

Appendix E

MEMORANDUM OF UNDERSTANDING

between the

**UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CAYUGA COUNTY, NY

SENECA COUNTY, NY

and

CAYUGA INDIAN NATION

concerning:

**Lead Agency and Cooperating Agency Coordination for an Environmental
Impact Statement on the Proposed Fee-to-Trust Transfer of Land
from the Cayuga Indian Nation to the Bureau of Indian Affairs**

The objective of this Memorandum of Understanding ("MOU") is to establish an agreement between the Bureau of Indian Affairs ("BIA"), the New York State Department of Environmental Conservation ("NYSDEC"), Cayuga County, NY ("CC"), Seneca County, NY ("SC"), and the Cayuga Indian Nation of New York (the "Nation") regarding the roles and responsibilities of the BIA, NYSDEC, CC, SC, and the Nation in the development of the Environmental Impact Statement ("EIS") concerning the Nation's proposed fee-to-trust transfer of land. This MOU confirms the formal designation of the NYSDEC, CC, SC, and the Nation as cooperating agencies, and delineates the responsibilities and obligations of each agency with respect to the development of the EIS. Accordingly, the parties agree to the following:

I. Purpose.

The Nation is applying to the BIA for a fee-to-trust transfer of 125± acres of land owned by the Nation (the "Proposed Action"). The Proposed Action is intended to help address the Nation's need for cultural and social preservation, political self-determination, self-sufficiency, and economic growth as a federally recognized Indian tribe. The federal government's trust relationship with Indian tribes is defined by treaties, statutes, Executive Orders, regulations, and judicial decisions. The BIA is required to review the proposed fee-to-trust acquisition under the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) ("NEPA"). Under NEPA, the BIA is the lead agency for the evaluation of the Proposed Action and alternatives consistent with Counsel on Environmental Quality ("CEQ") regulations, 40 C.F.R. §§ 1500-1508. In accordance with this MOU, NYSDEC, CC, SC, and the Nation are designated

cooperating agencies. The preparation of the EIS has been contracted to AKRF, Inc. ("AKRF"), a third-party contractor to the BIA.

II. Authority.

The agencies enter this MOU under the authority of NEPA, CEQ regulations, the July 28, 1999 CEQ Memorandum on Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, the January 30, 2002 CEQ Memorandum on Cooperating Agencies in Implementing the Procedural Requirements of NEPA, Department of Interior Manual 516 DM 1-6, 10, and the BIA NEPA Handbook, 59 IAM 3-H (May 5, 2005).

III. Responsibilities and Obligations.

- A. Responsibilities of the Lead Agency - Among its statutory and regulatory obligations, the lead agency BIA shall be responsible for:
1. Drafting the NEPA documents to ensure that the EIS is in compliance with all applicable laws, policies, Executive Orders, and guidelines with respect to potential impacts resulting from the Proposed Action.
 2. Through consultation with each cooperating agency, the BIA is responsible for selecting the alternatives for assessment in the EIS and, when desirable or appropriate, for the selection of a Preferred Alternative.
 3. Approving the Draft EIS and the Final EIS prior to release to the public.
 4. Preparing and approving a Record of Decision ("ROD").
 5. Having the sole authority to manage and direct the actions of AKRF.
 6. Adhering to the schedule attached as "Attachment A." The BIA may modify timeframes and deadlines that apply to the cooperating agencies through consultation with each cooperating agency. The BIA may modify timeframes and deadlines that do not apply to the cooperating agencies without such consultation.
 7. Designating those subject areas in the EIS upon which each cooperating agency will focus its evaluation and review of the environmental issues. These designations will be based upon the special expertise of each cooperating agency.
 8. Participating in all phases of EIS preparation, including attending inter-agency coordination meetings, reviewing draft documents and public notices, and participating in public scoping and Draft EIS public review meetings and hearings.

9. Receiving and reviewing all agency and public scoping comments, comments on the Draft EIS and the Final EIS, and preparing responses to comments.
 10. Keeping cooperating agencies informed in general on the progress of the EIS and providing copies of documents relevant to the cooperating agencies' duties hereunder as determined in the discretion of the BIA. Such documents will include the scoping report, agency and public scoping comments, draft EIS, final EIS, and ROD.
 11. Contributing to and maintaining a comprehensive mailing list for distribution of Proposed Action information and NEPA documents.
 12. Designating a representative(s) to serve as the day-to-day liaison or point of contact for the Proposed Action.
 13. Maintaining the federal Administrative Record of the preparation of the EIS and ROD.
- B. Responsibilities of the Cooperating Agencies – NYSDEC, CC, SC, and the Nation shall be responsible for:
1. Participating in the EIS process, including attending meetings as requested by the BIA, reviewing draft documents, and participating in the scoping and Draft EIS public review processes.
 2. Identifying significant environmental issues and providing assistance and information related to their areas of special expertise, as follows:
 - i. NYSDEC – shall provide such assistance and information related to its expertise concerning environmental and regulatory impacts of the Proposed Action within the jurisdiction of the NYSDEC as the BIA requests.
 - ii. CC – shall provide such assistance and information related to its areas of expertise concerning the economic, socioeconomic, environmental, land use, public health and safety, tax, and regulatory impacts of the Proposed Action within CC as the BIA requests.
 - iii. SC – shall provide such assistance and information related to its areas of expertise concerning the economic, socioeconomic, environmental, land use, public health and safety, tax, and regulatory impacts of the Proposed Action within SC as the BIA requests.

- iv. Cayuga Nation – shall provide such assistance and information as the BIA requests.
3. Adhering to the schedule attached as "Attachment A," commencing at the time upon which this MOU is entered into by the cooperating agency. The BIA may modify timeframes and deadlines that apply to the cooperating agencies through consultation with each cooperating agency. The BIA may modify timeframes and deadlines that do not apply to the cooperating agencies without such consultation.
 4. Responding in a timely manner to data requests put forth by the BIA or AKRF.
 5. Designating a representative to serve as the day-to-day liaison or point of contact for the Proposed Action.
 6. Reviewing agency and public scoping comments, comments on the Draft EIS and Final EIS, and providing such assistance with preparing responses to comments as the BIA requests.
 7. Contributing to a comprehensive mailing list for distribution of Proposed Action information and NEPA documents.
 8. Maintaining and providing to the BIA copies of documents and correspondence for inclusion in the federal Administrative Record of the preparation of the EIS and ROD. Documents and correspondence not in the possession of the BIA may not be included in the Administrative Record.

The parties to this MOU understand that cooperating agency status does not confer to the cooperating agencies any special authority to change, edit, or veto all or part of the EIS, ROD, or other related NEPA documentation, which remains the ultimate responsibility of the BIA. In addition, the parties understand that veto or decision-making power does not accompany cooperating agency status. As the lead agency charged with carrying out the NEPA process, the BIA retains sole decision-making authority over the EIS and its process and the ROD.

IV. Administration.

- A. This MOU shall not enlarge or diminish the BIA's obligation to provide documents to the public under Federal law. In addition to those otherwise provided under Federal law, the rights of the cooperating agencies to documents pursuant to this MOU are set forth in Section III(A)(10).
- B. The parties agree to use their best efforts to resolve any substantive disputes. If any issue cannot be resolved, the BIA will be the final decision-maker. However,

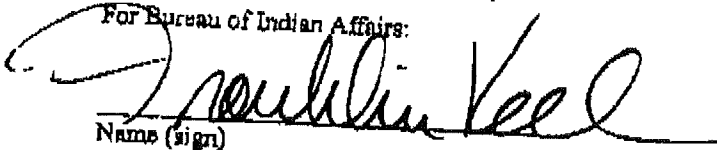
the cooperating agencies retain the right to comment on all issues related to the EIS, including those in dispute, through the normal NEPA process available to any interested member of the public.

- C. The cooperating agencies agree not to employ the services of any representative or party having a financial or other interest in the outcome of the Proposed Action. The cooperating agencies will take all necessary steps to ensure that no conflict of interest exists with its consultants, counsel, or representatives employed in this undertaking.
- D. This MOU shall be incorporated into or referenced in the Draft and Final EIS for public review so that the signatories' respective roles may be understood.
- E. Any party may unilaterally withdraw from this MOU after 30 days written notice of their intention to do so to the other parties. During the intervening 30 days, the parties agree to actively attempt to resolve any outstanding disputes and disagreements.
- F. The BIA may terminate this MOU with respect to any cooperating agency(ies) at any time by providing 30 days written notice of the termination to the other parties, which notice shall identify reasons for the termination. During the intervening 30 days, the parties agree to actively attempt to resolve any outstanding disputes and disagreements. Grounds for termination include, but are not limited to, failure or unreasonable delay in meeting the responsibilities of Parts III.B or IV of this MOU. This MOU shall otherwise remain in effect for the remaining parties until the BIA has issued a Final ROD.
- G. This MOU may be amended with the written concurrence of all parties.
- H. This MOU does not obligate the BIA to provide funding for cooperating agency involvement in the preparation of the EIS, nor does it require the signatory agencies to obligate or expend funds in excess of available appropriations.
- I. The cooperating agencies agree not to seek recourse against the United States for any cause of action that may arise under this MOU. Provided, however, that neither this provision or anything else in this MOU shall be construed or deemed to waive, diminish, or otherwise affect the rights, claims, causes of action, counterclaims, or defenses the cooperating agencies, the State and its political subdivisions, may have under statute, rule, regulation, or common law to challenge all or a portion of the Final EIS or ROD, or both, for the Proposed Action, or the decision on the Proposed Action itself.
- J. Nothing herein shall be construed as obligating the government to expend, or as involving the United States in any contract or other obligation for the future payment of, money in excess of appropriations authorized by law and administratively allocated for this work.

V. Endorsements.

We have read the foregoing and by signing this MOU, agree to our intent to provide services as outlined above.

For Bureau of Indian Affairs:



Name (sign)

MAR 21 2008

Date

Franklin Keel
Director, Eastern Region
Bureau of Indian Affairs

Name (print)

Title

For New York State Department of Environmental Conservation:

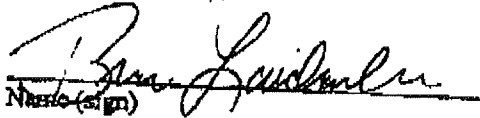
Name (sign)

Date

Name (print)

Title

For Cayuga County, NY:



Name (sign)

10/17/06

Date

Brian Laudadio

Name (print)

Council to Cayuga Co., NY

Title

V. Endorsements.

We have read the foregoing and by signing this MOU, agree to our intent to provide services as outlined above

For Bureau of Indian Affairs

Name (sign)

Date

Name (print)

Title

For New York State Department of Environmental Conservation

Nancy H. Jones

Name (sign)

12/19/06

Date

Nancy W. Lussier

Name (print)

~~DIRECTOR OF MANAGEMENT & BUDGET SERVICES~~

Title

For Cayuga County, NY

Name (sign)

Date

Name (print)

Title

For Seneca County, NY:

Rami Lardner
Name (sign)

10/17/06
Date

Brian Lardner
Name (print)

Counsel to Seneca Co., NY
Title

For Cayuga Indian Nation:

Name (sign)

Date

Name (print)

Title