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VIA E-MAIL AND FEDERAL EXPRESS

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Re: Comments and Corrections Submitted on Behalf of Cayuga County and Seneca County to the Pre-publication Draft Environmental Impact Statement for the Cayuga Indian Nation Fee-To Trust Applications Dated April 14, 2005 and May 25, 2005

Dear Messrs. Chandler and Feingold:

On behalf of Cayuga County and Seneca County (collectively referred to as the "Counties"), we submit this letter with its enclosures, as well as two separate bound volumes (hereinafter referred to as the "Supplemental Cayuga County Volume" and the "Supplemental Seneca County Volume") and the letter of the firm of O'Brien & Gere dated March 17, 2009 as the Counties' comments to and corrections of the pre-publication Draft Environmental Impact Statement ("pre-publication DEIS") prepared pursuant to the requirements of the National Environmental Policy Act of 1969 ("NEPA"). The Supplemental Cayuga County Volume and the Supplemental Seneca County Volume contain corrected pages where typos, incorrect data and the like are corrected by hand or with track changes.

The pre-publication DEIS purports to address the environmental impacts of the granting of the referenced applications dated April 14 and May 25, 2005 (the "CIN Applications") submitted to the Bureau of Indian Affairs ("BIA") by the Cayuga Indian Nation ("CIN") seeking trust status for certain real property owned by CIN located within the Counties. (Hereinafter, the CIN Properties subject to the CIN Applications located in the Counties will be referred to collectively as the "CIN Properties". The CIN Properties may also be referred to as follows: the "Seneca Falls Property," the "Union Springs Property," the "Springport Property," and the "Montezuma Property.")

## Overview

Pursuant to the Memorandum of Understanding executed on October 17, 2006 by the cooperating agencies ("MOU"), the Counties provide these comments and corrections. Specifically, the Counties provide these submissions in accordance with the MOU's requirement that the Counties provide assistance and information related to their areas of expertise including, economic, socioeconomic, environmental, land use, public safety, tax and regulatory impacts.

Please be advised that in accordance with the MOU, as well as correspondence dated February 17, 2009 from BIA's consultant AKRF, Inc. and correspondence from the Assistant Regional Director of the Eastern Division of BIA received March 2, 2009 (attached hereto as part of Exhibit "A"), the Counties' comments herein to the pre-publication DEIS are limited to those areas of the Counties' expertise, and the Counties specifically reserve their rights to make substantive comments and corrections to the analyses undertaken in the DEIS once it has been released for public review. As identified below, the Counties believe that no further action on the CIN Applications should take place at this time, and a DEIS should not be published or issued for public comment.<sup>1</sup>

For the reasons that follow, the pre-publication DEIS should be withdrawn in its entirety and the DEIS should not be issued until such time as: (i) pertinent information identified in the Counties' letter to BIA dated March 12, 2009 (attached hereto as part of Exhibit "A") is provided and the cooperating agencies have an opportunity to review it, and (ii) until such time as critical issues regarding among other matters, the authority of CIN to sell untaxed goods and services is finally resolved. The record demonstrates that it is premature to consider the DEIS or for BIA to make a determination on CIN's Applications until all of the information requested by the Counties has been provided and reviewed by them, and until the critical issues now pending before the New York Courts concerning the authority of CIN to sell untaxed products and services, including cigarettes is finally decided. That determination in particular will dramatically affect socioeconomic and other environmental impacts which granting this application would have on the Counties and their residents.

In sum, the Counties are disappointed in the pre-publication DEIS as it fails to provide as required by NEPA a rigorous analysis of critical issues starting with the purpose and need of the CIN Applications, impacts to public health and safety effects, socioeconomic impacts and other environmental impacts of critical concern to the Counties and their residents. As a result, the pre-publication DEIS rather than undertaking an analysis of potential impacts from the granting of the CIN Applications appears to have been drafted to justify BIA granting those applications. Indeed, the failure of the pre-publication DEIS to acknowledge, let alone consider, extensive comments provided during the scoping phase further demonstrates that it was drafted as a tool to

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<sup>1</sup> When the DEIS is eventually issued for public comment, the comments and corrections provided to each of the cooperating agencies in accordance with the MOU should be appended to and included in the DEIS made available for public review consistent with the goals and requirements of NEPA.

endorse BIA's presumptive decision to grant the CIN Applications. (For ease of reference, we resubmit those comments which are attached hereto as: Exhibit "B," the Counties' Comment Memorandum dated March 14, 2006 and enclosures; Exhibit "C," the Report of Ian Ayers dated February 2006; and Exhibit "D," the Report of O'Brien & Gere dated February 2006. Each of the foregoing are incorporated by reference hereto.)

A. Introduction: The BIA Should Withdraw The Pre-publication DEIS, And Not Issue The DEIS For Public Comment Until Such Time As Required Information Is Provided And Until Such Time As Critical Issues Which Are The Subject Of Pending Litigation In New York State Courts Are Finally Resolved.

The pre-publication DEIS should be withdrawn by BIA, and the BIA should not issue a DEIS for public review at this time because critical information required by applicable regulations under NEPA, including 40 C.F.R. §§ 1502.18, 1502.21 was not provided in the DEIS or in its appendix. As set forth in detail in a letter dated March 12, 2009 to BIA (attached hereto as part of Exhibit "A"), the Counties specifically requested that the pre-publication DEIS be withdrawn until the information on which numerous statements and conclusions in the pre-publication DEIS are based is provided. BIA has failed to withdraw the pre-publication DEIS, despite the fact that the Counties cannot undertake their responsibilities under the MOU as to their areas of expertise without the required information. See March 12, 2009 letter request to BIA attached as part of Exhibit "A" hereto (information which is required to be made available with the pre-publication DEIS, but which has not been provided includes but is not limited to, various reports referenced therein, including Phase I Environmental Assessments undertaken on the CIN Properties, data concerning tests and analyses summarized in the pre-publication DEIS, information regarding socioeconomic impacts and other information).

In addition, the BIA should not issue a DEIS for public comment until such time as several critical issues which are currently pending before New York State Courts are finally decided, as decisions on those matters will dramatically affect the nature and extent of impacts associated with CIN's Applications. Specifically, there is an ongoing state court litigation in a matter entitled Cayuga Indian Nation of New York v. Cayuga County Sheriff, et al., Index No. 2008-16250, (pending in New York State Supreme Court, Monroe County), in which the Cayuga Indian Nation challenged the Counties' authority to require CIN to collect taxes on cigarettes it was offering for sale as required by New York law. This matter will also have an impact on whether CIN may offer for sale certain goods and services without collecting taxes on them. This matter is currently pending before New York State Supreme Court and there are also proceedings pending in that matter before the New York State Supreme Court Appellate Division Fourth Department (CA-08-02582).

The socioeconomic impact on the Counties of the sale by CIN of untaxed cigarettes and other goods and services is dramatic. In short, if it is found that CIN is authorized to sell cigarettes without charging and collecting required New York taxes, and is similarly authorized to sell other goods and services (including gasoline) without charging taxes, the socioeconomic

impacts to the Counties and their residents are dramatic, and potentially devastating. In sum, if CIN businesses are allowed to sell untaxed cigarettes and other goods and services, this will continue to place CIN businesses at an enormous competitive advantage over non-CIN businesses, and will allow CIN to, among other things, potentially capture the markets for goods and services sold by CIN in the Counties and in this region of the State of New York. The impacts from such sales would be potentially devastating and likely irreparable, and include but are not limited to the loss of non-CIN business and jobs, the erosion of tax base in the Counties from the loss of those jobs and businesses, and potential loss of population from persons who may leave as the result of not finding employment.

Further, there are social impacts as well from the sales of untaxed goods and services, including cigarettes, including the potential that the sale of cigarettes at lower prices will increase the rate of smoking among the Counties' residents. Until the pending litigation in New York State Supreme Court is finally decided, each of these potential impacts cannot be properly evaluated as part of the NEPA process, including the analysis of such impacts as required to be undertaken in the DEIS.

For the foregoing reasons, the pre-publication DEIS should be withdrawn, and no DEIS should be issued for public comment or for any purpose until the referenced matters have been finally determined.

B. The Purpose and Need Statement Including the Pertinent History

In order to meet the requirements of NEPA, a DEIS's purpose and need statement must specify the underlying purpose and need of the application before the agency at issue, including identifying a range of appropriate alternatives the agency should consider. 40 C.F.R. §§ 1502.13 (defining the requirements of a purpose and need statement). Further, the Department of Interior's Guidance provides in pertinent part that a purpose and need statement must:

Present the purpose of and need for the Agency action. The purpose and need shall be described in sufficient detail to aid in the development of an appropriate range of alternatives. Care should be taken to ensure an objective presentation and not a justification.

516 D.M. 4 (citing to the Department of the Interior's NEPA Guidance).

Here, in order for the purpose and need statement to meet minimum requirements, the BIA must analyze whether BIA's granting of CIN's Applications is consistent with and will further the purpose of the legislation under which the CIN Applications are made for the taking of property into trust which is 25 U.S.C. § 465 (codifying the Indian Reorganization Act which may hereinafter be referenced to as the "IRA" or "Section 465"). The requirement that the purpose and need statement analyze whether the CIN Applications meet the requirements of the

statute under which applications are made is further highlighted by recent Supreme Court case law which calls into question whether Indian Nations such as CIN may petition under the IRA for fee-to-trust transfers. In fact, the Counties contend that CIN was neither a tribe, as that term has been defined under caselaw, nor under federal jurisdiction when the IRA was enacted in 1934, or that CIN is otherwise not entitled to the benefits of the IRA under the circumstances. For these reasons, it is far from clear that the Secretary of the Interior (through the BIA) has authority to grant CIN Applications. As a result, whether the BIA has the authority to grant CIN's Applications in light of the recent Carcieri decision is an issue that must be evaluated in the purpose and need statement. See Carcieri v. Salazar, \_\_\_ S.Ct. \_\_\_, February 24, 2009.

Moreover, as detailed in the enclosed Supplemental Volumes for both Seneca County and Cayuga County and as found at pp. 1-1 through 1-2 (the additions to that section are provided in track changes format) an authoritative review of the history demonstrates that the statutes at issue do not apply to the Cayuga Indian Nation, and the applications before the BIA, because, among other reasons, the CIN did not lose property by virtue of the government's allotment policy and, therefore, BIA does not have the authority to grant the CIN Applications.

Further, as has previously been demonstrated during the scoping process, the IRA simply does not apply to CIN's Applications, given that the evidence demonstrates that CIN did not lose the subject property as the result of the federal government's allotment policy. Because the land subject to CIN's Applications was not lost as a result of the United States allotment policy, the purpose and need statement should address whether Section 465 authorizes the Department of Interior to take the land at issue into trust.

Furthermore, because CIN's Applications seek to have non-contiguous lands taken into trust, material issues have been raised as to whether granting such applications would be contrary to the IRA's goal of "consolidation of [existing] checker boarded reservations," Cong. Rec. 11732 (1934), and the United States Supreme Court's teaching that "checker boarding" should be avoided. City of Sherrill v. Oneida Indian Nation of New York, 124 S.Ct. 1478 (2005). Indeed, because CIN cannot demonstrate that it lost subject lands as the result of the federal government's allotment policy, it is clear that the IRA and the applicable regulations do not apply to CIN under the circumstances and that as such, there is no basis to grant CIN's applications under the circumstances.

In any event, as required by NEPA, including its applicable regulations as well as applicable guidance, at the very least, these issues should be thoroughly discussed and analyzed in the purpose and need statement, particularly where as here, they have been the subject of numerous scoping comments and other comments throughout the process. (See Exhibit "B" attached hereto, the Counties' Scoping Comments Memorandum dated March 14, 2006.)

In addition, critical issues were not addressed in the purpose and need statement, including whether there is a need to take CIN property into trust, even if Section 465 can be shown to apply to CIN. As has been identified in submissions previously provided to the BIA

regarding the CIN Applications, including in the Counties' February 10, 2006 Comment Letter (at pp. 10-11 attached as part of the Counties' Scoping Comment Memorandum dated March 14, 2006, Exhibit "B"), the evidence demonstrates that CIN can re-establish its presence in the region and operate its successful businesses without converting land into trust. Therefore the purpose and need statement should carefully scrutinize whether CIN can achieve its stated goal of establishing its presence in the region and operating its businesses successfully without converting its land into trust, particularly, where as here, foregoing the fee-to-trust transfer would avoid the myriad of substantially detrimental impacts to the Counties and local municipalities that will result from granting the CIN's applications.

In addition, the purpose and need statement should analyze CIN's need to have the applications granted in light of BIA's policy of denying such applications where it determines that Indian tribes, such as CIN, have the "ability to manage their own affairs" including where evidence shows CIN has "been highly successful in their own efforts." See the Counties' Comment Letter dated February 10, 2006 at Exhibits "C" and "G" (attached as part of Counties' Memorandum dated March 14, 2006 attached hereto as Exhibit "B").

Further, in order to meet the applicable statutory criteria under NEPA, the purpose and need statement should also contain an evaluation of whether CIN's applications meet the relevant criteria under 25 C.F.R. § 151.10 which governs same. The relevant criteria under which CIN's applications must be analyzed (including as set forth above) requires: (i) BIA to scrutinize the Nation's justification (if any) of anticipated benefits from the acquisition; (ii) CIN to provide a plan which specifies the anticipated benefits related to the proposed use of each parcel; and (iii) that substantial weight be given to concerns raised by state and local governments when determining if such applications should be granted. Each of the foregoing issues should be addressed and analyzed in the purpose and need statement of the pre-publication DEIS, but no such analysis is provided.

CIN's continued claim that it will simply maintain status quo and not seek to in any fashion expand its operations or develop properties which are not currently developed also needs to be evaluated in terms of whether such a plan meets the requirements of 25 C.F.R. § 151.10, because maintaining the status quo in the manner described by CIN would not appear to further the goals of economic self-sufficiency or meet the other criteria required under the IRA. (As detailed below, CIN's statement that it will merely maintain the status quo is also contradicted, given CIN's admission that it will be increasing the number of employees for at least some of its businesses. Page 4.8-10.)

Moreover, since the CIN has made clear throughout the process that it will restart its gaming operations, the purpose and need statement must analyze in detail those aspects of CIN's Applications whereby CIN seeks to conduct gaming. The inquiry should include but not be limited to whether gaming on the CIN Properties comports with the purpose underlying and the restrictions set forth in the Indian Gaming Regulatory Act. Specifically, the purpose and need

statement must perform an analysis as to whether CIN's proposed gaming satisfies the requisite federal mandates including 25 U.S.C. §§ 2710 and 2719.

It should be noted that the November, 2006 Scoping Report issued by BIA consultant, AKRF, Inc. ("AKRF") erroneously concludes that the regulatory criteria to be considered by BIA in deciding CIN's Applications is outside the scope of the "project." AKRF's statement in this regard is simply wrong and flies in the face of NEPA including applicable regulations. Further, AKRF undermines its contention that a discussion of purpose and need is outside the scope of the NEPA process when AKRF admits in the same Scoping Report that: "comments regarding whether granting the CIN Applications will meet purpose and need under NEPA will be discussed in the EIS to the extent required under NEPA." Under any standard, the pre-publication DEIS's purpose and need statement utterly fails to address, let alone analyze whether granting the application would meet applicable criteria under 25 C.F.R. Part 151.

C. Alternatives: Failure To Consider Alternatives As Required By NEPA

Consistent with the pre-publication DEIS's omission of pertinent facts, and failure to analyze critical issues as required by NEPA, the alternatives section fails to acknowledge, let alone analyze, the range of alternatives as required by NEPA. Indeed, the only alternatives considered are the statutorily required no-action alternative, and those alternatives favored by the Cayuga Indian Nation. In fact, the pre-publication DEIS fails to acknowledge that the State of New York as well as the Counties specifically identified other alternatives which were required to be analyzed.

Given the undeniable and long-term impacts of granting CIN's Applications on the Counties, BIA was required to acknowledge and to analyze alternatives identified that would mitigate those impacts. For example, an analysis of alternatives suggested that would allow the Counties and the State to maintain certain regulatory control regarding environmental public health and safety issues so as to avoid or minimize impacts associated with CIN's operations should have been undertaken. See Exhibit "B," Counties' Comment Memorandum dated March 14, 2006 at pp. 25-27. Further, the pre-publication DEIS fails to consider alternatives which were identified that would have required CIN to make payments in lieu of taxes in order to mitigate the impact of continued use by the CIN Properties of local resources including sewers, roads, and other public infrastructure as well as to address the significant competitive advantage enjoyed by CIN businesses if the CIN Applications are granted.

To the extent that the pre-publication DEIS indicates that federal law would be enforced on CIN Properties in the absence of State, County and Local law, there is no discussion of how such federal law would be enforced, and no discussion of whether enforcement of federal law would in fact meet minimum requirements to protect public health and safety, as well as to protect the environment. An analysis of federal enforcement of such regulations on other lands taken into trust by BIA is minimally required in order to analyze the potential impacts of federal enforcement as it relates to these critical issues. It should also be noted that for alternative 3 in

the pre-publication DEIS states that no response from the New York State Office of Parks, Recreation and Historic Preservation has been received, but such a response must be received or further inquiry must be made regarding that issue as part of the DEIS process.

In addition, no valid screening analysis as required by NEPA was included to demonstrate the range of alternatives identified met applicable criteria (specifically identified under the IRA). Thus, as discussed previously, the screening analysis must include a discussion as to whether the application is justified under the IRA based upon, among other factors, (i) benefits to CIN from same, (ii) whether a plan has been provided which specifies anticipated benefits based upon the use of each particular parcel, and (iii) the concerns raised by state and local governments when determining if such applications should be granted.

D. Land And Water Resources

Preliminarily, the actual acreage of effected real property associated with the CIN Applications should be corrected throughout the pre-publication DEIS from 125 to 129.16 acres. Further, consistent with the pre-publication DEIS's failure to undertake required analyses, there is reference to certain identified soils on specified CIN Properties being subject to erosion, but no discussion of how potential impacts would be addressed in light of the impact that development by CIN of the CIN Properties and their continued use.

Concerning water resources, the pre-publication DEIS concludes for several CIN Properties that a federal wetland delineation would be required "if any future disturbance activity is proposed." Needless to say, deferring, and for all practical purposes, avoiding such delineation flies in the face of NEPA requirements as well as the requirements by the federal, state and local agencies which provided comments. As discussed previously in detail, and in the comments submitted during the scoping phase, because there will be no municipal, county or state control over "development" on the CIN Properties, nor has there been any explanation as to how any federal regulations would be enforced, stating that actions will be taken in the future without requiring them as mitigation measures to be implemented into the preferred alternative is meaningless. Moreover, applicable regulations and guidance, as well as comments from the United States Environmental Protection Agency ("EPA") require that wetlands on the CIN Properties be delineated. See the correspondence of G. Musumeci to Franklin Keel dated February 27, 2006 stating that all wetlands should be delineated on the CIN Properties (attached hereto as Exhibit "E").

Most importantly, based upon the inevitability that the CIN Properties will be developed in order for the purpose of the CIN Applications to be fulfilled, there should be reasonable analyses of the likely potential build-out of each of the CIN Properties including those currently not developed as well those currently developed.

Regarding the water pond areas found in the Union Springs property, as detailed in the enclosed comments submitted with the Cayuga County Supplemental Volume, it is believed that



those water pond areas likely resulted from quarry operations and because of lime associated with same, such ponds are a unique habitat for certain plant species and turtles (Cayuga County Supplemental Volume at p. 3.4-5).

The pre-publication DEIS states that the Nation's Union Springs Property is located within the Cayuga Lake Watershed area, but does not analyze the potential impact to such watershed should the CIN Applications be granted. Indeed the pre-publication DEIS's failure to analyze this impact is particularly stunning, because the Union Springs Property encompasses an area of approximately 111 acres. This property has the potential to undergo significant development in the future, with no oversight as to the impacts or implications to environmental media of the surrounding properties or the community, including potential public health impacts. Further, this omission is also problematic given that the Union Springs Property is located in proximity to Cayuga Lake, and such lake is a drinking water source, and a regional, if not a national, natural resource that would be damaged by impacts from future development. As indicated there can be no legitimate doubt but that future development will occur on this and other CIN Properties so the BIA is obligated to evaluate reasonable future development scenarios and their potential impacts.

Further nowhere in the pre-publication is there a reference to the Finger Lakes Land Trust and its activities which include having "...protected more than 10,000 acres of the region's wetlands, forests, farmland, grass land and gorges..." ([http://fltl.org/protected\\_lands/](http://fltl.org/protected_lands/)) in the Finger Lakes, including properties located in Seneca and Cayuga Counties. At a minimum the pre-publication DEIS is required to determine whether granting CIN's Applications will impact any of the lands protected by the Finger Lakes Land Trust.

E. Air Quality

The air quality analysis contained in the pre-publication DEIS fails to address the fact that air quality is significantly compromised in areas associated with certain CIN Properties. See the Counties' Comment Memorandum dated March 14, 2006 at Exhibit "B" thereto (and the attachment thereto which is the February 10, 2006 Counties Comment Letter at p. 16 at Exhibit "J").

Similarly, the pre-publication DEIS fails to address the February 10, 2006 O'Brien & Gere Report which concludes that the Nation under applicable regulations be prohibited from selling or supplying gasoline having a vapor pressure on the Reid's Scale greater than 9 lbs per square inch (N.Y.C.R.R. Part 225-3.3) in order to reduce harmful emissions, yet no analysis whatsoever is undertaken of that issue. See Exhibit "D" attached hereto.

F. Hazardous Materials /Petroleum Storage

The pre-publication DEIS documents a number of Phase I Environmental Site Assessments (ESA's) undertaken for various CIN Properties. The problem is that the Phase I

ESA's undertaken are each according to applicable standards no longer valid, as each Phase I ESA was completed more than six months ago, and therefore they are not deemed reliable. Further as discussed in the introduction to this submission, none of the Phase I ESA's or the underlying documentation on which each was based was provided in the appendix as required.

Further, it is clear from reviewing the "summaries" of the Phase I ESA's referenced in the pre-publication DEIS, that those Phase I ESA's were not conducted in accordance with ASTM standards, including the fact that there is no reference to interviews with the CIN Property owners and/or operators of those properties. This information is critical where as here, the pre-publication DEIS makes numerous statements regarding the regulatory status of above and below ground storage tanks, fuel dispensers and other regulated facilities including those related to petroleum and hazardous substances, and yet there is no indication that the operators of those facilities were ever interviewed, and if they were, that information has not been provided.

The little information which is provided in the pre-publication DEIS regarding hazardous materials and petroleum, including storage of same indicates that the operations on the CIN Properties are not likely complying with current state and federal law, including but not limited to secondary containment measures for gasoline dispensing equipment as well as similar measures for above and below ground tanks and piping. Resource Conservation and Recovery Act; 42 U.S.C. §6901 et seq. (including §§6991(a)-6991(m)). In fact, little or no attempt was made to determine whether regulatory compliance was met for the CIN Properties, including compliance regarding storing and utilizing petroleums and hazardous substances.

Moreover, the information pre-publication DEIS demonstrates that further investigation is required at several of the CIN Properties where past spills and leaks have been noted, or where there is evidence of potential impacts from past operations. For example, the summary of the Phase I ESA for the Seneca Falls Property references floor drains, but it was not determined whether same properly discharged to sewers or are otherwise discharging in accordance with applicable local state and federal law. Similarly previous spills associated with that property were documented from various underground storage tanks. In fact, previous spills documented from various underground storage tanks demonstrate that additional investigation is required under applicable standards for the Nation's Seneca Falls Property. At a minimum, the pre-publication DEIS should have included undertaking appropriate Phase II investigations to determine whether past spills have impacted the CIN Properties at issue, including off-site properties.

Moreover, with the recent reopening by the New York State Department of Environmental Conservation ("DEC") of reported spill sites due to concerns from the health effects of vapor intrusion. In fact, one of the sites DEC is investigating is located in Cayuga County in proximity to the Union Springs Property (the site located in proximity to the Union Springs Property is known as the "Cayuga County Groundwater Contamination Site," Federal NPL No. NYN000204289). As a result, additional investigation and study of the CIN Properties is required to address vapor intrusion concerns. Briefly, as background, the New York State

Department of Health has promulgated guidance regarding owners of sites subject to spills to address potential vapor intrusion because of the potential human health impacts from it, including vapor intrusion from spills of volatile organic compounds and other contaminants and the potential that such materials could migrate through soils into occupied properties. Under the circumstances and given the history of spills on CIN Properties, a rigorous evaluation of the potential for vapor intrusion must be undertaken.

Further, the potential for the CIN Properties to impact valuable well water resources, including the Union Springs Wells, also should be evaluated, yet no such evaluation or even identification of that as a concern is found in the pre-publication DEIS. For example, the Union Springs Properties are located in a Well Head Protection Plan area, but the pre-publication DEIS failed to identify this issue let alone analyze whether and how the CIN Properties may effect the referenced Union Springs Wells and measures to be taken to insure that future operations will not cause releases or leaks into such water supply. Further, as indicated above, CIN's Union Springs Property is located in proximity to the referenced Superfund site, and the ramifications of the location of the CIN Property being located in proximity thereto must be evaluated in the DEIS.

Further, the Department of the Interior's own guidance requires that for any action which contemplates the acquisition for conveyance of property, it is critical for BIA to identify the potential for liability to be imposed on the United States for cleanup or other damages associated with such property if the conveyance occurs. The Department of Interior's Manual entitled "Real Property pre-Acquisition Environmental Assessments," 602 DM2 should have been specifically referenced in the pre-publication DEIS, as the standards therein require the evaluation of each such parcel in order to determine whether off-site impacts have occurred, and the potential for liability to the United States if the CIN Applications are granted. No such analysis was undertaken despite evidence of on-site and off-site impacts from the CIN Properties and the the fact that numerous comments identified that issue during the scoping period.

G. Noise Impacts Analysis

The pre-publication DEIS's noise impacts analysis was focused on expected noise from traffic. CIN takes the position that no changes will be made to current operations and thus any impacts will be based on the status quo with the lone exception of gaming which was previously terminated in 2005, but which CIN states will be restored to the same level as 2005. As a result, for all practical purposes, the pre-publication DEIS undertakes essentially no analysis to determine what potential impact would result from the CIN Applications. At a minimum, the pre-publication DEIS is required to assess potential traffic impacts associated with CIN reinstituting its gaming operations which have not been operated for approximately four years, and impacts from the continuing use of CIN's other businesses. The requirement that such impacts analysis be undertaken is even more pronounced given that CIN admits that it will be retaining additional employees to carry out certain business operations

In fact, rather than undertake an analysis of potential impacts, AKRF simply reviewed current traffic conditions (without attempting to determine what impacts might be anticipated from restarting gaming activities, or even at a bare minimum, looking at what impacts occurred in 2005, when gaming activities were in progress) and analyzed what the level of service was at various intersections and roads associated with some of the CIN Properties. As a result, under applicable standards, the so-called analysis undertaken by AKRF for traffic was facially insufficient. At a minimum, the pre-publication DEIS was required to examine what impact resumption of Class II gaming would have on the CIN Properties where gaming will take place and areas in the vicinity. Needless to say, as it has been four years and will likely be closer to five years or more by the time such gaming is resumed, any competent analysis would analyze what potential impacts might occur from resuming such operations, even if those operations were resumed at the exact same level as were previously undertaken by CIN.

Moreover, as discussed, any statement that such gaming activities will not increase is simply not credible for several reasons. Indeed, we know from the pre-publication DEIS that CIN is already planning on retaining additional employees to maintain certain of its non-gaming businesses at the "status quo" level. Therefore, it is simply not credible to believe that gaming will be undertaken with the same number of employees and will draw the same number of customers as it did previously. Thus, the traffic analysis should have examined these issues and specifically analyzed traffic conditions from 2005 (or attempted to recreate 2005 conditions) and then factored in potential increases based upon the inevitable expansion of those operations.

Further, as CIN will undoubtedly expand its current operations and will also undoubtedly develop the CIN Properties which are not currently developed, traffic analyses should have been undertaken based on reasonable buildout scenarios (i.e., additional gas stations, Class II gaming and other operations similar to the current operations) on the undeveloped sites. In addition, the data summarized in the table apparently collected by AKRF and therefore that information cannot be properly analyzed (a request for such data has been made).

#### H. Vegetation And Wildlife Resources

For the Seneca Falls Property, the pre-publication DEIS states that "immediately west" of the subject property and bordering that site is a wooded wetland, and further concludes that such wetland "contributes to the habitat value of the subject property." Moreover, the pre-publication DEIS confirms that the inspection of the Seneca Falls Property shows that a scrub-shrub, deciduous temporary flooded wetland is found on that property and despite all of these findings, no analysis is made to how to mitigate future impacts from potential development and activities to such wetland. Further, given the observations made regarding the Seneca Falls Property, delineation of the wetlands contained thereon is required, but no such delineation has been undertaken.

Concerning the Union Springs Property, there are two open water pond areas identified, and available information indicates that such water ponds may have been associated with former

quarry operations and may have lime deposits associated with same. Based upon the location of the former quarry ponds and the unique environmental setting of same, it is very likely that such ponds are a habitat for endangered or threatened species including certain turtles and other species (Cayuga County Supplemental Volume at p. 3.4-5). As a result, the pre-publication DEIS is required to analyze potential impact of CIN's operations and/or further buildout on the Union Springs Property. Further, the Union Springs property also contains deciduous forested habitat. As such, further investigation of those properties including wetland delineation is required as well as identifying measures to mitigate impacts to such areas from the development of the Union Springs Property.

Regarding the Springport Property, the pre-publication DEIS identifies that property as being located immediately to the west of certain wetlands and further states that a small portion of the mapped scrub-shrub wetlands extend into the "western edge" of the Springport property itself. Nevertheless, the pre-publication DEIS concludes that no delineation is required, because it finds that the Springport Property has been cleared of vegetation and maintained as a lawn for sometime. In fact, under applicable standards, this would not allow the property owner to avoid the requirement that wetlands be delineated, particularly where as here, future development is all but assured.

With regard to the Montezuma Property, the pre-publication DEIS indicates that it is very small, but admits that it is in proximity to certain wetlands and to a renowned natural preservation area. The pre-publication DEIS concludes that no delineation is required but, given the proximity of such property to wetlands and to the preserve, and the likelihood of development of same, further investigation and delineation of wetlands is required.

#### I. Wildlife Resources

The pre-publication DEIS notes that the Seneca Falls Property "has low value for wildlife" as "no endangered or threatened" species is located on same. Nevertheless, certain wetlands species, including the Green Frog, Raccoon and Spring Peeper utilize the adjacent wetlands and traverse portions of the Seneca Falls property as part of their home ranges and thus, further investigation is required in order to detail the potential impacts to that wildlife based upon current operations and likely future development. Indeed, even if the foregoing species including the Green Frog and Raccoon are not "threatened or endangered," such species may very well fall under the category of species of special concern under New York law (6 N.Y.C.R.R. Part 182.2[i]). Given that granting CIN's Applications will remove any protections under state, county or local law that may be provided to such species, it is incumbent upon BIA to investigate and determine whether such species located on the Seneca Falls Property are species of special concern. Moreover, as discussed in the context of other local county and state regulations, at a minimum the pre-publication DEIS must include an analysis of what the impact of enforcement of federal law would have on the wildlife resources at issue.

Concerning the Union Springs Property, the pre-publication DEIS indicates certain wetland dependent animals are expected to frequent that property, including the Yellow Warbler and the Red-Bellied Woodpecker and Eastern Wood Peewee, which each use the area of the Union Springs property as a nesting location. The pre-publication DEIS concludes that those species are common as well as others identified (Bull Frog, Snapping Turtle and Herons); however, as set forth above, such species may very well fall into the category of species of special concern, and thus further investigation to determine if the potential impacts of current operations and future operations at the Union Springs Property is required here.

Regarding the water pond areas found in the Union Springs property, as detailed in the enclosed comments from Cayuga County, it is believed that those water pond areas likely resulted from quarry operations and because of lime deposits, that such ponds are a unique habitat for certain plant species and turtles.

J. Threatened And Endangered Species

Concerning the Seneca Falls Property, the pre-publication DEIS indicates that potentially threatened or endangered species including the Imperial Moth has been sighted in the vicinity of it, and also that the Water Fowl Winter Concentration Area is known to occur in the vicinity of that property, but nevertheless concludes that neither the species nor the resource area are protected under New York Law. For the reasons set forth previously, including the special protections provided by the State of New York to not only threatened and endangered species but species of special concern, further investigation is required.

Further, with regard to the Union Springs Property, the National Heritage Program has indicated that one threatened plant species, the Handsome Sedge is known to occur in the vicinity of that property. The pre-publication DEIS states there is "no recent information supporting the continued occurrence of the Handsome Sedge" but since the information indicates that the Handsome Sedge may in fact occur in that area, further investigation is required. Similarly, with regard to the Springport Property, the Straight-Leaf Pond Weed and the Water Fowl Winter Concentration Area as discussed above, are reported to be located in the vicinity of that property also, investigation of that species is required under the circumstances. It has also been noted that the Handsome Sedge may find suitable habitat on the Nation's Springport Property, while the Straight-Leaf Pond Weed (listed as a N.Y.S. Endangered Species) prefers calcerous pond edges, such as those found in the two ponds and depression area located on the Nation's Union Springs Property, and thus requires further investigation of those properties.

Similarly, with regard to the Montezuma Property an endangered plant species was identified as being potentially on it known as the Button Bush Dodder, but according to the pre-publication DEIS neither was observed "during the site inspection." Depending on the time of the year of the site inspection, and other factors, that species may not have been noted, and therefore further investigation is required. Furthermore, as an inland salt marsh area occurs in

the vicinity of the Montezuma Property, further research needs to be undertaken to delineate same as well as to identify mitigation measures associated with the allocation of that habitat.

K. Cultural Resources

As indicated in the introduction, the field notes and inspection reports for the cultural resources and archeological inspections referenced in the pre-publication DEIS were not produced as appendices, and must be so provided in order to be evaluated by the Counties under the requirements of the MOU. As such, the pre-publication DEIS's conclusion that most of the resources identified, including historic structures, are not visible from CIN Properties cannot be evaluated without the underlying documentation, including inspection reports and the like.

In addition, as detailed in the Seneca County Supplemental Volume submitted herewith, there are several cultural resources which must be evaluated under applicable law and guidance which were omitted from the pre-publication DEIS, or were not analyzed with the appropriate level of scrutiny required. Specifically, the Ferry Farm, which includes a cobblestone house and other significant features is located directly adjacent to the Red Jacket Fire House on Lower Lake Road in Seneca Falls. The Ferry Farm is important because of its role in the Underground Railroad and based upon consultation with Seneca County representatives, it is believed that that resource is a listed resource under state, if not also under federal law. Thus, the reference at 3.7-5 of the pre-publication DEIS to the Ferry Farm as a "Potential Historic Resource" is believed to be misleading and/or out of date, as indicated in the supplemental volume.

Further, the pre-publication DEIS does not identify or analyze impacts to another property on the National Register, which is the Cobblestone Winery (the former Sohan Property) located on Route 89 in the Town of Varick. It is believed that each of these structures are on the National Register, or are in the process of being added and therefore are eligible.

L. Archeological Impacts

The CIN Properties located in Union Springs, Springport and Montezuma are located in areas that are deemed to be archeologically sensitive (based upon the proximity to among other areas, the Seneca River Crossing Canals Historic District and the Montezuma National Wildlife Refuge), but the pre-publication DEIS concludes no further investigation is necessary, this is simply not the standard. In fact, based on those findings, further investigation is necessary, including at least potentially a Phase I Archeological Study. Indeed, such a study is required even more so here given the current operations on the CIN Properties and the fact that the CIN Properties will be developed or further developed.

Further, reference is made in the pre-publication DEIS to the fact that there has been some disturbance in the CIN Properties located in the archeologically sensitive areas and that due to such disturbance, no further archeological investigation is required but that is not the case

under any appropriate standard. CIN cannot avoid further investigation of potential archeological resources under those circumstances.

M. Socioeconomic Impacts

Preliminarily, consistent with analyses undertaken regarding other impacts by the pre-publication DEIS, the socioeconomic impact analysis omits critical information failing to acknowledge (let alone analyze), important impacts identified during the scoping phase, and makes invalid assumptions and proceeds from various false premises to arrive at the conclusions that it does. For example, despite the thoughtful analysis provided by renowned expert, Dr. Ian Ayers, who concluded that the socioeconomic impact of the operation of CIN businesses selling goods and services on other businesses and on other residents of the County was likely dramatic, the pre-publication DEIS failed to even acknowledge that such important analysis need be undertaken, let alone undertake such analysis as was required by NEPA.

In addition, when the pre-publication DEIS merely analyses the current property taxes being paid by the CIN Properties to be taken into trust, it fails to analyze the critical development potential of those properties and the fact that not only will the ability to develop the CIN Properties in accordance with local zoning and comprehensive plans be lost forever to these communities, but any enhanced property tax revenue that might be associated with the development of the CIN Properties is forever lost on these communities and disproportionate share of taxes and levies from special districts will be paid by other residents. Further, the pre-publication DEIS fails to discuss the fact that there are hundreds of other acres of property under control of or which CIN seeks to control. Needless to say, if future applications were made to have such property taken into trust, the affect of same would be catastrophic.

Further, there are a number of assumptions made throughout the pre-publication DEIS section regarding socioeconomic impacts which assumes, among other things, that so-called exempt property did not participate in payments for a community infrastructure through payments in lieu of taxes or other payments, and this assumption cannot be made on this record. It should also be noted that the Fiscal Impact Section of the pre-publication DEIS states that nine (9) parcels in Cayuga County are the subject of the CIN Applications, but in fact, there are a total of nine (9) parcels in Cayuga County and Seneca County. The balance of the section will address computational errors and omissions found in the pre-publication DEIS.

**CAYUGA COUNTY: ERRORS CONCERNING STATEMENTS  
REGARDING PROPERTY TAXES AS WELL AS FAILURE TO  
IDENTIFY EACH OF THE TAXING JURISDICTIONS AT  
ISSUE.**

As indicated in the introduction, there are a number of conclusions reached in the pre-publication DEIS based upon data concerning taxes paid by the CIN Properties to municipalities located in Cayuga County, as well as taxes paid by other property owners in those municipalities,



but is set forth in more detail in the Supplemental Volumes, that tax information contains errors, or needs to be updated. See Cayuga County Supplemental Volume at pp. 4.8-4, table 1 and text found at p. 10 in the summary.

Further, the text on p. 3.8-19 of the pre-publication DEIS regarding the CIN Properties in Cayuga County is incorrect and misleading, as the discussion on that page improperly intermingles assessments, tax rates, and tax-year information for 2004, 2005 and 2006. In short, the foregoing information contained in the previously referenced charts must be based upon the same cycle information; in other words, 2004 assessments have no bearing whatsoever on 2005 tax bills, and in kind, 2005 tax rates do not have any bearing on 2006 tax bills. The referenced chart should be based on the 2006 fiscal year which used assessments from 2005 final assessment roll. Further, the uniform percentage of value for the 2005 assessment roll was 100% not 74% as calculated therein. In addition, there are other errors regarding several of the municipalities including an error based on the 2005 final assessment which is noted in the enclosed where there are incorrect amounts provided for assessment values and other errors.

In addition, the pre-publication DEIS failed to consider levies made by special use districts which provide services to the CIN Properties. Corrected tables are inserted in the Cayuga County Supplemental Volume to show levies and taxes made by other special districts, schools and otherwise which were omitted from the pre-publication DEIS, but which are necessary to undertake a proper analysis of current conditions in Cayuga County. See New Table, 3.8-23 attached to the Cayuga County Supplemental Volume (showing the levies and taxes associated with Springport Fire Department Sewer District and Water Districts and other special district and taxing authorities not shown in the original pre-publication DEIS).

In addition, Chart 3.8-25 (found at p. 3.8-20 of the pre-publication DEIS) appears to represent taxes paid for the CIN parcels at issue for County and Town tax bills. If the referenced chart is supposed to represent those payments, then each of the four parcels at issue should also be included in that chart, because they also each pay County and Town taxes. Further, the equalization rate for the 2005 assessment roll applies to the 2006 tax bill. The equalization rate (defined as a uniform percentage of value) in the Town of Springport for the 2005 assessment roll was 100%, and this should be used consistently throughout the pre-publication DEIS. Further, the 2005 equalization rate for the Town of Montezuma was also 100%.

In addition, when analyzing the charges imposed by water districts and sewer district in the Town of Springport, the taxable value is unit based, not ad valorem. Thus, the table shown on p. 3.8-20 should show that the value is one unit, not one dollar. The second paragraph found on p. 3.8-21 is also incorrect, because the numbers contained therein are based on the erroneous assumption that the Village of Union Springs does not pay County or Town taxes, when in fact it does. See additional chart added in the Cayuga County Supplemental Volume, p. 3.8-25. Similarly, the third paragraph on p. 3.8-21 references the 2004 assessment roll, but there is no basis to do so. As stated previously, the inconsistency of intermingling cycle information from 2004, 2005 and 2006 makes any conclusions contained in the pre-publication DEIS inaccurate.

To the extent that the pre-publication DEIS uses the 2006 fiscal year (which is based on the 2005 final assessment roll) this information should also be based on the 2005 final assessment roll.

In addition, Table 4.8-1 (found at p. 4.8-4) is incorrect in that it does not include tax amounts for the college charge-back, fire districts, water districts, or sewer districts. There are other errors on that page which are set forth correctly in the Cayuga County Supplemental Volume which also corrects additional errors found on p. 4.8-5. Similarly, Chart 4.8-5 (p. 4.8-13) is incorrect and a replacement chart is enclosed which accurately reflects associated figures based upon the 2006 tax year. Similarly, the Supplemental Cayuga County Volume contains a replacement for Table 4.8-6 found at p. 4.8-14 to provide consistent and accurate information in that regard.

SENECA COUNTY: ERRORS CONCERNING STATEMENTS  
REGARDING PROPERTY TAXES AS WELL AS FAILURE TO  
IDENTIFY EACH OF THE TAXING JURISDICTIONS AT  
ISSUE.

As with the calculations for Cayuga County, the calculations for Seneca County omitted critical information relating to special districts and other levies imposed on CIN Properties. As such, replacement tables are enclosed including a replacement Table 4.8-7 found at page 4.8-14 as well as a replacement Table for the executive summary.

Further, the pre-publication DEIS states that there is one (1) parcel in Seneca County which is the subject of CIN's Application when there are actually three (3) separate parcels. In addition, as set forth in the enclosed Supplemental Seneca County Volume, there are additional computational errors, etc., including in Table 4.8-1 (the sum of \$5,974.50 and \$6,314.58 is not correct), and on the same page 4.8-5, reference to the Town of Seneca Falls was omitted in the section referencing that table. Further on 4.8-14 in the last paragraph, the dollar figures applying to the Town of Seneca Falls and Seneca County are the reverse of those shown in Table 4.8-7 and do not match the percentage figure shown. As indicated, however, because of the changes in the Tables as proposed, these errors may now be moot with the addition of the replacement tables.

N. Alleged Positive Impacts Based on Granting of the CIN Application

As with substantial data referenced in the pre-publication DEIS, the critical data on which conclusions are based is simply not provided, but only summarized. Thus, alleged sales data used to calculate the alleged positive economic impacts granting the CIN Applications is not provided.

Further, the BIA wholly failed to consider the comments by Dr. Ian Ayers regarding the potential negative effects, including lost businesses, lost jobs, and other potential negative effects associated with the significant advantage enjoyed by CIN businesses by virtue of their exemption

from the payment of property taxes, and the additional advantage enjoyed by CIN not charging taxes on the goods and services it sells. As discussed in the introduction to these comments, the significant competitive advantage enjoyed by CIN businesses is significantly enhanced if Courts determine that such businesses may sell goods and services, including cigarettes, without charging taxes. There is also a failure to analyze negative impacts associated with the impact of Class II gaming on not-for-profit business, as the CIN gaming will at least potentially negatively impact the ability of such not-for-profits to raise funding through bingo, etc.

O. Community Infrastructure Impacts

The pre-publication DEIS makes reference to CIN Properties' use of various infrastructure by the Nation, but there is no analysis whatsoever as to what impact the communities at issue will suffer when the Nation ceases to make required payments to various sewer, water and other service providers. The importance of an analysis of the amounts paid to other special districts and service providers is particularly important, given the inevitable expansion and development of the CIN Properties (as such expansion and development is implicit in CIN's Applications). This impact would be substantial, given that CIN will not be contributing to defray the expenses of community infrastructure which CIN Properties will utilize to the detriment of other residents who will bear a disproportionate share of such infrastructure costs going forward. There is mention of the CIN possibly entering into "agreements" with these communities concerning reimbursing same for the use of infrastructure, but without any requirement that same be implemented as a mitigation measure as part of the selected alternative, these statements are without value and do not mitigate the impacts identified.

As discussed previously, the analysis undertaken wholly fails to take into account increased taxes, fees and other costs to non-CIN businesses and other residents of the Counties who would be required to pay increased taxes, fees and levies in order to support infrastructure used by the CIN Properties but for which no fees would be paid.

P. Public Health and Safety

The pre-publication DEIS makes no reference whatsoever to extensive information provided during scoping comments, including the correspondence dated October 2006 submitted on behalf of the Counties which included information from the Counties' Sheriffs Offices and emergency services providers. Thus, as with other information that was omitted from the pre-publication DEIS, the responses provided by the Counties in October 2006 was referred to but not included in the appendices. In fact, as detailed in those previous correspondences, each of the Counties provided an analysis by its emergency service providers including police service providers in response to questions regarding among others, the potential impacts associated with the granting of the CIN Applications (copies of those correspondences, which are not found in the appendix to the pre-publication DEIS are attached hereto as Exhibits "F" for Seneca County and "G" for Cayuga County).

In sum, the potential impact to police services and other emergency services providers is substantial, particularly given the virtual certainty that development will occur on the undeveloped CIN parcels, and further development will occur on currently undeveloped parcels. In addition, the potential for expanding gaming operations, particularly in light of the OIN application in Madison and Oneida Counties, will undoubtedly significantly impact community's (and the region) infrastructure ranging from sewer services, fire services, increased costs associated with maintaining roads from increased traffic, and yet no analysis of such impacts is identified let alone undertaken.

Moreover, the pre-publication DEIS fails to acknowledge let alone analyze potential safety impacts associated with the CIN Properties no longer being subject to local, county and state regulations for health and safety. For example, there is no discussion whatsoever of the fact that CIN Properties are located in proximity to the Village of Union Springs wells, and the Wellhead Protection Area previously discussed earlier in these comments.

Further, there is no discussion whatsoever as to whether and how any federal regulations will be enforced by EPA or the Army Corps of Engineers including regulations related to underground storage tanks located at the CIN gas station businesses and secondary containment associated with fuel dispensers and underground piping, wetlands and impacts to waterways and water resources. Moreover, there is no discussion (despite extensive comments provided to BIA during the scoping process) regarding potential health impacts based upon the sale of food or other products associated with the CIN Properties which would no longer be required to meet applicable local or state safety standards.

There is also the failure to identify, let alone analyze potential adverse impacts to the environment associated with the lack of any local or state control or regulation of the use of hunting and fishing associated with the CIN Properties and the potential negative impacts associated with such unregulated hunting and fishing activities.

There is similarly no substantive discussion in the pre-publication DEIS of the potential negative social affects of gambling, there is little or any discussion of the potential negative effects of gambling, other than a statement indicating that persons will be made aware of the potential hazards of gambling. As set forth in the comments provided by the Counties in response to the BIA's request for information regarding impacts, studies and other information were provided to show the potential for increased crime and other negative impacts associated with gaming. See Exhibit "F".

Q. Zoning and Comprehensive Plans

Preliminarily, it is noted that the Village of Union Springs Comprehensive Plan dated 2007 which has been available through the Cayuga County Planning Department has not been identified or analyzed, and it must be in order for the DEIS to comply with applicable standards.

Moreover, as detailed in the pre-publication DEIS, several of the CIN Properties contain existing structures which are violative of or not consistent with zoning and land use plans. Rather than identifying measures to mitigate the impact of the continued uses and the virtual certainty that such uses will be expanded, no measures are identified let alone analyzed.

Further, as indicated in the pre-publication DEIS, current CIN Properties contain any number of buildings and structures which are inconsistent with and violative of zoning and comprehensive plans in the communities at issue. The unregulated development of the CIN Properties going forward which will inevitably occur will have a substantial negative impact on tourism and the development of these communities as a whole, including potential development of tourist attractions. The impact of such unregulated development on the tourism industry of these Counties, which are in the heart of the Finger Lakes a region renowned for its tourist attractions is not evaluated, but must be under the circumstances.

R. Traffic Impacts

Because the pre-publication DEIS proceeds from the false premise that there were no traffic impacts associated with the CIN Properties previously, and as such, there will be none in the future. In fact, there is no attempt whatsoever to determine whether operations which last existed in 2005 (including CIN gaming operations) would have the same impact in terms of traffic once they are reinstated. As such, the analysis undertaken in this section of the pre-publication DEIS is invalid on its face and does not meet standards.

S. Visual Impacts

As indicated previously, the site inspections associated with the historic and archeological resource reviews in the pre-publication DEIS were not provided, so it is impossible for the Counties to determine whether in fact the data presented in some form is accurate.

In any event, as indicated previously, because the pre-publication DEIS proceeds from the false premise that the CIN Properties will not be developed or will not be further developed, the view-shed analysis undertaken is invalid on its face. As discussed, and as identified in the substantial scoping comments previously provided to BIA, NEPA requires that a visual assessment based on likely potential for future build-out scenarios be undertaken. Here, the Nation's own data indicates it will be retaining additional employees to conduct current operations, so it is all but certain that expansion will occur. Thus, in order to analyze visual impacts (as well as traffic and other critical impacts), reasonable build-out scenarios must be analyzed in the DEIS.

T. Cumulative Impacts

Despite comments made from the Counties and others, the pre-publication DEIS fails to undertake the cumulative impacts analysis associated with the granting of the application by the

Oneida Indian Nation ("OIN") for Madison and Oneida Counties. Madison and Oneida Counties are in close proximity to Cayuga and Seneca Counties and thus, the impacts associated with extensive gaming and other operations associated with the granting of the OIN application must be evaluated in order to undertake a valid cumulative impacts analysis as required by NEPA.

Further, as indicated given the stated intent of CIN to make further applications for fee-to-trust transfers, the impact of taking the hundreds of additional acres of property controlled by CIN must be evaluated. The impact associated with the past and continued purchases of lands by CIN from the proceeds of businesses which failed to collect taxes in accordance with law or from proceeds which were derived from gaming must also be evaluated.

U. Alternatives Analysis and Mitigation Measures

As discussed previously regarding the analysis regarding alternatives, no valid screening analysis was undertaken and therefore required by NEPA, and therefore, no alternatives other than the statutorily required no-action alternative as well as those alternatives favored by CIN are analyzed. There are a number of alternatives that have been suggested in comments by the Counties and others, but BIA has failed to acknowledge same, let alone analyze them.

Further, there is a simple failure to identify mitigation measures, because as discussed earlier, the pre-publication DEIS rather than offering a rigorous analysis of environmental impacts, is apparently nothing more than a tool used by BIA to justify the granting of CIN's applications. The mitigation measures previously identified, including those that could be adopted through legitimate alternatives including a program of payments in lieu of taxes, and allowing the state and counties to retain jurisdiction over certain regulatory matters relating to public health and the environment, etc. are not even acknowledged, let alone identified and analyzed as required.

Conclusion

For the foregoing reasons, BIA should withdraw the pre-publication DEIS and not issue the DEIS for public comment at this time.

Sincerely,

Joseph D. Picciotti

JDP:cds

Enclosures

cc: Frank R. Fisher, Esq.  
Suzanne Sinclair  
Wayne D. Allen  
Frederick R. Westphal, Esq.