Clinton

---

<sup>21</sup> Please see Attachment K.. Submitted in Groups 1 and 2 comments. Photographs taken 7/30/02

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