

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

JOSEPH D. PICCIOTTI

DIRECT: (585) 419-8629  
FAX: (585) 419-8815  
JPICCIOTTI@HARRISBEACH.COM

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2009 JUN 15 P 2:32

June 11, 2009

BIA-ERO  
REGIONAL DIRECTOR

James Langford  
Office of the Chief Information Officer  
Office of Information Planning  
U.S. Department of the Interior  
Bureau of Indian Affairs  
625 Herndon Parkway  
Herndon, VA 20171

Laura Cloud/Thelma Harjo  
Office of Asst. Secretary  
U.S. Department of the Interior  
Bureau of Indian Affairs  
MS-3071, MIB  
1849 C Street, NW  
Washington, D.C. 20240

Re: FOIA Request: Application of the Cayuga Indian Nation of New York Requesting  
Land Be Taken Into Trust (Requests dated April 14, 2005 and May 25, 2005)

Dear Sir and Madam:

Pursuant to the provisions of the Federal Freedom of Information Act, 5 U.S.C. §552 ("FOIA"), we hereby reiterate the earlier FOIA request made by Philip Spellane of this office in a letter request dated July 7, 2008 (an extra copy is attached for your review) and which the Department of the Interior ("DOI") previously acknowledged receipt (a copy of that acknowledgement is also enclosed for your review) but which DOI has yet to respond by making the documents available, despite the fact that our FOIA request was made nearly (1) year ago. In sum, we reiterate our request that the Department of Interior's Bureau of Indian Affairs ("BIA") or other DOI representatives in accordance with FOIA, make available all records and/or submissions pertaining to the applications for the acquisition of land to be placed into trust in the referenced matter by the United States for the use and benefit of the Cayuga Indian Nation of New York ("CIN").

We also write this letter to specifically reiterate the previous July 7, 2008 FOIA request with regard to a subset of those documents previously requested, including documents specifically identified or referred to in the "Draft Environmental Impact Statement" issued by

BIA in the last several months ("DEIS"). The DEIS was prepared regarding the referenced applications by the CIN pursuant to the review required under the National Environmental Policy Act of 1969 ("NEPA"). We previously requested BIA provide the required documents in accordance with NEPA (we attach our most recent demand dated June 9, 2009 requesting the documents be produced, but requests for the same documents were made as early as March of this year). Because BIA has not provided the documents required to be made available by NEPA, we are also requesting that those documents be made available pursuant to FOIA. Our submission of this reiterated demand made under FOIA may not be interpreted in any fashion as a concession that the documents requested in our letter dated June 9, 2009 to Mr. Chandler are not already required to be produced in accordance with NEPA.

Needless to say, we continue to request each of the other documents requested in Mr. Spellane's July 7, 2008 letter, but the documents identified below are needed immediately to ensure that a thorough environmental review process under NEPA is completed. As indicated, we do require that the following documents be produced as soon as practicable, and within ten (10) days as the close of the comment period under NEPA is fast approaching, and the documents requested are necessary for the process including the following:

1. The 2003 four year plan authored by the CIN previously referenced in the "Purpose and Need Section" of the pre-release or pre-publication DEIS issued by BIA in this matter and any other such CIN plans considered by BIA or its contractor in completing the DEIS, including the most recent version of the DEIS issued by BIA in May 2009 (the "May 2009 DEIS"). Needless to say, given that the May 2009 DEIS fails to undertake substantial analyses and testing based on the statement that CIN has "no present plans" to develop undeveloped properties or increase the development on existing properties which are to be taken into trust, it is critical that any document referencing planning by CIN be provided to evaluate the potential for future development or future expansion by CIN;

2. The DEIS references 1992 analytical results for one of the Seneca Falls specifically parcel (36-1-49), but states that the report is "not available for review," please provide a copy of the report as there is no basis for the report not to be made available, and based upon the text of the DEIS, AKRF clearly reviewed such material. See p. 3.4-4. Because the 1992 data was clearly made available to AKRF and contains information regarding past impacts or potential impacts from petroleum operations on the Seneca Falls property (located in close proximity to Seneca Lake) it is critical that this information be provided;

3. The field notes, worksheets, etc. completed by AKRF or others for the site inspections completed (apparently sometime in 2006) which are referenced in the "Living Resources" Chapters including but not limited to Sections 3.6-3.7. We do note that the May 2009 DEIS was revised to state that "all of the observations" were provided in the referenced sections, and in our view that is more reason to release the field notes, where, as here, such reports are undertaken that kind of information is provided as a matter of proper

professional protocol. Moreover, release of those notes is even more important where critical architectural, archeological and historical resources are located in close proximity to several parcels for which trust status has been sought, and the DEIS concluded that there was no impact on those resources because of the topography and vegetation associated with the properties associated with land located between the Nation's parcels and the historic resources effectively blocks or screens such resources. (For example, The Charles Howland-William H. Chase House is located "relatively close to" the Nation's Union Springs property, May, 2009 DEIS at p 3.7-4; and the Ferry Farm is located only .2 miles northeast of the Nation's Seneca Falls properties. Id.);

4. The data compilations or other documents used in conjunction with the IMPLAN model to generate the information and conclusions referenced in Section 3.8 subsection G, including data sets used to produce any of the IMPLAN results relied upon, identification of computer programs used to process the results (by source code or otherwise), and outputs for intermediate or final model results referenced or relied upon in the pre-draft DEIS beginning on page 3.8-25 through page 3.8-28. (We note that on page 3.8-26 there is a reference to the exemption from FOIA addressed on pages 1 and 2 of this letter, but we note that the raw data allegedly supporting claims of expenditures by the CIN in New York State has not been provided and such data is clearly required to be provided under NEPA and would no constitute confidential information as such information would be in raw form and not identify any confidences);

5. Each document or compilation from which the data shown in Table 3.8-25 was generated in the DEIS, including any documents detailing "amounts expended for normal business operations based on actual expenditures during fiscal year 2005," including "the actual expenditures" referenced in Table 3.8-25;

6. The documents compilations containing or referring to the underlying data which is summarized in Table 3.8-26 of the DEIS showing "amounts expended for normal business operations based on actual expenditures during fiscal year 2005," including the "actual expenditures," referenced in Table 3.8-26;

7. The documents containing or referring to the underlying data which is summarized in the in Table 3.8-27 showing "amounts expended for normal business operations based on actual expenditures during fiscal year 2005" in areas located outside of Seneca and Cayuga Counties but within the State of New York, including the "actual expenditures" referenced in Table 3.8-27;

8. The data compilations, reports or documents used to develop the information summarized in the DEIS at Table 3.8-28;

9. The data compilations, reports or documents used to develop the information summarized in the pre-draft DEIS at Table 3.8-29;

10. The data compilations, reports or documents used to develop the information summarized in the pre-draft DEIS at Table 3.8-30;

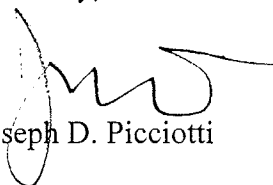
11. The date compilation reports or documents used to develop the information discussed at pages 4.8-6 through 4.8-12 and each of the data compilation reports or documents or other information relied upon or otherwise used in compiling Tables 4.8-2, 4.8-3, and 4.8-4; and

12. To the extent not provided in the appendix to DEIS, all of the data on which the analysis contained in Section 3.12 is based.

We previously agreed to pay reasonable duplication costs for the public processing of this request in an amount not to exceed \$100.00; however, please notify us prior to you incurring any expenses in excess of that amount.

Under the circumstances, as this FOIA request was first made by Mr. Spellane nearly one (1) year ago, we respectfully submit that the DOI has been required to provide a substantive response including making the documents available for many months but has failed or refused to do so. Therefore we would appreciate a substantive response as soon as possible, and specifically that the documents be provided within ten (10) days as requested.

Sincerely,



Joseph D. Picciotti

JDP:nac

Enclosures

cc: Philip G. Spellane, Esq.  
Frederick R. Westphal, Esq.  
Frank R. Fisher, Esq.  
Kurt Chandler ✓



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240



July 16, 2008

**RECEIVED**

JUL 21 2008

Mr. Philip G. Spellane  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534

Dear Mr. Spellane:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request dated July 7, 2008. Your request was assigned Control No. FC 08722. Please cite this number in any communications with the Bureau of Indian Affairs concerning your request.

In your request, you state:

“... I hereby request copies of all records and/or submissions pertaining to the application or applications for the acquisition of land by the United States to be held in trust for the use and benefit of the Cayuga Indian Nation of New York.”

In accordance with our Departmental FOIA policy (43 CFR Part 2), we will advise you of the status of your response within 20 workdays. We will also advise you if we anticipate a delay due to unusual circumstances, and an additional 10-workday extension is necessary.

You have provided us with an upper limit (of \$100) of what we are to incur, on your behalf. Should it appear that the actual cost of searching for or duplicating records responsive to your request will exceed this limit, you will be provided with an estimate of the total cost of responding to your request and an opportunity to narrow your request.

If you have any questions concerning your request, feel free to contact this office<sup>1</sup> at (202) 208-4542, Fax: (202) 208-6597.

Sincerely,

Laura Cloud  
Indian Affairs FOIA Officer

<sup>1</sup>Indian Affairs FOIA Officer, Office of the Deputy Assistant Secretary – Indian Affairs (Management), 1849 C Street, NW, Mail Stop 3071-MIB, Washington, DC 20240.

HARRIS BEACH <sup>PLLC</sup>  
ATTORNEYS AT LAW

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

PHILIP G. SPELLANE

DIRECT: (585) 419-8638  
FAX: (585) 419-8811  
P SPELLANE@HARRISBEACH.COM

July 7, 2008

**COPY**

FOIA Officer  
Bureau of Indian Affairs  
MS-3071, MIB  
1849 C Street, NW  
Washington, DC 20240

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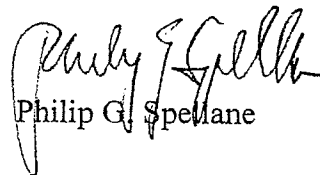
I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$100.00. However, please notify me prior to your incurring any expenses in excess of that amount.

If for any reason my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act and provide the name and address of the person or body to whom an appeal should be directed.

As you know, the Freedom of Information Act requires that an agency respond to a request within twenty business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

Thank you for your prompt consideration to this matter and please call if you have any questions.

Very truly yours,

  
Philip G. Spellane

PGS:drb