

COMMENTS

Mr. Franklin Keel, Regional Director
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive
Suite 700
Nashville, TN 37214

RE: DEIS Comments, Cayuga Indian Nation of New York Trust Acquisition Project

Dear Mr. Keel:

This letter contains our comments on the Draft Environmental Impact Statement with respect to the Cayuga Indian Nation's Land into Trust Application. We oppose the land-into-trust application and urge the Bureau of Indian Affairs to deny the application in all respects, including for the reasons set forth in this letter.

TAXES

- Once the land is placed into trust, it becomes exempt from local property taxes, special district charges, and other fees shared by users of the community infrastructure, such as sewers, water, roads, etc.
- Under any analysis, removal of the subject lands from the tax rolls will have a significant adverse impact on the communities in Seneca and Cayuga counties and on the individual land and business owners who will be carrying the main burden of the needed increased taxes.
- Infrastructure and community services, such as police protection, fire protection, local schools, emergency services, and other public services require the revenue from property taxes and assessments to support them. The Cayuga Indian Nation will derive support from these services without having to share the burden of funding them.
- Governmental entities that derive revenue from property to maintain infrastructure and community services include the relevant counties, towns and villages and local school, fire, sewer and water districts.
- New York derives substantial revenues from sales taxes and excise taxes due on sales of taxable goods, including gasoline and tobacco products. The Cayuga Indian Nation is not collecting New York sales and excise taxes (and therefore not remitting taxes to the state) normally due on the sale of taxable goods to non-tribal members. Non-collection of these taxes has and will continue to create ongoing reductions in such tax collections and reduction in the local share of those taxes paid to our communities.
- An approved trust application (and any future applications granted) will result in a tax shifting that will place greater and greater tax burden on fewer property owners, particularly as properties taken into trust are inevitably developed. This unfair tax burden will inhibit private sector investment and job growth in the region. Furthermore, it will burden current non-Cayuga Indian Nation businesses and those residents who are/have been remitting such taxes.
- The inevitable future development and build-out of trust properties will exacerbate the loss of future taxes on the trust properties by Cayuga Indian Nation businesses.

RESPONSES

Form Letter 5: Multiple Commenters

The following is a form letter, submitted by multiple individuals, or at least some slight variation thereof. Please refer to the Table of Contents for the complete list of people who submitted this letter. Each individual letter is included on the enclosed CD.

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Your preference is noted.

13-2

Please refer to Common Response 7: Real Estate Taxes and Economic Effects.

Please refer to Common Response 8: Sales Taxes.

Please refer to Common Response 15: Community Services and Infrastructure.

As discussed in "Chapter 4.8: Socioeconomic Effects" of the DEIS, removal of the subject properties from the tax rolls would not have a significant impact to property tax revenue for local municipalities, counties, or the state. Tax exemptions for Indian Tribes are a matter presided over by Congress and not within the scope of this FEIS.

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Please refer to Common Response 16: Unfair Competition.

Please refer to Common Response 17: Future Development.

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- Non-collection of New York sales tax and excises taxes on taxable goods by non-Indian has and will continue to create ongoing reductions in such tax collections and reduction in local share of those taxes paid to our communities. This unfair tax will place a greater and greater burden on fewer property owners and non-Indian business owners, particularly as properties taken into trust are developed and will continue to be developed. The resulting decrease in non-Indian businesses whether caused by lowering the size of their operations or shutting down, will have an adversely drastic economic effect on the communities in the affected counties.

INFRASTRUCTURE/SERVICES

- Infrastructure maintenance, police protection, fire protection, emergency services and other public services require revenues from property taxes and assessments to support them. The loss of tax and assessment revenue generated by the Cayuga Indian Nation trust properties will impose the cost of such referenced local services on a smaller group of property owners thus increasing the unit cost for those services. Such services will be continued to be used by the Cayuga Indian Nation properties taken into trust and persons occupying such properties, (should the application be granted) but without the Cayuga Indian Nation trust properties paying any taxes or assessments.
- Trust properties will continue to use community infrastructure (roads, emergency services etc.), yet those properties (and activities on them) will be exempt from sharing in the cost to maintain such infrastructure and pay for services that occupants of trust properties will continue to use.
- The development and all but certain expansion of Cayuga Indian Nation lands including Cayuga Indian Nation operations, retail facilities and gaming will increase the demand on community services provided by local and state governments. Certain of these services will continue to be undertaken by local governments without the payment of any taxes or assessments for properties which are the subject of Cayuga Indian Nation applications and/or future applications.

UNFAIR COMPETITION

- The Cayuga Indian Nation enjoys a significant economic advantage over competing businesses in operating its commercial enterprises and not charging or collecting state taxes. Non-Indian business, which must pay taxes, may be unable to compete and be forced to decrease the size of their operations (and as a result decrease employees) or shut down, resulting in losses of jobs, loss and businesses, additional lost tax and special assessment revenues.
- Sales at gas stations and cigarettes sales undoubtedly suffer when competing enterprises are charging lower prices by refusing to collect required taxes. By virtue of Cayuga Indian Nation enterprises not remitting sales and excise taxes they are able to offer their customers lower prices, therefore attracting more customers and substantially undercutting their competitors.

REGULATORY JURISDICTION

- States, counties, towns and villages will lose any ability to regulate activities on the trust properties, including any activities that take place on such properties that impact the environment and natural resources including the air, soil and water.

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Please refer to Common Response 8: Sales Taxes.

Please refer to Common Response 17: Future Development.

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Please refer to Common Response 15: Community Services and Infrastructure.

Please refer to Common Response 17: Future Development.

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Please refer to Common Response 8: Sales Taxes.

Please refer to Common Response 16: Unfair Competition.

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Please refer to Common Response 9: Regulatory Jurisdiction.

Please refer to Common Response 11: Land Use and Zoning.

Please refer to Common Response 12: Checkerboarding.

Please refer to Common Response 21: Potential Environmental Impacts.

At this time, the Cayuga Indian Nation has no plans to alter or expand land uses on the properties subject to the land-into-trust application. Existing land uses are generally consistent with local zoning and land uses plans, and the Nation has shown consideration for public welfare through enactment of a land use ordinance and other ordinances.

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COMMENTS

- Cayuga Nation sovereignty over the subject lands will result in a patchwork of jurisdiction over the lands. The Cayuga Indian Nation lands are a part of a larger community, all connected by water, sewer, school and other community services and resources. Without the ability to apply regulatory laws to Cayuga Indian Nation trust property, State and local governments would be unable to protect the property and health of residents in the overall community with whom the Cayuga Indian Nation shares a common environment.
- Land use, environmental and other regulatory laws are only effective if they are applied uniformly over an area. The patchwork removal of the proposed lands from state and local jurisdiction threatens the regulatory scheme as a whole.
- In addition to the practical benefits of comprehensive state laws, rules and regulations instituted and implemented by elected representatives, the preservation of governance at the local level preserves and advances important values, among them democracy and the sharing of community burdens and benefits.
- States, counties, towns and villages will lose the ability to require enforcement of fire and building codes on buildings constructed or existing on trust lands.
- Land use and zoning regulations are indispensable tools in the community planning process. Zoning allows municipalities to make the most efficient use of the community's available land, while working toward the development of a balanced and cohesive community. If trust status is granted to the Cayuga Indian Nation properties, the properties granted trust status will not be subject to land use and zoning laws and the Cayuga Indian Nation can develop such properties without regard to land use conflicts or conflicts with an overall community plan.
- The state, counties, towns, and villages will lose any ability to;
 - Review, monitor, or regulate activities that have an environmental impact on the air, soil, and water
 - Enforce the fire and building codes on structures existing or constructed on trust lands
 - Permit and track the handling, transporting, disposing, and cleaning-up hazardous materials.
 - Sample quality of petrochemical products at gas stations
 - Register and inspect underground fuel storage tanks
 - Ensure that gas discharges are cleaned up
 - Enforce the New York State Sanitary Code
 - Manage and protect fish and wildlife populations
 - Restrict and regulate development within floodplains and floodways
 - Protect cultural, historic, archaeological, and architecturally important resources
 - Review and permit sound, economic development of mineral resources
 - Regulate the application of pesticides
 - Prevent illegal youth purchases of tobacco
 - Ensure compliance with state fair labor standards protections
 - Respond to criminal activities because of the continuing legal uncertainty about the ability of state and local police to enter tribal land
 - Enforce public nuisance regulations
- The lands of the Cayuga Indian Nation are part of a larger community, all connected by water, sewer, school, and other community services and resources. Land use, environmental and other regulatory laws are only effective if they are applied uniformly over the whole area. The patchwork removal of the proposed lands from state and local jurisdiction

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Please refer to Common Response 9: Regulatory Jurisdiction.
Please refer to Common Response 21: Potential Environmental Impacts.

Please refer to Common Response 23: Criminal Jurisdiction.
Please refer to Common Response 31: Wildlife Harvesting.

Under the Proposed Action, environmental regulations would continue to be enforced by the EPA. The Cayuga Indian Nation does not have any plans to expand facilities or operation on the subject properties that would compromise any sensitive environmental or cultural resources. New York State would continue to have jurisdiction over civil and criminal issues. The BIA does not encourage sale of restricted items to minors, nor would the Cayuga Indian Nation be authorized or inclined to engage in unlawful business operations.

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Please refer to Common Response 9: Regulatory Jurisdiction.
Please refer to Common Response 12: Checkerboarding.
Please refer to Common Response 14: City of Sherrill U.S. Supreme Court Decision.

Tribal sovereignty is granted under Congressional legislation. The validity of tribal sovereignty is not within the scope of this FEIS.

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threatens the regulatory scheme as a whole, and the Supreme Court in the Sherill decision clearly stated that concern.

- We are a nation of laws, rules and regulations. These laws, rules and regulations do not apply to these land into trust. Therefore, how are these lands governed? We live in the USA so the same laws, rules and regulations should apply to all without exception.

ENVIRONMENTAL CONSEQUENCES

- New York and its municipalities enforce environmental laws to prevent damage to our natural resources and to prevent detrimental effects to all who share in the same environment. If the Cayuga Indian Nation lands are taken into trust they would be exempt from such state, county and local environmental laws, thereby posing a significant potential risk of damage or potential damage to our natural resources thereby adversely impacting residents of the counties because we all share in the same environment, and such trust status and lack of regulatory control presents threats or potential threats to our natural resources.
- The inability of the State to enforce state environmental laws that protect our natural resources ranging from our lakes, rivers, and groundwater, to our air and soil, will adversely impact all members of our communities.
- To prevent damage to the natural resources and detrimental affects to all who share the same environment, New York and its municipalities enforce environmental laws. The inability of the state to enforce environmental laws that protect or reduce adverse impact to scarce and irreplaceable natural resources will prevent the state from protecting the environment for all. Any land taken into trust would be exempt from those state, county, and local environmental laws and increase the likelihood of damage and destruction of those resources which would adversely affect all members of the community.

FUTURE DEVELOPMENT

- Given that the Cayuga Indian Nation has indicated it seeks to acquire more lands and that it reportedly has many acres of land located in the counties that are not part of the current land to trust applications, I believe the Cayuga Indian Nation will continue acquire properties within what it contends is the reservation area, make application to have such additional lands held in trust and then develop or further develop such properties resulting in increased losses of future tax and assessment revenue.
- The environmental impact of the all but inevitable likelihood that the Cayuga Indian Nation will make future trust applications and acquire more lands and expand its operations must be considered (i.e., gasoline sales, convenience store operations, campgrounds and gaming). The impact and the financial drain associated with the removal of additional properties from tax rolls, including impacts to public infrastructure, social services and other services required must be considered.
- The Cayuga Indian Nation's failure to state its future development plans or potential plans exacerbates the concern that the future acquisition of additional lands will result in future land-into-trust applications. These applications will remove more lands from the obligations of taxation and assessments, and will in turn remove more properties and businesses conducted on those properties from all state, county and local regulatory control.
- The Cayuga Indian Nation originally claimed a need for land-in-trust because it desired to return to its homelands and re-establish its presence in the area. This could just as well be accomplished by buying land and sharing in land ownership responsibilities, such as paying

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Please refer to Common Response 9: Regulatory Jurisdiction.

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Please refer to Common Response 21: Potential Environmental Impacts.

The EPA would continue to have jurisdiction over trust lands for environmental regulation to ensure adequate protection of the surrounding community and significant natural resources. The Cayuga Indian Nation has no current plans to alter existing land uses; therefore, the Proposed Action would not result in any adverse environmental impacts.

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Please refer to Common Response 17: Future Development.

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The Cayuga Indian Nation has expressed no current plans to alter existing land uses, expand its businesses under the Proposed Action, or apply for additional transfers of land-into-trust. No additional fee-to-trust applications have been received to date, and consideration of any potential future federal trust land acquisitions and/or Cayuga Nation land-to-trust applications are hypothetical and cannot be assessed in this FEIS.

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Please refer to Common Response 2: Purpose and Need for Trust Land.

Please refer to Common Response 17: Future Development.

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The validity of tribal sovereignty and tax exemptions for sovereign tribal entities is under the purview of Congress, and not within the scope of this FEIS.

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property taxes, sales taxes, etc. with non-Indian land and business owners. The Amish and Mennonites are an intricate part of our communities. They share in the tax burdens we all face, but still retain their ethnic, cultural, and religious heritage. So could the Cayugas.

- This earlier desire seems to have been replaced by one based on financial gain rather than heritage. The applications profess a desire to maintain the properties in their current use instead of developing them for members to inhabit. Given that we understand that the Cayuga Indian Nation has indicated it seeks to acquire more lands and that it reportedly has many acres of land located in the counties that are not part of the current land-to-trust applications, we believe the Cayuga Indian Nation will continue to acquire properties within what it contends is the reservation area. We believe it will make applications to have additional lands held in trust and then develop or further develop properties, resulting in increased losses of future tax and assessment revenue.

OTHER COMMENTS

- In addition to the reasons above, we believe that there is a more fundamental problem: it is well past time for the descendants of the original Indian tribes to cease the Victim-Federal Dependent role and join American society as normal citizens. This would be healthiest for them and for American society as whole. Yes, the Europeans treated the Indians cruelly, as conquerors everywhere, including the Indian tribes themselves, had done to each other for thousands of years before Europeans came here. In these enlightened times we look back and deplore it, but that was the way things were done then, by all conquerors. However, it looks as though living Americans, who had nothing to do with this, are destined to treat the Indian descendants as dependents into perpetuity.

We all know that there in fact are no Indian "nations" within our nation; this is a convenient fiction that is used to qualify for Federal funds and tax breaks. In a fair world, the Bureau of Indian Affairs and any other Federal departments involved would be directed to transition the remaining tribal reservation members into society and then be dissolved. Realistically, however, "taking care" of the Indians is an entrenched Federal jobs program with no end in sight, and pigs will fly before anyone gives it up. It is also a lucrative entitlement program for some Indians. We want to go on record that we believe this whole relationship, in addition to being expensive for American taxpayers, demeans our Indian citizens.

- Please acknowledge that this discontentment needs to stop and that we need to work together as human beings to establish fair practices for everyone. The American Indians are a part of this nation and must put aside the injustices of the past and go on with us for a better and communicative world.
- Please, take into consideration that these lands have been acquired from the Indians at least eight (8) different times. How many more times must we suffer because a few who seem to be the only people ((Indians (probably not) or lawyers?)) that benefit from all of this tragedy.

GENERAL COMMENTS

The DEIS as prepared for the conveyance of lands into trust by the Cayuga Indian Nation of New York is inadequate because it does not undertake an adequate analysis of the issues I/we have highlighted in this letter.

The Draft Environmental Impact Statement lacks critical information needed for a thorough review of the application because it does not require mitigation of known adverse impacts as

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Your preference is noted.

Your comment is noted.

Please refer to Common Response 19: Special Treatment of Indians.

The validity of the land-into-trust process is a matter under the purview of Congress, and not within the scope of this FEIS.

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Your comment is noted.

Please refer to Common Response 4: Cayuga Indian Reservation.

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Your preference is noted.

Your comment is noted.

Please refer to Common Response 6: Alternatives.

Please refer to Common Response 18: DEIS Completeness.

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identified in this letter. I/we urge the Bureau of Indian Affairs to adopt the "no action alternative" and not grant the Cayuga Indian Nation's application for lands into trust.

I/We oppose the land-into-trust application submitted by the Cayuga Indian Nation of New York and urge the Bureau of Indian Affairs to deny the application in all respects, including for the reasons set forth in this letter.

The Draft Environmental Impact Statement (DEIS) lacks the critical information needed for a thorough review of the application and because it does not require mitigation of known adverse impacts (as identified in this letter), I/we respectfully request that the Bureau of Indian Affairs withdraw the DEIS until these issues are resolved or until then, I/we request that the "no action alternative" be selected and the Cayuga Indian Nation application to have lands conveyed into trust, be denied in all respects.

Thank you for the opportunity to submit our comments and concerns into the public record.

13-15

RESPONSES
