



New York Association of Convenience Stores

130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

June 12, 2009

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

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

Dear Mr. Keel:

My name is James Calvin. I am President of the New York Association of Convenience Stores, a private, not-for-profit trade association representing the interests of licensed mini-marts and convenience stores throughout New York State. NYACS is headquartered at 130 Washington Avenue, Albany NY 12210.

For five years or more, non-Indian retailers in Seneca and Cayuga counties suffered the ill effects of unfair competition from the Cayuga Indian Nation's LakeSide Trading stores, which defiantly refused to collect and remit applicable state and local taxes on cigarettes, motor fuel and other products they sold to non-Indian customers.

The Nation's artificially and dramatically lower "tax free" prices proved irresistible to smokers. In droves, non-Indian cigarette customers shifted their purchases from our tax-collecting stores, which traditionally relied on cigarettes for one-third or more of total inside sales, to LakeSide Trading, adversely impacting not only our bottom line, but employment, tax revenue, and public health policy.

When county authorities halted tax-free cigarette sales at LakeSide Trading last fall, there was an immediate and sharp increase in sales at surrounding non-Indian convenience stores. The closest locations in Montezuma and Seneca Falls rose 150% or more. But even stores in Auburn experienced a 20% to 30% jump. This illustrated the magnetic pull of untaxed cigarettes across the Finger Lakes region, underscoring how much business was being diverted from non-Indian stores to LakeSide Trading, and how much tax revenue the state and counties had been losing as a consequence.

Now, the community is presented with a Draft Environmental Impact Statement in which the Bureau of Indian Affairs concludes that resumption of "tax free" sales of gas and cigarettes at the two LakeSide Trading is vital to the Nation's "cultural and social preservation, political self-determination, self-sufficiency, and economic growth as a federally recognized Indian tribe."

The DEIS explains that "the Nation intends to reestablish tribal presence in their homeland around Cayuga Lake, which holds for them cultural and religious significance," even though "no members of the Nation are currently known to reside in either Seneca or Cayuga Counties."

Curiously, the DEIS laments that losing revenue from untaxed cigarette sales "would severely impact the Nation's economy and its goal of becoming economically self-sufficient," yet fails to explore whether there could be any alternative means of achieving the goal. Has the Cayuga Indian Nation looked at *anything* other than gaming and tax-free tobacco?

'Sovereign Tax-Exempt Entity'

We object to the BIA attempting to unilaterally bestow tax-free status on the sales of cigarettes and gas at LakeSide Trading stores by asserting in the DEIS that "because the Nation is a sovereign tax-exempt entity, no sales taxes are paid on the Nation's purchases or collected on sales made by the Nation."

For the record, Indian sales of cigarettes and motor fuel to non-Indian New Yorkers are indeed taxable under amended Sections 471e and 284e, respectively, of the New York State Tax Law, which took effect March 1, 2006. The refusal of the past three Governors of New York to enforce this statute – inaction that is currently being litigated by a state legislator who voted for the amendments – does not make the Nation a "tax exempt entity."

To the contrary, a unanimous U.S. Supreme Court, in its 1994 *Attea* ruling, held that New York State was entitled to collect taxes on Native American sales of cigarettes and motor fuel to non-Indian customers as long as the exemption on tribal sales to tribal members was preserved. In rendering that decision, the Court made clear that the State's interest in collecting lawful taxes outweighs tribes' interest in offering a tax exemption to customers who would ordinarily shop elsewhere, and that Indian traders are not wholly immune from state regulation that is reasonably necessary to collecting such taxes.

We would recommend that discussion of this issue be clarified, and corrected, in the Final EIS.

Regulatory Double Standard

Taxation, it should be noted, is only one element of the double standard that was allowed to exist between Cayuga Indian Nation and non-Indian convenience stores in the affected area. Below are some of the laws and regulations our stores must comply with but LakeSide Trading was allowed to ignore.

New York State/Local Statute or Regulation	Subject to enforcement?	
	Non-Indian Store	LakeSide Trading
Tobacco Products		
Collect/Remit NYS Excise Taxes on Cigarettes	Yes	No
Collect/Remit NYS Excise Taxes on Other Tobacco	Yes	No
Collect/Remit NYS and Local Sales Taxes	Yes	No
Obtain/Display NYSDTF Tobacco Dealer Registration	Yes	No
Abide by CMSA Minimum Pricing Law	Yes	No
Remove Self-Serve Displays of Tobacco Products	Yes	No
Sell Only Cigarettes Bearing NYS Tax Stamps	Yes	No
Require ID From Customers Who Appear 24 or Younger	Yes	No
Undercover Health Dept. Inspections to Detect Sales to Minors	Yes	No
Fine of \$300 to \$1,500 if Caught Selling to Minors	Yes	No
License Suspension for Repeat Sales to Minors	Yes	No
Post Sign Warning That Sales to Minors Prohibited	Yes	No
Motor Fuel		
Register Underground Petroleum Tanks with NYSDEC	Yes	No
Periodically Test Underground Tanks, Report Results	Yes	No
Monitor Tank Inventory, Maintain Reconciliation Reports	Yes	No
Immediately Report Spills/Leaks to NYSDEC	Yes	No
Subject to NYSDEC Petroleum Inspections/Audits/Fines	Yes	No
Collect/Remit NYS and Local Taxes on Motor Fuel	Yes	No
Pumps Inspected by Sealer of Weights and Measures	Yes	No
Other Products		
Collect 5¢ Deposit on Carbonated Beverage Containers	Yes	No
Redeem 5¢ Deposit on Carbonated Beverage Containers	Yes	No
Collect/Remit NYS and Local Sales Taxes	Yes	No
Comply With State Item Pricing Law	Yes	No
Comply With State Scanning Accuracy Law	Yes	No

Given these suffocating competitive disadvantages, would any convenience store in Seneca or Cayuga counties having to compete against LakeSide Trading stand a chance of succeeding? In fairness, the Final EIS should address these double standards.

We do respect the right of the Cayuga Indian Nation to operate commercial enterprises. But we believe all who reap the rewards of doing business with New Yorkers bear an obligation to abide by duly enacted state and local standards for the conduct of such commerce.

Economic Impact

The DEIS boasts that wages paid to LakeSide Trading employees "represent a direct investment in the local economy by the Nation" and that many of its purchases of goods and services "are made locally and therefore support local businesses."

While we appreciate the Nation's contribution to the Finger Lakes economy, many non-Indian stores have employed local people and bought local supplies since long before the LakeSide Trading existed. That does not justify removing our property from the tax rolls or permitting us to sell products without collecting taxes or following regulations.

The DEIS fails to objectively analyze the impact of existing and future Cayuga Indian Nation enterprises on competing non-Indian businesses in terms of sales, employment, regulatory compliance and private investment.

Conclusion

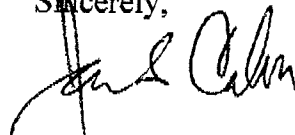
We fail to grasp why the tax-free sale of tobacco remains the centerpiece of the Cayuga Indian Nation's land trust application.

Surely the federal law creating the land-into-trust mechanism did not intend for the BIA to sanction cherry picking of non-contiguous commercial property for tribal enterprises whose success relies on enticing non-Indian customers to evade duly enacted State taxes.

Cigarette tax evasion is a lose-lose-lose proposition for Seneca and Cayuga counties. Tax-collecting local businesses lose legitimate sales and are weakened. The counties themselves lose desperately needed tax revenue. And the public policy goal of curbing smoking through exorbitant taxation is defeated.

Accordingly, the New York Association of Convenience Stores urges the Bureau of Indian Affairs to adopt Alternative 2, No Action.

Sincerely,



James S. Calvin
President



Fax

CAYUGA COUNTY
CHAMBER of COMMERCE

36 South Street
Auburn, NY 13021
Phone: (315) 252-7291
Fax: (315) 255-3077

Website: www.cayugacountychamber.com

Cayuga Dollar\$ Program

Chamber certificate program that keeps \$'s in Cayuga County.

If you are Interested in accepting these certificates at your business, OR would like to purchase Cayuga Dollar\$, to use as incentives etc please contact Amy Fuller @ 252-7291

To: Franklin Keel

From: Andrew R. Fish

Business: _____ Pages: 3 Date: 6/6/09

Subject: DEIS Comments, Cayuga Indian Nation of NY Trust Application Project

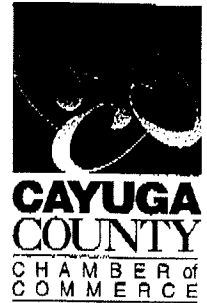
Urgent For Review Please Comment Please Reply

• Comments

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BIA-ERO
REGIONAL DIRECTOR



July 6, 2009

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

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

The Cayuga County Chamber of Commerce ("Chamber") respectfully submits the following comments as objections to the Draft Environmental Impact Statement ("DEIS") regarding the proposed land-in-trust application submitted by the Cayuga Indian Nation ("Tribe") to the Bureau of Indian Affairs ("BIA").

Land in trust applications might be beneficial for large expanses of undeveloped properties, as such exist in the Western United States, but are inappropriate for the densely populated, developed properties in the Eastern United States. In addition to the lack of existing environmental laws and regulations on purportedly "sovereign land," the type of "checkerboarding" that will result from the piecemeal application currently before the BIA is improper for trust approval. The approval of the land in trust application would result in a loss of tax revenues from said lands in addition to reduced tax revenues from declining real estate values due to the checker-board development of land-in-trust adjacent to private, tax-paying residents. Finally, the trust application should be summarily denied due to the Tribe's failure to collect and pay mandatory sales tax to the State of New York, a documented violation of the penal law. As the Tribe is unwilling to abide by the penal law, there is cause for concern regarding their willingness to follow environmental regulations and not pollute our precious land, air and waters.

While the DEIS lists expenditures on goods and services occurring within and outside Seneca and Cayuga counties, cigarette and gasoline purchases for resale are blatantly excluded. In November of 2008, law enforcement officials in the two counties seized 17,600 cartons of untaxed cigarettes from the LakeSide Trading convenience stores located in Seneca Falls (Seneca County) and Union Springs (Cayuga County). County officials estimate that these cigarettes seized in a one-day raid represent \$485,000 in uncollected state taxes. Clearly, this lost revenue has a significant negative impact on the State of New York, Seneca and Cayuga Counties, and their local legitimate businesses and taxpayers. By not collecting sales and excise taxes on cigarettes and gasoline, the LakeSide Trading stores maintain an unfair advantage in offering lower prices on these commodity items. Existing and former business owners have spoken publicly about the detriment of this unfair competition, and this is not what the land-in-trust program was intended for.

36 South Street
Auburn, NY 13021
Tel: 315.252.7291
Fax: 315.255.3077

NS

Home of the Community Calendar
www.cayugacountychamber.com

The statement in the DEIS that the Tribe has "no plans for further development on the properties subject to the Proposed Action" is disingenuous. Already in 2009, two new enterprises have been opened by the Tribe on adjacent and nearby properties. It is clear that the Tribe has every intention of expanding their commercial enterprises, which will only compound the existing negative impacts to the Counties and State.

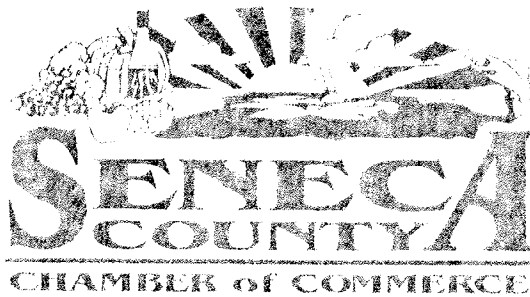
Some local and state regulations that enterprises on trust land would be exempt from include health and safety inspections. As Cayuga enterprises in the two counties include the sale of produce and other food, this raises serious concern for public safety. Furthermore, the LakeSide Trading stores selling gasoline (a highly regulated substance of concern) are not only within the Cayuga Lake watershed, but are in close proximity to the lake. To suggest that a lack of monitoring by government agencies would create no significant risk to critical natural resources or the public is optimistic at best.

The Chamber represents more than 430 businesses located in the City of Auburn and Cayuga County. The Chamber opposes the Cayuga Nation's Land Into Trust application in principle because the DEIS lacks critical information regarding, among many other issues, the negative impacts of existing Cayuga Nation enterprises on surrounding businesses and communities. The Chamber echoes the call recently made by Senator Schumer, that the DEIS be completely redrafted.

Respectfully,



Cayuga County Chamber of Commerce Board of Directors and Staff
Andrew R. Fish
Executive Director



2020 Routes 5 & 10 West • P.O. Box 10
Seneca Falls, New York 13158-0010

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phone (315) 681-2906
fax (315) 681-1750

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e-mail: info@senecachamber.org
www.senecachamber.org

REGIONAL DIRECTOR

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 comments on the Draft Environmental Impact Statement (DEIS) with respect to the Cayuga Indian Nation's Land into Trust Application. The Seneca County Chamber of Commerce opposes the application in principle and urges the Bureau of Indian Affairs to adopt the "no action alternative" option presented in the DEIS. The attached resolution adopted by the Chamber's Board of Directors on Wednesday, June 17, 2009, specifically addresses our objections to the DEIS.

The Draft Environmental Impact Statement lacks critical information regarding, among many other issues, the negative impacts of existing Cayuga Nation enterprises on the surrounding communities. Section 3.8-23 states, "The LakeSide Trading business [in Seneca County] primarily sells gasoline and convenience store goods, including cigarettes." While tables 3.8-25, 26 & 27 list expenditures on goods and services occurring within and outside Seneca and Cayuga counties, cigarette and gasoline purchases for resale are blatantly excluded. In November of 2008, law enforcement officials in the two counties seized 17,600 cartons of untaxed cigarettes from the LakeSide Trading convenience stores located in Seneca Falls and Union Springs. County officials calculate that these cigarettes seized in a one-day raid represent \$485,000 in uncollected state excise taxes. This does not include the value of state and local sales taxes which are uncollected. Clearly, this lost revenue has a significant negative impact on the State of New York, Seneca and Cayuga counties, and taxpayers.

Furthermore, this claim of special privilege by the Cayuga Nation in not collecting taxes has a negative impact on competing businesses in the surrounding area. By not collecting sales and excise taxes on cigarettes and gasoline, the LakeSide Trading stores have an unfair advantage in offering lower prices on these items. Existing and former business owners have spoken publicly before the Seneca County Board of Supervisors about the detriment of this unfair competition. Following the seizure of cigarettes from the LakeSide Trading stores in November, other stores

in the surrounding area reported dramatic increases and record sales on cigarettes, illustrating the impact of Nation enterprises.

The statement in the DEIS that the Cayugas have "no plans for further development on the properties subject to the Proposed Action" is disingenuous. Already in 2009, two new enterprises have been opened by the Cayugas on adjacent and nearby properties. Upon opening these two enterprises, it is our understanding that, once again, the Cayugas had initially claimed special privilege with regard to inspections and processes that all businesses are subject to. It is clear that the Cayugas have every intention of expanding their commercial enterprises, which will only compound the existing negative impacts to the counties and State.

The local and state regulations that enterprises on trust land would be exempt from include health and safety inspections. As Cayuga enterprises in the two counties include the sale of produce and other food, this raises serious concern for public safety. Furthermore, the LakeSide Trading stores selling gasoline are not only within the Cayuga Lake watershed, but are in close proximity to the lake. To suggest that a lack of monitoring by government agencies would create no significant risk to critical natural resources or the public is optimistic at best.

A conclusion to be derived from this incomplete information is an attempt by the Cayuga Nation to suppress the true negative impact of their enterprises currently operating in the counties, and mislead the public regarding future development. While the DEIS is therefore significantly flawed and biased, 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. Thank you for the opportunity to submit comments and concerns into the public record.

Sincerely,



Alfred Gaffney
Executive Director

Enclosure

cc: Chuck Lafler, Chairman, Seneca County Board of Supervisors
Richard Swinehart, Seneca County District Attorney
Suzanne Sinclair, Seneca County Manager
Frank Fisher, Seneca County Attorney



2020 Routes 5 & 20 West • P.O. Box 70
Seneca Falls, New York 13148-0070

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phone: (315) 568-2906
fax: (315) 568-1730

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e-mail: info@senecachamber.org
www.senecachamber.org

PLAZERO
REGIONAL DIRECTOR

RESOLUTION

SENECA COUNTY CHAMBER OF COMMERCE OPPOSES LAND-INTO TRUST APPLICATION OF CAYUGA INDIAN NATION

Whereas, the Bureau of Indian Affairs (BIA) has released a Draft Environmental Impact Statement (DEIS) supporting the proposed fee-to-trust conveyance of certain real property owned by the Cayuga Indian Nation (CIN) and located in Cayuga and Seneca Counties in the State of New York; and

Whereas, the DEIS acknowledges that the property in question is on “ancestral land” and therefore not on a current reservation, thus the CIN application is being treated improperly as an “on-reservation” rather than an “off-reservation” application; and

Whereas, the DEIS conclusion that there would be no significant environmental impact if the approximately 125+ subject acres owned by the CIN were taken into federal trust for the use and benefit of the CIN becomes moot as trust land would be exempt from local, state, and most federal regulations which monitor environmental conditions and regulate activities; and

Whereas, taking the subject land into trust would render it sovereign territory and therefore exempt from local property taxes, special district charges and other fees, thus reducing the revenue of relevant counties, towns, villages, and school, fire, water, and sewer districts; and

Whereas, despite the fact that the stated purpose of the CIN application is to foster activities that will result in economic growth for the Nation, the DEIS nevertheless contends that the CIN has “no plans for further development on the properties subject to the proposed action;” and

Whereas, the DEIS fails to take into consideration the fact that the CIN already owns some 765 additional acres in the counties and has openly expressed interest in purchasing more up to 64,015 such acres of ancestral land that the Nation contends would thereby become eligible for trust status; and

Whereas, the DEIS fails to recognize the negative impacts that the CIN’s LakeSide Trading enterprises have had on competing local businesses due to CIN enterprises’

unfair advantage of not collecting state sales and excise taxes on motor fuel, tobacco, and other products sold, thereby also reducing the sales tax revenue of the counties; and

Whereas, the DEIS admits that the sole source of CIN's tribal revenue is its gas station and convenience store businesses and gaming operations but does not acknowledge that the sale of untaxed cigarettes and its gaming operations were both determined to be illegal; and

Whereas, in Table 3.8-27, figures are omitted for the annual amount of purchases of cigarettes and gas outside the counties, which would further demonstrate lost local and state tax revenues; and

Whereas, the DEIS states that "No members of the Nation are known to reside in Cayuga County/Seneca County" and that "[t]he proposed action is intended to further the lifestyle, cultural values and objectives of the Nation by advancing the Nation's goals of re-establishing tribal presence in its former homeland," yet on the very same page (4.8-2) the document makes the incongruous statement that "[i]t is not anticipated that members of the Cayuga Nation would relocate to the Project area;" and

Whereas, the DEIS minimizes the costs of road, water, and sewer infrastructure, police and fire protection, and other public services that would be provided to the subject properties without guaranteed reimbursement from the CIN; and

Whereas, land placed in trust is removed from local governmental jurisdiction in terms of air, soil, and water regulations, zoning and land use regulations, building codes, and other community standards, thereby exposing both humans and the environment to unnecessary health, safety and welfare risks; and

Whereas, the DEIS has failed to take into consideration the disruptive practical consequences of checker-boarded sovereign parcels, which practice was squarely rejected by the U. S. Supreme Court ruling in City of Sherrill vs. the Oneida Indian Nation; and

Whereas, the DEIS has failed to recognize the U.S. Supreme Court decision in Carcieri vs. Salazar which prohibited the Secretary of the Interior from taking land into trust for an Indian tribe, such as the CIN, which was not federally recognized and under federal jurisdiction in 1934, be it therefore

RESOLVED, the Seneca County Chamber of Commerce rejects the preferred alternative contained in the DEIS and calls upon the BIA to elect the No Action alternative, and be it further

RESOLVED, the Seneca County Chamber of Commerce calls upon the BIA to reject all further fee-to-trust applications of the CIN in accordance with the Carcieri vs. Salazar decision referred to above, and any other applicable law, and be it further

RESOLVED, a copy of this resolution shall be sent to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214 so as to be received by July 6, 2009, and be it further

RESOLVED, a copy of this resolution shall be sent to the following public officials:

Kenneth Salazar, Secretary of the Interior
Charles Schumer, United States Senator
Kirsten Gillibrand, United States Senator
Michael Arcuri, United States Congressman
David Paterson, Governor of the State of New York
Michael Nozzolio, New York State Senator
Brian Kolb, New York State Assemblyman

PASSED AND RESOLVED THIS 17th DAY OF June, 2009.



Diane Lahr-Smith
Chair, Board of Directors



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

July 6, 2009

Mr. Franklin Keel, Regional Director
 Eastern Regional Office
 Bureau of Indian Affairs
 545 Marriott Drive, Suite 700
 Nashville, TN 37214
Transmitted via telefax to 615-564-6701

RECEIVED
 2009 JUL -6 P 3:26
 DIV-EPD
 REGIONAL DIRECTOR

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

Dear Mr. Keel,

New York Farm Bureau, the largest general farm organization in New York State, appreciates the opportunity to comment on specific issues that are of great concern to the agriculture community in Seneca and Cayuga Counties and should be given greater consideration in the final EIS for the proposed Cayuga Indian Nation of New York's Fee-to-Trust conveyance of property.

As the "voice of New York agriculture," we have been involved with the Cayuga Land Claim, the origin of the proposed action, since it first became an issue over twenty years ago. We believe that the fee-to-trust land proposal is not appropriate because it provides an unfair advantage for a certain segment of the population - an advantage that occurs at the expense of others in the community. The impact on local communities would be particularly extreme in New York, due to the relatively high population density of the impacted communities compared to typical areas of fee-to-trust applications which are located in remote areas of the western part of the country. We urge the Bureau of Indian Affairs to amend their draft EIS to accurately reflect the fiscal, environmental and jurisdictional impacts of this proposal on Seneca and Cayuga regions with a specific focus on the impact to the agriculture industry.

The members of the agricultural community are extremely concerned over the consequences the proposed land transfer will have on revenues to local governments and schools. The draft EIS fails to accurately reflect the impact of the loss of property tax base on local municipalities and schools and the expense to local entities for provision of services to protect and support land placed in trust. Because placing land in trust will substantially decrease the tax base for local property taxes, local governments and schools will need to cut services or find other sources of revenue. One local school district estimates their tax base to be reduced by 51% should the land transfer be implemented as proposed. In these dire economic times, every single tax dollar is precious and desperately needed to provide municipal and education services which our farm communities depend on.