



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 29 2023

The Honorable Clint Halftown
Federal Representative, Cayuga Nation
256 Cayuga Street
Union Springs, New York 13160

Dear Representative Halftown:

This letter provides my decision, on reconsideration, on the Cayuga Indian Nation of New York's (Nation) application to the United States Department of the Interior (Department) requesting the acquisition of approximately 114 acres of land in Cayuga County, New York, in trust for gaming and other purposes. After careful review of the record before me, I have reconsidered the Department's July 31, 2020, decision¹ (2020 Decision) and now approve the Nation's application. I am directing the Regional Director, Eastern Region of the Bureau of Indian Affairs (BIA), to accept the land under consideration into trust based on the reasoning and analysis below.

I. Background

The Nation's application requests the Department accept into trust approximately 114 acres of land in Cayuga County (Property), which includes four contiguous parcels in the Village of Union Springs, New York and a small parcel in the Town of Springport, New York. The Nation plans to continue the existing uses of the Property, including a gaming facility, convenience store, gas station, car wash, agricultural area, and a vacant lot.

History of the Nation's Reservation

Prior to the Revolutionary War, the Nation's territory comprised approximately 1,700 square miles, spanning from Lake Ontario southward into Pennsylvania.² In 1788 and 1789, the State of New York negotiated several treaties with constituents of the Six Nations Confederacy, including the Cayuga Nation. Pursuant to these treaties, the Nation ceded 1,600 square miles of its land base to New York State, but retained a 64,000-acre reservation, "for their own use and cultivation but not to be sold, leased or in any other manner alienated or disposed of to others."³ The Cayuga Reservation (Reservation) boundaries encompassed land along the western and eastern shores of Cayuga Lake. Thereafter, the Nation was a signatory to the 1794 Treaty of Canandaigua with the United States.⁴ In Article 2 of that treaty, the United States "acknowledge[d] the lands reserved to the Oneida, Onondaga

¹ Decision Letter from Tara Sweeney, Assistant Secretary – Indian Affairs, to Clint Halftown, Federal Representative of the Cayuga Nation (July 31, 2020).

² *Cayuga Indian Nation of New York v. Pataki*, 165 F. Supp. 2d 266, 304 (N.D.N.Y. 2001), *rev'd on other grounds*, 413 F.3d 266 (2d Cir. 2005).

³ *Id.* at 315 (quoting the 1789 Treaty of Albany).

⁴ Treaty with the Six Nations, Nov. 11, 1794, 7 Stat. 44., 2 Kappler 34-37 (1904).

and Cayuga Nations, in their respective treaties with the State of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations.”⁵ Nevertheless, and in violation of the Nonintercourse Act,⁶ the State of New York purchased all of the Nation’s land within the boundaries of the Reservation over the next thirteen years.⁷

As a result of these purported sales, the Nation was dispossessed of aboriginal fee title to the lands within its Reservation. Additionally, the State, Counties, and local governments exercised some regulatory jurisdiction over the land within the Nation’s Reservation. However, because only Congress can disestablish Indian reservations, “the Cayuga Reservation has not been disestablished and persists today within the boundaries set forth in the Treaty of Canandaigua.”⁸ In recent years, the Nation has repurchased property within the Reservation boundaries, but because the land is no longer held in aboriginal fee title, it is subject to Federal, Tribal, State, and local regulatory jurisdiction.⁹ As a result, the Nation has not been able to exercise its full sovereign jurisdictional authority over its land within its Reservation, as discussed below.

Procedural History of the Nation’s Fee-to-Trust Application

In March 2005, the Supreme Court ruled in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005) that the similarly situated Oneida Indian Nation could not unilaterally assert tribal tax immunity over land within its reservation boundaries to prevent a local government from assessing real property taxes on lands that the Oneida Indian Nation reacquired two centuries after they had last been possessed by the Oneida Indian Nation. The Supreme Court instructed that the “proper avenue” for the Oneida Indian Nation “to reestablish sovereign authority over” the land is by a fee-to-trust application to the Secretary of the Interior (Secretary), pursuant to Section 5 of the IRA and the Department’s implementing regulations at 25 C.F.R. Part 151.¹⁰ On April 14, 2005, the Nation submitted its fee-to-trust request in order to reestablish full jurisdiction over its land within its Reservation.

The Nation’s 2005 application was for trust acquisition of approximately 129 acres of land gaming and other purposes.¹¹ The application included parcels in both Cayuga and Seneca Counties, New York. From 2006 through 2010, the BIA conducted a robust environmental review of the proposed

⁵ *Id.* at 45.

⁶ 25 U.S.C. § 177.

⁷ On July 27, 1795, the Nation entered into a treaty with the State of New York in which the State acquired the entire original reservation of the Nation (except for a three-square-mile area on the eastern shore of Cayuga Lake) in exchange for a promise that the State pay the Nation \$ 1,800 annually in perpetuity. In 1807, the State of New York purchased the Nation’s remaining three-square-mile parcel for \$4,800. *Cayuga Indian Nation of New York v. Cuomo*, 565 F. Supp. 1297, 1305 (N.D.N.Y. 1983).

⁸ *Cayuga Nation v. Tanner*, 6 F.4th 361, 378 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022).

⁹ *Id.* at 375-76.

¹⁰ *City of Sherrill*, 544 U.S. at 221.

¹¹ Application of the Cayuga Indian Nation of New York Requesting that Land be Taken in Trust (April 14, 2005) (~125 acres in the Town of Seneca Falls and the Village of Union Springs, New York); Application of the Cayuga Indian Nation of New York Requesting that Land be Taken in Trust (May 25, 2005) (~4 acres in the Towns of Springport and Montezuma, New York).

acquisition and alternatives, including holding public meetings in Seneca Falls and accepting written comments.¹² A Final Environmental Impact Statement was made available on October 22, 2010.¹³

Meanwhile, a leadership dispute developed within the Nation. The Council of the Cayuga Nation eventually split into factions: the “Jacobs Council” and the “Halftown Council.”¹⁴ The Department suspended its review of the application to allow for a resolution of the leadership dispute. On July 13, 2017, the Acting Assistant Secretary for Indian Affairs issued a final agency decision recognizing the Halftown Council as the legitimate Cayuga Nation government.¹⁵ In 2018, the Nation requested that the Department re-initiate its review of the Nation’s application and issue a final decision.¹⁶ The application has remained substantially the same throughout the pendency of this process, except that all lands in Seneca County were removed from consideration in 2019.¹⁷

On July 31, 2020, the Department disapproved the Nation’s application, citing opposition from neighboring communities and litigation between those communities and the Nation.¹⁸ The 2020 Decision also expressed concern over incidents that occurred in February 2020 on Nation property in Seneca County, even though the Nation withdrew all of the lands in Seneca County from consideration in 2019.¹⁹ On February 22, 2020, in an operation that was coordinated with local law enforcement, the Nation evicted trespassers from several of its Seneca County properties and razed the structures thereon so they would not be the focal points for conflict in the community.²⁰ On February 29, 2020, in advance of a planned protest at the Seneca County properties, Cayuga Nation Police taped off and secured the area. When protestors attempted to enter the property, Cayuga Nation Police and local law enforcement formed a line to walk the protestors off the property. Two protestors were briefly detained.²¹ I discuss these events and their treatment in the prior decision below at Part IV.

Shortly before the Department issued the 2020 Decision, the Nation sued the Department for failing to act on the Nation’s application.²² After the 2020 Decision, the Nation amended its complaint to challenge the denial.²³ The suit has been stayed since the fall 2021 because the Department and Nation

¹² See, e.g., 71 Fed. Reg. 7,568 (Feb. 13, 2006); 74 Fed. Reg. 24,032 (May 22, 2009).

¹³ 75 Fed. Reg. 65,372 (Oct. 22, 2010).

¹⁴ See *The Cayuga Nation by its Council of Chiefs and Clan Mothers v. Eastern Regional Director, Bureau of Indian Affairs*, Decision of the Office of the Assistant Secretary – Indian Affairs, United States Department of the Interior (July 17, 2017).

¹⁵ *Id.*

¹⁶ Letter from Raya Tresier, Wilmer Hale, to John Tashuda, Office of the Assistant Secretary – Indian Affairs (March 26, 2018).

¹⁷ See Letter from Clint Halftown, Federal Representative of the Cayuga Nation, to Tara Sweeney, Assistant Secretary – Indian Affairs (March 20, 2019).

¹⁸ Decision Letter from Tara Sweeney, Assistant Secretary – Indian Affairs, to Clint Halftown, Federal Representative of the Cayuga Nation (July 31, 2020) [hereinafter 2020 Decision].

¹⁹ *Id.* at 3-5, 7-8.

²⁰ Letter from Clint Halftown, Federal Representative of the Cayuga Nation, to Bryan Newland, Assistant Secretary – Indian Affairs (Nov. 8, 2021) at 14-16 [hereinafter Nation Submission]; see also Letter from David DeBruin, Counsel for Cayuga Nation, to the Honorable David N. Hurd, United States District Court Judge (Mar. 3, 2020).

²¹ Nation Submission at 17.

²² Complaint, *Cayuga Nation v. United States*, Civ. No. 20-1581 (D.D.C. June 16, 2020).

²³ Amended Complaint, *Cayuga Nation v. United States*, Civ. No. 20-1581 (D.D.C. Sept. 9, 2020).

began settlement negotiations. As part of the negotiations, the Nation provided the Department with two memoranda dated November 8, 2021, supported by seventeen exhibits.²⁴ The Nation's submission provided significant background information regarding the February 2020 events on the Nation's Seneca County properties. Those flashpoint events were preceded by years of efforts to regain possession of these Nation-owned properties through the state courts. The submitted documents offer new information and provide a more comprehensive understanding of the February 2020 events, showing that the Nation acted responsibly, with notice to local counterparts, in its effort to regain control of its Seneca County properties. Based on this more fulsome understanding of the February 2020 events, as well as other positive developments surrounding the Seneca County properties since that time,²⁵ reconsideration of the Nation's application is merited.

Accordingly, on November 22, 2021, I decided to reopen the Nation's application and reconsider the July 31, 2020, denial of that application.²⁶ This letter constitutes my decision on reconsideration.

II. Gaming Eligibility Determination Pursuant to the Indian Gaming Regulatory Act

Congress, through the Indian Gaming Regulatory Act (IGRA), recognized Indian Tribes' inherent and exclusive right to regulate and conduct gaming activity on Indian lands,²⁷ which are defined, in pertinent part, as "all lands within the limits of any Indian reservation."²⁸ This definition includes all lands within the boundaries of an Indian Tribe's Reservation, including lands owned in fee simple.²⁹ Section 20 of IGRA prohibits Tribes from conducting gaming on lands acquired in trust after October 17, 1988, with exceptions for lands located within or contiguous to the boundaries of the reservation of an Indian Tribe that existed as of October 17, 1988 (the on-reservation exception).³⁰

The Department's regulations at 25 C.F.R. Part 292 set forth procedures for implementing Section 20 of IGRA. Lands are eligible for gaming pursuant to the on-reservation exception if the Tribe had a reservation on October 17, 1988, and if the lands are located within or contiguous to the boundaries of the reservation.³¹

²⁴ Letter from Ambassador (ret.) Keith M. Harper, Counsel to the Cayuga Nation, to Bryan Newland, Assistant Secretary – Indian Affairs (Nov. 8, 2021); Letter from Clint Halftown, Federal Representative of the Cayuga Nation, to Bryan Newland, Assistant Secretary – Indian Affairs (Nov. 8, 2021) [hereinafter Nation Submission].

²⁵ Since February 2020, the Nation has sought to defuse tension surrounding the Seneca County properties. The Nation obtained demolition permits from Seneca County for removal of structures on the seized properties and obtained a construction permit to build a convenience store and gas station on the properties. Nation Submission Exhibit I; *see also* Nation Submission at 22.

²⁶ Declaration of Bryan Newland, *Cayuga Nation v. United States*, Civ. No. 20-1581 (D.D.C. Dec. 8, 2021), ECF No. 34, Attachment #1.

²⁷ *See* 25 U.S.C. § 2701(5).

²⁸ 25 U.S.C. § 2703(4)(A).

²⁹ *See e.g.*, Letter from Roger W. Thomas, Office of the Solicitor, to Mr. Donald C. Kittson, Tribal Attorney, Blackfoot Tribe, dated December 3, 1990 (on file with the Office of Indian Gaming).

³⁰ 25 U.S.C. § 2719 (a)(1).

³¹ 25 C.F.R. § 292.4(a). The Department's regulations define "reservation" as "[l]and set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the [T]ribe, notwithstanding the issuance of any patent." 25 C.F.R. § 292.2.

As stated above, the Nation's Reservation boundaries were established by treaty in 1794 and remain intact.³² The Nation's Reservation boundaries encompass approximately 64,000 acres situated on the east and west banks of Cayuga Lake. The Union Springs parcels are located approximately 500 feet east of Cayuga Lake, and the Springport parcel is similarly close to the eastern shore of the lake.³³ Enclosure II contains maps depicting the Nation's Reservation boundaries and the location of the Union Springs parcels and the Springport parcel.³⁴ Both properties are located within the boundaries of the Cayuga Reservation.

I therefore conclude that because the Property is within the Nation's Reservation boundaries, the requirements of the Department's regulations at Part 292 are satisfied, and the Nation may continue to conduct gaming, pursuant to IGRA, regardless of the trust status of the Property.

III. Trust Acquisition Determination Pursuant to the Indian Reorganization Act and 25 C.F.R. Part 151.

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA. As detailed below, the Nation is eligible to have land acquired in trust for its benefit pursuant to this authority. Because the Property is located within the Nation's Reservation boundaries,³⁵ my analysis proceeds under the Part 151 on-reservation criteria.

25 C.F.R. § 151.3 – Land acquisition policy.

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for a Tribe:

1. When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
2. When the tribe already owns an interest in the land; or
3. When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.³⁶

Although only one factor in Section 151.3 must be met, the Nation's application satisfies all three factors. The criteria of subsection (a)(1) are satisfied because the Property is located within the exterior boundaries of the Nation's reservation. Subsection (a)(2) is satisfied because the Nation already owns the land in fee. The Nation also satisfies the requirements of subsection (a)(3) because the Department's acquisition of the Property in trust will be the very first for the Nation—which

³² *Cayuga Nation v. Tanner*, 6 F.4th 361, 365 (2d Cir. 2021), cert. denied, 142 S. Ct. 775 (2022).

³³ Environmental Assessment at 3-4, Attachment V to the Record of Decision [hereinafter Environmental Assessment].

³⁴ The "Land Claim Boundary" map was prepared by O'Brien & Gere on behalf of the State of New York in 2006. The map reasonably represents the boundaries of the Nation's reservation.

³⁵ See *supra* at Part II.

³⁶ 25 C.F.R. § 151.3(a).

otherwise has no land in trust or restricted status—and is necessary to facilitate Tribal self-determination. The Department’s acquisition of the Property in trust reinforces the Nation’s governmental authority over the Property and facilitates the Nation’s self-determination and economic development.

Accordingly, I find the acquisition of the Property into trust satisfies 25 C.F.R. § 151.3.

25 C.F.R. § 151.10(a) – The existence of statutory authority for the acquisition and any limitations contained in such authority.

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition, and if such authority exists, to consider any limitations contained in it including the effect, if any, of the decision in *Carcieri v. Salazar*.³⁷ In *Carcieri*, the United States Supreme Court held that the Secretary’s authority to take land into trust for an Indian tribe under the first definition of “Indian” in the IRA extends only to those tribes that were “under federal jurisdiction” on June 18, 1934 when the IRA was enacted.³⁸

In a 2011 memorandum, the Solicitor’s Office reviewed the Nation’s history to evaluate whether it was under federal jurisdiction in 1934 as required by *Carcieri*.³⁹ The memorandum, which I hereby incorporate by reference, concluded that the Nation was “under federal jurisdiction” in 1934 based on multiple historical facts, including: (1) the Nation was a signatory to the Treaty of Canandaigua; (2) the Nation received payments by the United States under the Treaty of Canandaigua on an annual and uninterrupted basis from 1794 until the present day; (3) the Nation’s membership was enumerated on the Indian Census Rolls and in the Commissioner of Indian Affairs’ Annual Reports before and after 1934; (4) the Nation’s members were residing at, and thus were eligible to vote in Section 18 elections held at the Allegany, Tonawanda and Cattaraugus Reservations in 1935; and (5) the Indian Claims Commission upheld and enforced the Nation’s treaty rights.⁴⁰

25 C.F.R. § 151.10(b) – The need of the individual Indian or tribe for additional land.

Section 151.10(b) requires consideration of the Nation’s need for additional land. The Nation’s need in this case appears obvious considering that, although the Nation’s Reservation boundaries encompass approximately 64,000 acres, the Nation lost aboriginal title to the land. Because the Nation is unable to exercise full jurisdiction over its land, the Nation is, in effect, “landless.” In that sense, the Nation is not pursuing “additional land,” but merely “land.” It is natural that the Nation seeks to restore a

³⁷ *Carcieri v. Salazar*, 555 U.S. 379 (2009) [hereinafter *Carcieri*].

³⁸ *Id.*

³⁹ Memorandum from Patrice Kunesh, Deputy Solicitor, Indian Affairs, to Larry Echo Hawk, Assistant Secretary – Indian Affairs, Re: Cayuga Indian Nation’s Fee-to-Trust Application and *Carcieri* (July 26, 2011).

⁴⁰ *Id.* In 2014, the Solicitor of the Interior memorialized the Department’s understanding of the phrase “now under federal jurisdiction” in light of *Carcieri* in Solicitor’s Opinion M-37029. Sol. Op. M-37029, The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act (Mar. 12, 2014). The analysis and conclusions in the 2011 memorandum regarding the Nation’s “under federal jurisdiction” status are consistent with M-37029.

portion of the land lost within the Nation's Reservation and reaffirm full sovereignty over its homeland, consistent with direction from the United States Supreme Court.⁴¹

Additionally, the Property is important to the Nation. The Nation's application states that it "seeks to reestablish its lands in this area because the location is close to areas that are historically and culturally significant to the Nation."⁴² The Property is also important to the business operations of the Nation, containing a convenience store and gas station, car wash, and the Nation's sole gaming facility. I have considered the Nation's need for this land in trust, as required by § 151.10(b), and nothing in these considerations dissuades me from my decision to approve.⁴³

I recognize that this represents a change in position from the 2020 Decision's analysis of § 151.10(b). That decision noted that "some of the current activities are anticipated to continue and acquisition by the United States in trust does not appear to improve the ability of the Nation to conduct those activities."⁴⁴ The 2020 Decision therefore concluded that the Nation did not need any land in trust. That approach is inconsistent with the overall purpose of the IRA and the Supreme Court's recommendation in *City of Sherrill* that placing the land into trust under Section 5 of the IRA "provides the proper avenue for [the Oneida Indian Nation] to reestablish sovereign authority over territory last held by the Oneidas 200 years ago."⁴⁵ Of course, "some" tribal activities can occur on reacquired tribal fee lands consistent with Federal, Tribal, State, and local regulations. But trust lands are different than reacquired fee lands. When land is in trust, the jurisdiction of Tribes is relatively plain. Additionally, trust land supports tribal self-determination and sovereignty by creating protected homelands for tribal members and reversing generations of land loss. This is the ultimate purpose of Section 5 of the IRA. Indeed, the Nation explains:

Despite the progress the Cayuga Nation has made, it remains critical for it to have some land in trust and for the Nation to recapture fully some portion—however modest—of its once definitively-sovereign reservation land. Land in trust is essential to provide

⁴¹ See *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 220 (2005) ("Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well-being."); see also *Cayuga Nation v. Tanner*, 448 F. Supp. 3d 217, 227 (N.D.N.Y. 2020) ("[T]he Nation took seriously the Supreme Court's advice about the land-into-trust process established in the IRA.").

⁴² Application of the Cayuga Indian Nation of New York Requesting that Land be Taken in Trust (April 14, 2005) at 2 [hereinafter 2005 Application].

⁴³ I also note that, while the Nation's complete lack of trust or restricted land makes its need very plain here, the regulations require only that I consider need as a criterion in my review. Even if the Nation had considerably less "need" for the land, this is merely a factor that must be considered in our process, not a mandate that must be met in order for approval to be possible.

⁴⁴ 2020 Decision at 8.

⁴⁵ *City of Sherrill*, 544 U.S. at 221. The 2020 Decision incorrectly concluded that the Nation needed to provide additional justification to establish its need for the acquisition. See *Central N.Y. Fair Bus. Ass'n v. Jewell*, 2015 WL 1400384, at *15 (N.D.N.Y. Mar. 26, 2015), *aff'd* 673 Fed. App'x 63 (2d Cir. Dec. 9, 2016), *cert. denied sub nom. Central N.Y. Fair Bus. Ass'n v. Zinke*, 137 S. Ct. 2134 (May 15, 2017).

stability and permanence for the Nation as well as to set the foundation for greater prosperity and self-sufficiency.⁴⁶

The record reflects the Nation's need for trust land, and this supports my determination to approve.

25 C.F.R. § 151.10(c) – The purpose for which the land will be used.

Section 151.10(c) requires the Secretary to consider the purposes for which the land will be used. The Nation will continue to use the land for multiple purposes, including a small gaming facility with electronic bingo, convenience store, gas station, car wash, agricultural field, and a vacant parcel.⁴⁷ In addition, the Nation is building an approximately 5,000 square foot gaming facility with associated parking next to the existing gaming facility.⁴⁸ These purposes will continue to support the Nation's economic development, self-determination, and sovereignty. I have considered this as required by § 151.10(c) in my determination to approve.

The 2020 Decision concluded that, because the Nation could continue its uses without trust status, the Nation's purposes would not "be furthered or aided by acquisition of the Property in trust by the United States."⁴⁹ As with the need criterion, however, this reasoning is in error as it misses the point of Section 5 of the IRA and the scope and purpose of Section 151.10(c). That the Nation *could* continue to use the Property without it being in trust status is not sufficient to deny the Nation access to "the capstone of the land-related provisions of the IRA."⁵⁰ All Section 151.10(c) requires is consideration of the purposes for which the Property will be used. That the Nation will continue to use the Property in the same manner as it currently uses it is not a rational basis to deny the Nation's application.

25 C.F.R. § 151.10(e) – If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

Section 151.10(e) requires consideration of the impact on the State and its political subdivisions resulting from removal of land from the tax rolls.

By correspondence dated January 11, 2022, the Department solicited comments from the following state and local governments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:⁵¹

- Union Springs Central School District
- Cayuga County

⁴⁶ Nation Submission at 29.

⁴⁷ See 2005 Application at 3; Environmental Assessment at 3-4.

⁴⁸ Environmental Assessment at 1.

⁴⁹ *Id.* at 9.

⁵⁰ COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 15.07 (2012).

⁵¹ See Notice of Cayuga Nation Fee-to-Trust Application for 114 Acres in Cayuga County (Jan. 11, 2022).

- Town of Springport
- Village of Union Springs
- Village of Cayuga
- City of Auburn
- State of New York

We received response letters with tax and/or jurisdictional information from the Union Springs Central School District,⁵² the Town of Springport, and Cayuga County. We also received letters of support from the Union Springs Fire Department, an individual named Tiffany Dwyer, and Peterman Lumber Company.⁵³

The Union Springs Central School District's (District) letter reported that the Property accounts for \$32,345.40 of annual property tax revenue for the District.⁵⁴ The District's total annual tax revenue for the 2021-22 school year is \$7,678,225, and thus the Property's contribution amounts to approximately 0.4% of the District's budget.⁵⁵ The School District expressed concern over this loss, explaining that "a declining tax base, dropping student enrollment, aging infrastructure and higher than average student poverty rates all combine to place the District in a difficult financial position."⁵⁶ The District also expressed concern that additional properties in its taxing jurisdiction might be taken into trust at a future date.⁵⁷ But the Nation has not applied for any other fee-to-trust acquisitions, and the Part 151 regulations do not require consideration of speculative losses of future tax revenue.⁵⁸

⁵² The School District requested an extension of the comment period. We received the School District's comment letter, dated February 11, 2022, either within the comment period or slightly after, and to the extent the School District's letter exceeded the 30-day regulatory comment period, we grant any necessary extension as a courtesy and accept the School District's letter.

⁵³ We received three supportive comment letters. First, the Union Springs Fire Department expressed support for this acquisition, explaining that "[f]or many years, we have had a close relationship with the Cayuga Nation The Cayuga Nation has given tremendous financial support to our department for many years, giving us the ability to fund the purchase of protective equipment for our firefighters and other lifesaving equipment that we would not otherwise be able to afford." Letter from Chief Garret J. Waldron, Union Springs Fire Department, to Kimberly Bouchard, Acting Regional Director, BIA Eastern Regional Office (Feb. 3, 2022). Further, the Fire Department states that "[w]hile this financial support has been significant, as important to us has been the close and respectful relationship we have had with the Cayuga Nation." *Id.* We also received letters of support from Tiffany Dwyer, an employee of the Nation's gaming facility and a tenant in Nation housing, and from Peterman Lumber Company, a vendor of the Nation.

⁵⁴ Letter from Jarett S. Powers, Superintendent of Union Springs School District, to BIA Eastern Regional Office (Feb. 11, 2022). The School District's letter expressed other concerns unrelated to taxation or jurisdiction. The School District argues that because the Nation already has a successful gaming enterprise on the land, it does not need the land in trust. Respectfully, this misunderstands the importance of trust land. Economic development is not the only reason for trust land acquisition. Trust land or restricted land, like aboriginal fee land, is where Tribes' jurisdiction and sovereignty are most clear, and it is protected from future loss. These aspects of trust land are crucial to a tribe's preservation of their community and culture irrespective of its existing economic development activities.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ The regulations require "only consider[ation] [of] the impact of the proposed trust acquisition." *Shawano Cty. v. Midwest Regional Director*, 40 IBIA 241, 249 (2005); *see also Cty. of Charles Mix v. Dep't of the Interior*, 674 F.3d 898, 904 (8th Cir. 2012).

The Town of Springport's letter identified \$22,843.70 in property taxes currently levied on the Property, plus a \$553 special assessment, totaling \$23,396.70.⁵⁹ This number includes 2021 taxes assessed by Cayuga County in addition to the Town of Springport. The letter from Cayuga County reports that the Property was assessed Town and County taxes amounting to \$23,307.91 in 2022, plus a \$547.96 special assessment, totaling \$23,855.60.⁶⁰ Neither the Town nor the County provided their total annual tax revenues, but the New York State Office of Real Property Tax Services publishes that Town and County taxes for this area amounted to \$2,649,320 in 2021.⁶¹ Thus, the Property's contributions amount to approximately 0.8% of the Town and County's property taxes. The Town raised concerns regarding the cost of fire protection, highway maintenance, operation and maintenance of water and sewer plants, infrastructure and debt service, and police protection.⁶² I recognize and acknowledge the Town's concerns related to taxation, but must balance those impacts against the Nation's need for land. Approval of the Nation's request is appropriate here because any impact to the local jurisdictions will be minimal, amounting to less than one percent of tax revenues.⁶³

The Town's submission also included a list of properties owned in fee by the Nation, but unrelated to the Property at issue, on which the Town of Springport claims the Nation owes taxes. Regardless of whether such taxes are allowable under New York state law for on-reservation properties, Part 151 does not require consideration of these other parcels, or of the Nation's tax paying history. I am bound by the regulations to consider the impact of *this* acquisition on local tax rolls. I have duly considered those impacts here and support this acquisition.

Before concluding, I note that the BIA assessed tax impacts in the Socioeconomic Impacts sections of its 2018 Supplemental Technical Memorandum and the Environmental Assessment. I have considered those documents, as well as the comments received from local jurisdictions, and I conclude that the tax

⁵⁹ Enclosure (BIA form), Letter from David R. Schenck, Springport Town Supervisor, to Bureau of Indian Affairs (Jan. 29, 2022). These tax totals appear to be from 2021.

⁶⁰ Letter from Philip G. Spellane, Harris Beach PLLC, to Kimberly Bouchard, Regional Director, BIA Eastern Regional Office (Feb. 10, 2022) [hereinafter Cayuga County Letter]. \$23,307.91 is the sum of the "2022 Town & County Tax Bill Amount" column.

⁶¹ New York State Office of Real Property Tax Services, Tax Rate and Levy Data, http://orps1.orpts.ny.gov/cfapps/MuniPro/muni_theme/muni/nyt.cfm?swis=055400&dom_sw=055400 (last accessed 2/24/2023). In 2021, the Town levied \$585,868, and Cayuga County levied \$2,063,452 in Springport.

⁶² Letter from David R. Schenck, Springport Town Supervisor, to Bureau of Indian Affairs (Jan. 29, 2022).

⁶³ The County's letter, which incorporates two previously submitted letters, raises four concerns unrelated to jurisdiction or taxation. *See generally* Cayuga County Letter. First, the County states that there is an unresolved leadership dispute within the Nation. The tribal leadership dispute was resolved several years ago through a plebiscite, as described in Assistant Secretary Michael Black's July 13, 2017 decision letter. Second, the County claims that the FEIS is deficient in numerous ways. As discussed more thoroughly *infra*, the BIA has since conducted a robust updated analysis of environmental issues and produced an Environmental Assessment. Third, the County states that BIA determined the applications were incomplete; this was resolved roughly a decade ago and the application is now complete. Relatedly, the County states that BIA rejected the application and that a new application must be filed, but as described previously, I determined to reopen and reconsider the existing application. Fourth, the County questions whether the Nation is eligible to have lands taken into trust in light of *Carcieri*. I address *Carcieri* in the discussion of 25 C.F.R. § 151.10(a) *supra*. The County also requested an extension of the comment period. Respectfully, in my discretion I decline to grant this request. The record already contains a great deal of information and input from individuals and local governments, including Cayuga County, and including the County's letters discussed here.

impacts will be minimal. Additionally, such minimal tax impacts may be largely offset by the direct economic effects from the Nation's activities in Cayuga County, which is currently estimated at more than \$3.4 million annually.⁶⁴ When the Nation's new gaming facility opens, that number is estimated to climb to approximately \$5.5 million annually.⁶⁵

I acknowledge the concerns raised by the School District, the Town, and the County regarding the loss of taxable income. I have weighed these concerns – along with the Nation's lack of trust lands whatsoever within the boundaries of its Reservation and the positive economic effects of its enterprises – and remain convinced that the Nation's request should be granted. Further, I note that, while the tax impacts appear minimal, the regulations do not require that tax impacts be minimal. Rather, they require that, along with the other § 151.10 criteria analyzed here, tax impacts be duly considered by the decisionmaker. I have done so here and approve the acquisition.

25 C.F.R. § 151.10(f) – Jurisdictional problems and potential conflicts of land use which may arise.

Consistent with § 151.10(f), I have considered the jurisdictional problems and conflicts of land use that may arise and conclude that the application should be granted.

The Department has received many comments over the years regarding the jurisdictional and land use impacts of the proposed trust acquisition, which I have considered in my review. Many of those comments were addressed in the 2010 FEIS, the Environmental Assessment, and the enclosed Record of Decision, however, there are several recurring comments that I believe warrant further discussion here.

First, commenters questioned whether the Nation's land uses are consistent with local land uses.⁶⁶ I begin by noting that the Nation proposes no change in land use. Moreover, the Nation's uses are generally consistent with local zoning and the uses of adjacent non-Nation lands. The portion of the Union Springs parcels that fronts Route 90 and includes the Nation's existing gaming facility, convenience store, gas station, and car wash is currently zoned "Highway Commercial" by the Village of Union Springs.⁶⁷ The "Highway Commercial" zone is "for activities involving the sale of goods and services carried out for profit which are typically found along highway corridors and that are generally a higher intensity of use than allowed in the Commercial District."⁶⁸ The Nation's current businesses, as well as the planned new gaming facility, are consistent with the "Highway Commercial"

⁶⁴ Environmental Assessment at 25.

⁶⁵ Environmental Assessment at 28.

⁶⁶ See, e.g., Letter from Joseph D. Picciotti, Harris Beach PLLC, to Franklin Keel, Regional Director, BIA Eastern Regional Office (Nov. 19, 2010) at 11.

⁶⁷ Environmental Assessment at 32.

⁶⁸ *Id.* (quoting the Zoning Law of the Village of Union Springs).

zone.⁶⁹ The Springport parcel is zoned for single-family residences, farm operations, and temporary buildings.⁷⁰ The property is currently vacant and is therefore consistent with the local zoning.

Commenters also expressed concern about potential jurisdictional conflicts due to the “checkerboarding” land ownership pattern that would result from the acquisition.⁷¹ While checkerboarding may pose some jurisdictional challenges, it is not disqualifying, especially in light of its historical origins.⁷² And checkerboarding is less of a concern in a situation like that presented here, where the State exercises delegated criminal prosecutorial authority on trust lands.⁷³ In any event, any checkerboarding here is minimal. The Nation’s original application included parcels in both Seneca and Cayuga Counties, but the Nation has since removed the Seneca County properties from consideration. The current application—consisting of four contiguous parcels plus one additional parcel—reflects a compact trust land configuration that meets the Nation’s current needs while minimizing the potential for jurisdictional disruption.

In addition, commenters worried that the loss of jurisdiction over the Property would impact local government’s ability to manage land in a consistent manner and to protect public health and safety.⁷⁴ In the Department’s experience, cooperative agreements between Tribes and local governments can serve to mitigate potential jurisdictional challenges. Cayuga County, the Village of Union Springs, and the Town of Springport remain free to initiate/continue a cooperative dialogue with the Nation regarding the Property.⁷⁵ I also highlight that the Nation has adopted and implemented the Cayuga Nation Land Use Ordinance and other ordinances that demonstrate its commitment to standards of public health and safety.⁷⁶

⁶⁹ Moreover, the convenience store, gas station, car wash, and parking lot were built by developers in 1998 prior to the Nation’s acquisition of the properties. Except for converting a car parts store into the existing small gaming facility, the Nation has merely continued the pre-existing uses. *See* Cayuga Indian Nation Trust Land Application, Final Environmental Impact Statement (Aug. 2010) at § 3.0.

⁷⁰ Environmental Assessment at 32.

⁷¹ *See, e.g.*, Letter from Philip G. Spellane, Harris Beach PLLC, to Kimberly Bouchard, Regional Director, BIA Eastern Regional Office (Feb. 10, 2022) at 3; Letter from United States Senators Charles E. Schumer and Kirsten Gillibrand to John Tashuda, Acting Assistant Secretary – Indian Affairs (rec’d June 6, 2018).

⁷² The current land tenure pattern within the Cayuga Reservation is largely the consequence of prior purchases of Cayuga lands by New York State without federal approval as required by the Nonintercourse Act, 25 U.S.C. § 177, subsequent sales to non-Indians, and reacquisition of certain lands by the Cayuga Nation as the lands have become available.

⁷³ *See* 25 U.S.C. § 232.

⁷⁴ *See, e.g.*, Letter from Bond, Schoeneck & King, PLLC, to Bruce Maytubby, Acting Regional Director, BIA Eastern Regional Office (May 4, 2018) at 10; Letter from Joseph D. Picciotti, Harris Beach PLLC, to Franklin Keel, Regional Director, BIA Eastern Regional Office (Nov. 19, 2010) at 10.

⁷⁵ The Town of Springport reports that the Nation “has shown no interest” in discussing a cooperative agreement with the Town and argues that “Land in Trust should be considered only after parties have demonstrated tangible, real and enforceable agreements that benefit and protect all parties.” Letter from David R. Schenck, Springport Town Supervisor, to Bureau of Indian Affairs (Jan. 29, 2022). While such agreements can mitigate jurisdictional challenges, cooperative agreements are not a prerequisite for trust acquisitions under the Part 151 regulations. To require such agreements would provide local governments an effective veto over a Tribe’s efforts to restore its land base.

⁷⁶ Environmental Assessment Appendix B: Cayuga Nation Land Use Ordinance No. CN-2003-01.

Over the last 20 years, the counties and towns within the Nation's Reservation boundaries have questioned various aspects of the Nation's jurisdiction on its fee lands. For example, with respect to gaming, the Village of Union Springs (Village) sought to enforce its games of chance ordinance against the Nation and its Union Springs gaming facility.⁷⁷ In 2021, the Second Circuit found that the Indian Gaming Regulatory Act preempts local gaming laws with respect to the Union Springs gaming facility since it is located on "Indian lands."⁷⁸ Yet previous decisions found that the Village may generally enforce local zoning laws and regulations on the Nation's land.⁷⁹ The result is an awkward jurisdictional detente in which the Village may impose restrictions through land use and zoning, but may not outright prohibit the Nation's gaming operation.

I find that maintaining the status quo is likely to lead to continuing jurisdictional confusion and disputes and the 2020 Decision erred in concluding otherwise. Land held in trust for the Nation is subject exclusively to the civil regulatory jurisdiction of the United States and the Nation, which would *resolve* the jurisdictional concerns discussed in the 2020 Decision, not further them.⁸⁰ In this way, the trust acquisition will clarify and settle matters, rather than upsetting any perceived "balance."⁸¹ Once in trust status, the scope of Tribal regulatory jurisdiction over that land will be clearer, and no longer be split between two entities who often find themselves at odds. In addition, while I recognize the 2020 Decision's concerns about local and State⁸² opposition, that opposition fails to provide a rational basis to deny the Nation's application under the IRA, Department regulations, or Department precedent. Rather, Section 151.10(f) requires that I *consider* such impacts, not resolve them.⁸³ And as with tax impacts, I must balance potential jurisdictional problems against the Nation's need for land. The Nation has no trust land within its reservation boundaries. Transferring the Property into trust resolves potential conflicts of overlapping civil jurisdiction.⁸⁴

In conclusion, acquiring the Property in trust will provide jurisdictional clarity. Such clarity should help reduce tension and confusion, not aggravate it. Additionally, jurisdictional conflicts, if such arise, are likely to be minimal due to the compact nature of the acquisition and the fact that the Nation's uses are consistent with the surrounding local zoning. Any jurisdictional conflicts that do arise could be mitigated through cooperative agreements.

The regulations require me to consider potential jurisdictional problems and conflicts of land use. I have duly considered these issues and determined to approve the acquisition.

⁷⁷ *Cayuga Nation v. Tanner*, 6 F.4th 361, 372 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022).

⁷⁸ *Id.* at 380. IGRA's definition of Indian lands can be found at 25 U.S.C. § 2703(4).

⁷⁹ *See, e.g., Cayuga Indian Nation of New York v. Vill. of Union Springs*, 390 F. Supp. 2d 203, 206 (N.D.N.Y. 2005).

⁸⁰ *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 3.4 (2012); *see also City of Sherrill*, 544 U.S. at 221.

⁸¹ The 2020 Decision declined to take the land into trust in part because doing so could "upset this balance . . . after it has come to rest after almost twenty years of litigation." 2020 Decision at 5. I disagree.

⁸² The State did not send a comment letter, opposing or supporting the trust acquisition, in response to the BIA's January 11, 2022 invitation to comment.

⁸³ *See, e.g., Cty. of Charles Mix v. Dep't of the Interior*, 799 F. Supp. 3d 1027, 1046-47 (D.S.D. 2011), *aff'd*, 674 F.3d 898, 904 (8th Cir. 2012).

⁸⁴ I note that there will be no change to the State's delegated criminal jurisdiction over the land under 25 U.S.C. § 232.

25 C.F.R. § 151.10(g) – If land to be acquired is in fee status, whether BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Section 151.10(g) requires the Secretary to determine whether BIA has the resources to assume additional responsibilities if the land is acquired in trust. This acquisition constitutes approximately 114 acres, and the BIA Eastern Regional Office and Cayuga Agency are equipped and prepared to handle responsibilities stemming from this acquisition. In 2019 the Regional Director concluded that acquisition of the Property in trust would not impose any significant additional responsibilities or burdens to the BIA.⁸⁵ I concur that acquiring the Property in trust will not impose significant additional responsibilities or burdens on BIA and that BIA has sufficient resources to assume the additional responsibilities resulting from this acquisition.

With respect to this factor, the 2020 Decision warned that “the extent and complexity of the additional responsibilities that *might* arise for BIA should the land be taken into trust is overhung by the circumstances of conflict and intergovernmental tensions described” therein (emphasis added).⁸⁶ I highlight that this sentence was written in the conditional tense. The 2020 Decision failed to identify any specific additional responsibilities the BIA would be required to undertake, much less complex ones. Nor did the 2020 Decision explain why the BIA would not be equipped to discharge those additional responsibilities. In fact, the 2020 Decision did not address or cite to the 2019 Regional Director’s Finding of Fact which I find persuasive here.

25 C.F.R. § 151.10(h) – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with NEPA, 42 U.S.C. § 4321 *et seq.* The Department must also complete an Environmental Site Assessment (ESA) pursuant to Departmental Manual at 602 DM 2 to investigate the presence of hazardous substances and/or liabilities affecting the land to be acquired. With respect to Environmental Site Assessments, the Nation has been fully cooperative in providing the information necessary for the ESAs. BIA conducted Phase I ESAs in 2009, 2016, 2018, and 2022 and found no Recognized Environmental Conditions associated with the Property.⁸⁷ Due to the current and historic use of one of the parcels as a gas station, Phase II ESA subsurface investigations were conducted on the parcel in 2009, 2016, and 2018 to determine if releases have occurred from the underground storage tanks. The subsurface investigations did not reveal evidence of contamination and no additional remedial actions were needed. The Department will require that all components of

⁸⁵ See Memorandum, Revised Proposed Findings of Fact and Conclusions for Cayuga Nation fee-to-trust land acquisition application, Cayuga and Seneca Counties, New York, from Regional Director, Eastern Region to Assistant Secretary Indian Affairs at 9-10 (October 4, 2019) (hereinafter 2019 Regional Directors Finding of Fact)

⁸⁶ 2020 Decision at 7.

⁸⁷ Environmental Assessment at Section 3.11.

the ESAs be updated, if necessary, per 40 C.F.R. Part 312 and current ASTM⁸⁸ Standards prior to deed conveyance.

Next, the Nation provided us with the information necessary to comply with NEPA. The BIA made the Draft Environmental Impact Statement (EIS) for the project available for public review on May 22, 2009, and held a public hearing on June 17, 2009, in Seneca Falls. The BIA made the Final EIS available on October 22, 2010.⁸⁹ The enclosed Record of Decision documents the Department's determination to adopt the Preferred Alternative (Alternative 1), the Proposed Project, which was analyzed in the Final EIS.

The EIS presented a comprehensive review of the acquisition by analyzing the affected environment including: land resources; water resources; air quality; hazardous materials; noise; living resources; cultural resources; socioeconomic conditions; community infrastructure; community services; resource use patterns; traffic and transportation; visual resources; and the potential environmental consequences to these aspects of the environment. As stated in the EIS's Mitigation discussion in the Executive Summary, "[n]o significant adverse impacts were identified as a consequence of either Alternative 1, the Proposed Action, or Alternative 3 [taking only the gaming operations into trust]. Therefore, it is concluded that neither the Proposed Action nor Alternative 3 would result in any significant adverse impacts needing mitigation of any form."⁹⁰

In 2018, the proposed action was re-evaluated in accordance with NEPA regulations at 40 C.F.R. § 1502.9, and BIA's NEPA Guidebook (59dAM 3-H). This review is memorialized in the 2018 Supplemental Technical Memorandum.⁹¹

In summer 2022, the Nation informed the Department that it planned to build a 4,928 square foot gaming facility and associated parking near the existing gaming facility. The Nation has informed the State and local governments of the project, received building permits, and is proceeding with the planned construction independent of this decision. Given that minor change, BIA considered what additional NEPA analysis, if any, was necessary to inform its decision on the fee-to-trust application. As explained in the enclosed Record of Decision, the BIA prepared an Environmental Assessment (EA), concluding that while the Nation's planned construction does represent new circumstances or information relevant to environmental concerns, it is not significant.⁹² Therefore, it does not require the preparation of a supplemental EIS.

⁸⁸ American Society for Testing and Materials.

⁸⁹ The Final EIS is available online at www.cayuganationtrust.net/index.html.

⁹⁰ Cayuga Indian Nation Trust Land Application, Final Environmental Impact Statement (Aug. 2010), available at <https://www.cayuganationtrust.net/FEIS.html>.

⁹¹ See Cayuga Indian Nation of New York Conveyance of Land into Trust Technical Memorandum (February 9, 2018).

⁹² Moreover, while the Nation's planned construction is not significant in our NEPA analysis, I also note that my decision whether to take the land into trust has no bearing on the Nation's expanded gaming facility construction. The fee-to-trust acquisition does not permit or otherwise grant authority for the Nation to expand its operation. The land is already gaming-eligible and thus authority to game exists regardless of the BIA's acquisition of the land in trust. See *Cayuga Nation v. Tanner*, 6 F.4th 361 (2d Cir. July 27, 2021), *cert. denied*, 142 S. Ct. 775 (2022).

I agree that no supplemental EIS was required here. When determining whether to supplement an EIS due to new information, agencies are to apply a “rule of reason.”⁹³ BIA is granted broad discretion here and “need not supplement an EIS every time new information comes to light after the EIS is finalized.”⁹⁴ In order to merit a supplemental EIS, new information should be substantial or significant as it relates to environmental concerns.⁹⁵ As the EA’s thorough analysis demonstrates, there are no such significant or substantial environmental concerns here.

The BIA provided the Draft EA by email to State and local governments and resource agencies on September 19, 2022, for a comment period ending on October 19, 2022. The BIA published Notices of Availability for the Draft EA in *The Citizen*, a local newspaper, on September 22, 2022. The Draft EA was also available for public review online at *cayugatrustapplication.com*. BIA received comments from two Environmental Protection Agency officials recommending additional figures, maps, and discussion to be included in the EA. The BIA carefully considered and addressed those comments in the Final EA and in Appendix H, Response to Comments.⁹⁶

Finally, I note that the Record of Decision supported by the Final EIS, our 2018 Supplemental Technical Memorandum, and our Environmental Assessment ensured an exceedingly thorough and public analysis of the environmental and socioeconomic issues related to this acquisition.

I conclude in the alternative that NEPA is also satisfied here, through the Categorical Exclusion provided in 516 Departmental Manual 10.5(I). That provision states that a Categorical Exclusion is available for land “conveyances and other transfers of interests in land where no change in land use is planned.” Here, the Nation intends to continue the existing uses of the lands and proposes no change in land use, maintaining the existing uses that the Nation has already established on the land while held in fee. While the Nation is building a new gaming facility, that construction is independent of our decision here.⁹⁷ Given the long-established plan and uses for the Property, this acquisition is also covered under 516 DM 10.5(I).

The enclosed Record of Decision concludes the Department’s compliance with both the letter and spirit of NEPA for the Nation’s application to transfer the Property into trust.

⁹³ See *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373, 376-77 (1989).

⁹⁴ *Id.* at 373.

⁹⁵ See 40 C.F.R. § 1502.9(d).

⁹⁶ BIA also received a request for a 60-day extension of the EA comment period from Harris Beach PLLC, counsel for Cayuga County. The County had ample opportunity to comment—and did comment—on the EIS. See, e.g., Ian Ayres, Comments of Ian Ayres Submitted on Behalf of Cayuga County and Seneca County and the State of New York to the Bureau of Indian Affairs on the Draft Environmental Impact Statement, Cayuga Indian Nation Lands Trust Acquisition Project (July 2, 2009). Because there have been minimal changes to the application since the FEIS, the BIA denied the request for extension.

⁹⁷ On July 26, 2022, the Nation obtained a building permit from the Village of Union Springs and has commenced construction.

Conclusion

Having thoroughly considered the Part 151 criteria, I conclude that the application meets all of the regulatory requirements and therefore the Property shall be taken into trust.

IV. Secretarial Discretion Considering Prior Events

As observed in the 2020 Decision, the Department's discretion whether to acquire land in trust for a tribe is broad.⁹⁸ Section 5 of the Indian Reorganization Act (IRA) provides that "[t]he Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands . . . for the purpose of providing land for Indians."⁹⁹ The BIA has developed regulations at 25 C.F.R. Part 151, guided by many years of administrative practice, that list relevant regulatory factors for consideration by the Department. "While the regulation does not provide guidance on how the Secretary is to 'weigh' or 'balance' the factors, it does provide a list of objective criteria that the decisionmaker is required to consider in evaluating trust land acquisition requests."¹⁰⁰ I have considered those criteria, along with the new information submitted by the Nation, and now reach a different conclusion than in 2020.

In coming to a new decision on this matter, I have considered the record before me, which now spans nearly twenty years of process. I am mindful of the discretion the IRA accords the Department in these decisions, and that "agencies are free to change [course] as long as they provide a reasoned explanation for the change."¹⁰¹ I am aware that this decision represents a change in the prior approach, but I am convinced there are good reasons, factually and in terms of policy, to support this change.¹⁰²

This decision differs from the 2020 Decision in two critical respects. First, as a matter of policy, I decline to consider factors outside of the Part 151 criteria. Second, I have a deeper understanding of the facts of the February 2020 events, which informs my analysis of the Part 151 criteria with respect to those facts.

In the 2020 Decision, my predecessor considered factors outside of the Part 151 criteria. That decision stated that "the Nation's unilateral demolition and the public violence involving Tribal members and Tribal police is information the Secretary may and should consider,"¹⁰³ and concluded that the

⁹⁸ See *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1261 (10th Cir. 2001) ("Generally speaking, the Secretary has broad discretion under the Indian Reorganization Act of 1934 . . . to decide whether to acquire land in trust on behalf of Indian tribes.").

⁹⁹ 25 U.S.C. § 5108.

¹⁰⁰ *McAlpine v. United States*, 112 F.3d 1429, 1434 (10th Cir. 1997); see also *Michigan Gambling Opposition v. Norton*, 477 F. Supp. 2d 1, 21 (D.D.C. 2007), *aff'd on other grounds sub nom. Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008).

¹⁰¹ *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); see also *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967, 981–982 (2005).

¹⁰² See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.").

¹⁰³ 2020 Decision at 4.

incidents supported disapproval. I note that this approach breaks from the longstanding procedure used in fee-to-trust acquisitions, and decline to do so here, except to address the 2020 Decision's misunderstanding of the facts. Additionally, I again highlight that the Seneca County properties on which the February 2020 events occurred are not a part of the pending fee-to-trust application.

With respect to the facts, the 2020 Decision placed significant emphasis on the events of February 2020 as examples of jurisdictional problems.¹⁰⁴ A closer look at the Nation's predicament, involving the seizure of their property and the closing of court doors to their needs, sheds light on how and why the February 2020 events occurred. I do not believe the February 2020 events suggest future jurisdictional problems on the Property under review. Indeed, taking the land into trust will serve to clarify jurisdiction on the Property. In addition to the extensive record already before me, I have considered a BIA report and two memoranda submitted by the Nation along with seventeen exhibits. Together, these documents provide a much more comprehensive understanding of the February 2020 actions than was available or analyzed in the 2020 Decision.

First, I find helpful the report of discussions conducted by BIA's Bryan Bald Eagle and Jimmy Gibson with the Nation on March 16 and 17, 2020 (Bald Eagle Report), soon after the February incidents. In those meetings, the Nation explained that "they had previously reached out to neighboring law enforcement regarding the unlawful [seizure of their properties]," but State and local law enforcement "were reluctant to partner with the tribe" to resolve the matter.¹⁰⁵ Nevertheless, the Nation "did indicate that local, state, and federal law enforcement were aware of the operation in advance and the local police observed the operation from a distance through a live drone feed."¹⁰⁶

The BIA outreach effort that resulted in the Bald Eagle Report was conducted at the request of Assistant Secretary Sweeney specifically to respond to and investigate the February incidents. The Bald Eagle Report was available to the Assistant Secretary for her consideration in advance of the 2020 Decision, but it was not cited in the decision. In my opinion, this report should have been referenced in the 2020 Decision and the failure to do so weakened its reasoning.

Additionally, the Nation's two memoranda and seventeen exhibits provide important details and context from before, during, and after the February 2020 events. The Nation's submission explains that "[i]n April 2014, before the Nation's leadership dispute was resolved, several individuals associated with the opposition group forcibly seized several of the Nation's properties in both Seneca and Cayuga Counties, refused to leave, and began operating the businesses thereon."¹⁰⁷ Local police did not help the Nation recover its Seneca County properties.¹⁰⁸ The Nation did not attempt to forcibly recover the Seneca County properties, but instead spent more than five years pursuing this matter in the courts.

¹⁰⁴ 2020 Decision at 7-8.

¹⁰⁵ See Bald Eagle Report at 1.

¹⁰⁶ *Id.* at 2.

¹⁰⁷ Nation Submission at 11.

¹⁰⁸ *Id.*

In a decision dated May 19, 2014, New York State trial court Justice Dennis Bender found that there “is no question but that the businesses and property involved are Cayuga Nation property, and it is not denied that the actions of the defendants disrupted businesses activity,” but given the then-continuing leadership dispute, Justice Bender declined to exercise jurisdiction.¹⁰⁹ To rule on the case would require him to answer the “question of who has the right to lead the Nation,” and the State court lacked jurisdiction to answer that “preliminary question.”¹¹⁰

After the leadership question was resolved by a vote of the Nation’s members and recognized by the Department in 2017, the Nation returned to Justice Bender’s court to recover the properties at issue. “This time, based on the resolution of the leadership dispute, Justice Bender agreed and ordered the properties returned.”¹¹¹ That ruling was stayed and appealed by the defendants, and in October 2019, the New York Court of Appeals reversed, incorrectly reading Acting Assistant Secretary Michael Black’s recognition of the Halftown Council as limited to ISDEAA¹¹² funding rather than for all purposes,¹¹³ and ruling that New York state courts could not enforce the Nation’s right to possess its properties because state courts could not resolve the leadership dispute.¹¹⁴ The dissent complained that the Nation was thus left “entirely without recourse” and predicted “chaos or worse.”¹¹⁵

The Nation tried a last effort, seeking the assistance of the United States Attorney for the Western District of New York, but that office also refrained from action based on concerns over the leadership dispute.¹¹⁶ The Nation was then left without any local or federal criminal enforcement assistance.

During these years of litigation and searching for assistance, the parties who seized the Nation’s property continued to operate the tribal businesses located there. Those businesses had generated more than \$5 million per year in profits before the properties were seized,¹¹⁷ and thus it appears likely that \$25 million or more that should have been directed to the Nation were instead appropriated by the occupants. The Nation claims that:

By 2019, the store was being operated by individuals not even part of the former opposition group. They had no claim to Cayuga Nation governance authority and were simply pocketing the proceeds from the store. They refused to allow any audit of the

¹⁰⁹ See *Cayuga Nation v. Jacobs*, 44 Misc.3d 389, 391 (N.Y. Sup. Ct., Seneca Cty. 2014).

¹¹⁰ *Id.* at 395.

¹¹¹ Nation Submission at 12, citing *Cayuga Nation v. Campbell*, No. 51342, 2017 WL 4079004 (N.Y. Sup. Ct., Seneca Cty. 2017).

¹¹² Indian Self-Determination and Education Assistance Act, 25 U.S.C. Ch. 46.

¹¹³ In order to correct the misunderstanding that the Department’s recognition of the Halftown Council was limited to ISDEAA purposes, the Department issued a clarifying letter explaining that the “Halftown Council is the Nation’s government for all purposes.” Letter from Tara Sweeney, Assistant Secretary– Indian Affairs, to David DeBruin, Counsel, Cayuga Nation (Nov. 14, 2019) at 1. This remains the longstanding view of the Department.

¹¹⁴ See *Cayuga Nation v. Campbell*, 34 N.Y.3d 282, 290-91 (Oct. 29, 2019).

¹¹⁵ *Id.* at 320.

¹¹⁶ See Nation Submission at 13; Nation Submission Exhibit E.

¹¹⁷ Nation Submission at 13.

operations of the store, and there was no accounting of revenues generated. No distributions to Cayuga members were made.¹¹⁸

This context and the years of effort—and litigation fees—the Nation expended trying to recover the properties through the courts and other governments' law enforcement agencies set the stage for the Nation's February 2020 action.

On February 22, 2020, the Nation recovered its property using its own police force. "The Nation advised the State Police of its plans for the operation, and the recovery effort was monitored in real time by state and local police who positioned themselves nearby."¹¹⁹ Cayuga Nation Police acted pursuant to a warrant issued by the Cayuga Nation Court and regained control of the properties in a few minutes time. Cayuga Nation Police detained seven people briefly and then released them. According to the Nation, "[n]o force was used; none of those present was injured. One occupier was charged with a possession of narcotics offense in tribal court, afforded all rights, and offered a public defender."¹²⁰ The Nation explains that:

Significantly, no charges of any kind have been brought by federal, state, or local authorities in connection with the Nation's recovery of its Seneca County properties. Although the U.S. Attorney's Office announced it was investigating these events, the Nation cooperated fully with that investigation, provided extensive information to the U.S. Attorney, and the federal investigation resulted in no charges.¹²¹

The Nation chose to demolish the properties to prevent them from becoming a focal point for attacks and attempts to reoccupy. One week later, after a planned protest of the Nation's actions, a group of individuals approached the razed property and attempted to cross the police tape around the demolished buildings. The Nation recounts that:

The Cayuga police formed a line, blocking deeper entry onto the property. Several of the protestors approached the line and continued to push forward, and a few began throwing punches. New York state and local police also stormed onto the property, taking up positions with and behind the Cayuga police. The Cayuga police then slowly walked forward, pushing the protestors back off the property. During the altercation, two individuals—including Charles Bowman, a non-Indian—were restrained and briefly detained by Cayuga police, before being released. Within about 20 minutes, the protestors had been walked back off the property, and not long thereafter everyone dispersed.¹²²

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 14.

¹²⁰ *Id.* at 15.

¹²¹ *Id.*

¹²² *Id.* at 17.

Again, no State, Federal, or local enforcement actions were filed against the Nation. Rather, the only prosecution that occurred was of Charles Bowman, the non-Indian involved in the altercation, who was indicted by Seneca County officials and charged with criminal trespass and assault.¹²³

My departure from the 2020 Decision is based in part on this more complete understanding of the history, context, and facts surrounding the events that transpired in February 2020. I find that the 2020 Decision's reliance on the February 2020 events as a rationale for denying the Nation's application was misplaced, and I do not endorse the 2020 Decision's departure from the regulatory analysis prescribed by Part 151.

V. Approval and Conclusion

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, I have determined that the Department will acquire the Property in trust for the Cayuga Nation. The Nation may continue to conduct gaming on the Property under the Indian Gaming Regulatory Act.

Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the Property in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosures:

- I. Legal Description of the Property
- II. Maps
- III. Record of Decision

¹²³ Nation Submission Exhibit G.

ENCLOSURE I
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT A

Table 2-1
Proposed Action – Five Parcels into Trust per Land Trust Application

County/ Municipality	Parcel Address	Parcel Deed Reference	Tax Lot Designations of Parcel	Approx. Acreage	Use
Cayuga County					
Village of Union Springs	North Cayuga Street	Book 1208 at page 236	134.17-1-1.51	106.96	Vacant lot/ agriculture
	299 and 303 Cayuga Street	Book 1129 at page 222	134.17-1-1.21	1.024	Gas station, car wash and convenience store
			134.17-1-1.121	0.963	
	271 Cayuga Street	Book 1129 at page 225	141.05-1-3	1.366	Gaming facility
Town of Springport	Route 90	Book 1215 at page 291	150.00-1-29.1	3.654	Vacant lot

Sources: Tax Assessors' records and real property tax bills/Tax Collector's office, Springport (including Village of Union Springs).

Note: By letter dated March 20, 2019, the Cayuga Nation withdrew from consideration for fee-to-trust the properties located in Seneca County. The records of the affected municipalities as shown in this table report only properties considered for fee-to-trust in Cayuga County. Currently, the acreage of the five parcels included in the Nation's fee-to-trust application is an approximate 113.967 acres. Upon completion of the survey review, a more definite acreage determination can be made.

Legal Description

The 113.96 acres, more or less, are described as follows:

Tax Lot No. 134.17-1-1.51 (106.960 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the west line of New York State Route No. 90 at the northeast corner of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1129 of deeds at page 225

Thence; North 83° 30' 22" West, along the north line of said lands of Cayuga Nation of New York, a distance of 371.99 feet to the northwest corner of said lands of Cayuga Nation of New York

Thence; South 04° 50' 25" West, along the west line of said lands of Cayuga Nation of New York, a distance of 160.00 feet to a point in the north line of Union Hose and Engine Company as recorded in the Cayuga County Clerk's Office in liber 860 of deeds at page 232

Thence; North 83° 30' 22" West, along the north line of said lands of Union Hose and Engine Company, a distance of 799.54 feet to the northwest corner of said lands of Union Hose and Engine Company

Thence; South 05° 25' 45" West, along the west line of said lands of Union Hose and Engine Company and other lands of Union Hose and Engine Company as recorded in the Cayuga County Clerk's Office in liber 697 of deeds at page 231, a distance of 534.30 feet to a point in the south line of aforesaid Lot No. 92

Thence; North 83° 30' 22" West, along the said south line of Lot No. 92, a distance of 1475.56 feet to a point

Thence; North 01° 58' 30" East, a distance of 418.74 feet to a point

Thence; North 83° 31' 30" West, a distance of 81.00 feet to a point in the former east line of Lehigh Valley Railroad

Thence; North 01° 58' 30" East, along the said former east line of Lehigh Valley Railroad, a distance of 387.06 feet to a point

Thence; North 01° 06' 13" East, continuing along the said former east line of Lehigh Valley Railroad, a distance of 484.62 feet to a point

Thence; North 04° 48' 31" West, continuing along the said former east line of Lehigh Valley Railroad, a distance of 733.54 feet to a point in the north line of aforesaid Lot No. 92

Thence; South 83° 18' 47" East, along the said north line of Lot No. 92, a distance of 2484.27 feet to the northwest corner of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1129 of deeds at page 222

Thence; South 00° 54' 40" East, along the west line of said lands of Cayuga Nation of New York, a distance of 176.89 feet to a point

Thence; South 04° 15' 56" East, continuing along the west line of said lands of Cayuga Nation of New York, a distance of 135.00 feet to the southwest corner of said lands of Cayuga Nation of New York

Thence; North 85° 44' 04" East, along the south line of said lands of Cayuga Nation of New York, a distance of 117.00 feet to a point

Thence; South 04° 15' 56" East, a distance of 173.22 feet to a point

Thence; South 01° 15' 36" East, a distance of 200.00 feet to a point

Thence; North 89° 40' 33" East, a distance of 199.62 feet to a point in the aforesaid west line of New York State Route No. 90

Thence; South 01° 15' 36" East, along the said west line of New York State Route No. 90, a distance of 305.60 feet to a point

Thence; South 01° 50' 03" West, continuing along the said west line of New York State Route No. 90, a distance of 184.98 feet to a point

Thence; South 04° 50' 25" West, continuing along the said west line of New York State Route No. 90, a distance of 184.59 feet to the point and place of beginning

Containing 4,659,193.3 square feet or 106.960 acres of land, more or less.

Tax Lot No. 134.17-1-1.21 (1.024 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at the intersection of the north line of said Lot No. 92 and the present west line of New York State Route No. 90

Thence; South $06^{\circ} 35' 57''$ East, along the said present west line of New York State Route No. 90, a distance of 120.03 feet to a point in the said present west line of New York State Route No. 90

Thence; South $85^{\circ} 44' 04''$ West, a distance of 308.04 feet to a point in the east line of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1208 of deeds at page 236

Thence; North $00^{\circ} 54' 40''$ West, along the said east line of lands of Cayuga Nation of New York, a distance of 176.89 feet to a point in the aforesaid north line of Lot No. 92

Thence; South $83^{\circ} 18' 47''$ East, along the said north line of Lot No. 92, a distance of 298.24 feet to the point and place of beginning

Containing 44,618.1 square feet or 1.024 acres, more or less

Tax Lot No. 141.05-1-3 (1.366 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the north line of lands of Union Hose & Engine Company as recorded in the Cayuga County Clerk's Office in liber 860 of deeds at page 232, said point being located South $83^{\circ} 30' 22''$ East, a distance of 799.54 feet from an existing rebar at the northwest corner of said lands of Union Hose & Engine Company

Thence; North $04^{\circ} 50' 25''$ East, a distance of 160.00 feet to a point

Thence; South $83^{\circ} 30' 22''$ East, a distance of 371.99 feet to a point in the west line of New York State Route No. 90

Thence; South $04^{\circ} 50' 25''$ West, along the said west line of New York State Route No. 90, a distance of 160.00 feet to a point in the aforesaid north line of lands of Union Hose & Engine Company

Thence; North 83° 30' 22" West, along the said north line of lands of Union Hose & Engine Company, a distance of 371.99 feet to the point and place of beginning

Containing 59,493.0 square feet or 1.366 acres of land, more or less

Tax Lot No. 134.17-1-1.121 (.963 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the present west line of New York State Route No. 90, said point being located South 06° 35' 57" East, a distance of 120.03 feet from the intersection of the said present west line of New York State Route No. 90 with the north line of said Lot No. 92

Thence; South 06° 35' 57" East, along the said present west line of New York State Route No. 90, a distance of 135.11 feet to the northeast corner of lands of David J. Rouse Jr. & Lisa A. Rouse, now or formerly, as recorded in the Cayuga County Clerk's Office in liber 1244 of deeds at page 171

Thence; South 85° 44' 04" West, along the north line of said lands of David J. Rouse Jr. & Lisa A. Rouse and the westerly prolongation thereof, a distance of 313.54 feet to a point

Thence; North 04° 15' 56" West, a distance of 135.00 feet to a point

Thence; North 85° 44' 04" East, a distance of 308.04 feet to the point and place of beginning

Containing 41,957.0 square feet or 0.963 acres of land, more or less

Tax Lot No. 150.00-1-29.1 (3.654 acres more or less):

All that tract or parcel of land situate in the Town of Springport, County of Cayuga and State of New York, being part of Great Lot No. 7 of the East Cayuga Reservation, bounded and described as follows:

Beginning at a point in the present west line of New York State Route No. 90 as established by New York State Appropriation Map No. 31, Parcel No. 40 at the intersection of said west line of New York State Route No. 90 with the north line of lands of Patricia L. Thornton and David J. Thornton as recorded in the Cayuga County Clerk's Office in liber 999 of deeds at page 292

Thence; South 85° 55' 53" West, along the said north line of said lands of Patricia L. Thornton and David J. Thornton and continuing along the north line of lands of Robert C. Butler and Karolyn A. Butler as recorded in the Cayuga County Clerk's Office in liber 1012 of deeds at page 291, and also lands of Robert A. Markert and Kathleen M. Markert as recorded in the Cayuga County Clerk's Office in liber 1409 of deeds at page 244, a distance of 681.61 feet to a point in the east line of lands of Walter J. McDonald, now or formerly, as recorded in the Cayuga County Clerk's Office in liber 720 of deeds at page 338

Thence; northeasterly, along the said east line of lands of Walter J. McDonald on a curve to the left with a radius of 1891.50 feet, a distance of 292.17 feet to the southwest corner of lands of Lorie K. Fischer and Todd R. Fischer as recorded in the Cayuga County Clerk's Office in liber 1183 of deeds at page 206. Said curve having a chord bearing of North 23° 09' 17" East and a chord distance of 291.88 feet

Thence; North 85° 55' 53" East, along the said south line of said lands of Lorie K. Fischer and Todd R. Fischer, a distance of 553.31 feet to a point in the aforesaid present west line of New York State Route No. 90

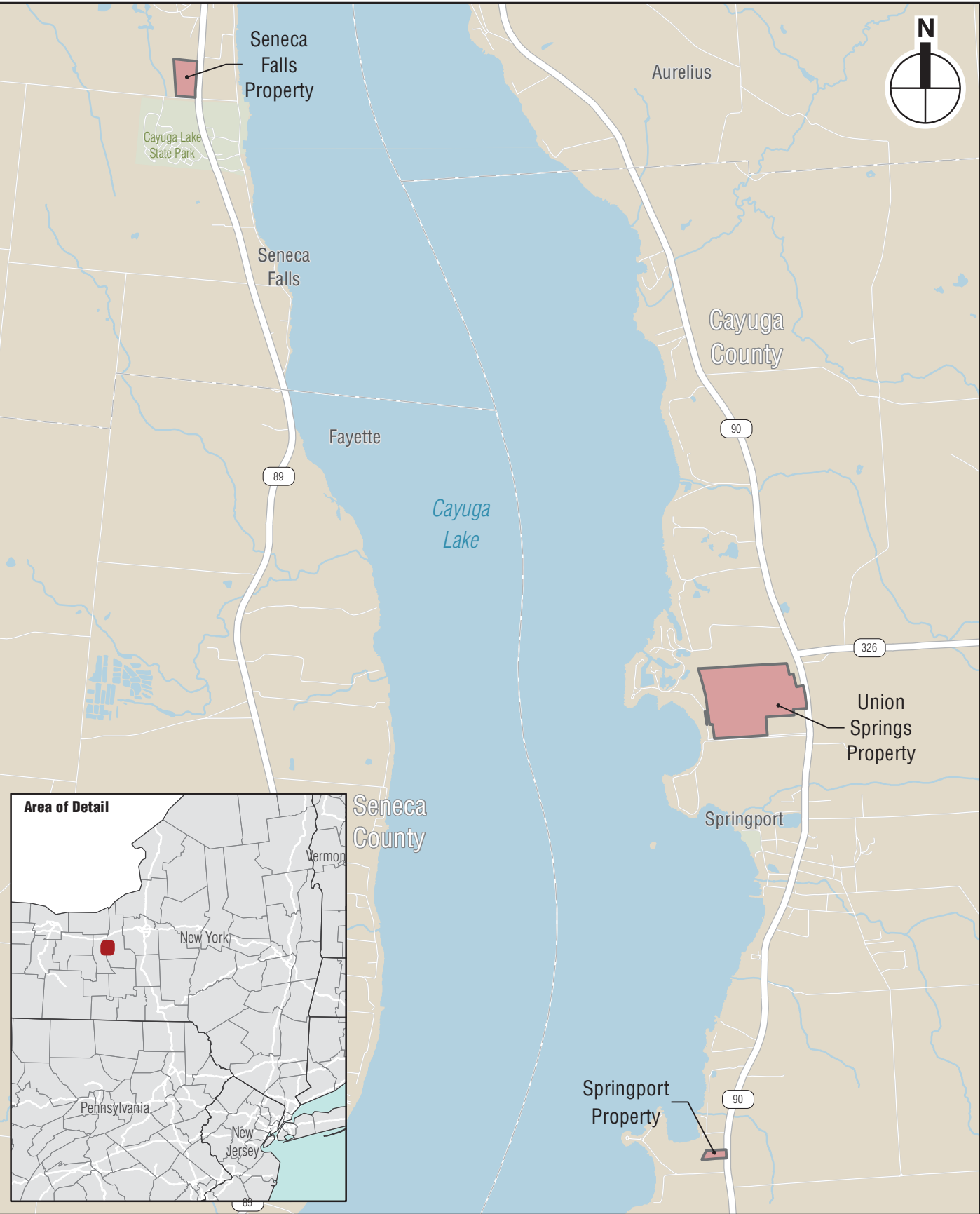
Thence; South 02° 54' 59" East, along the said present west line of New York State Route No. 90, a distance of 259.60 feet to the point and place of beginning

Containing 159,162.6 square feet or 3.654 acres of land, more or less

ENCLOSURE II

MAPS

1/22/2018



 Project Site

0 1 Miles

A MAP

of the Late

CAYUGA RESERVATION

Surveyed into Lots Agreeable to an Act of the Legislature passed on the 9th Day of April 1795, by the direction of Simeon De Witt Esquire, Surveyor General on the year 1795.

Done according to Law
Simeon De Witt
Surveyor Genl.

Scale of chains 40 to an Inch

Early Roads Prior to 1795

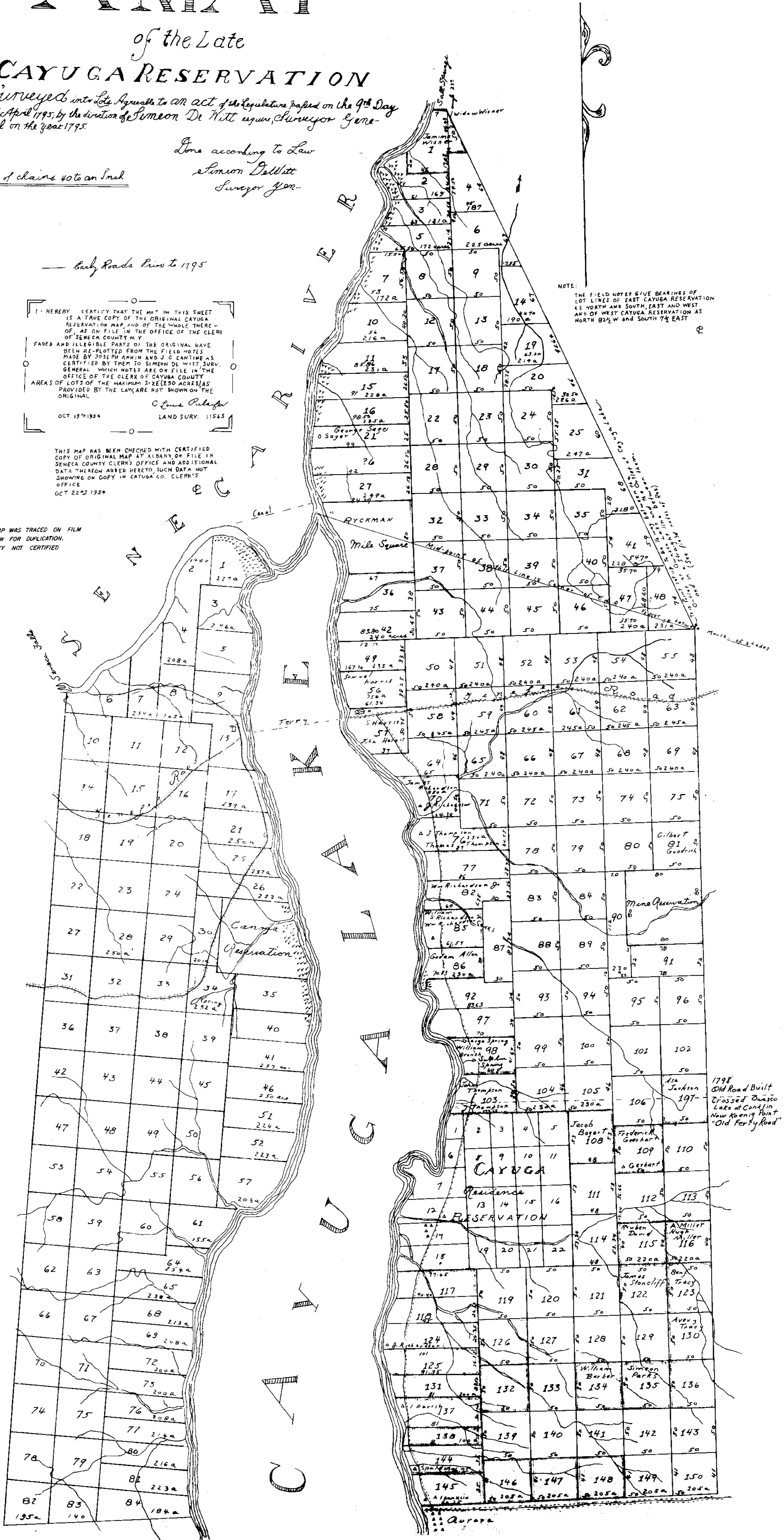
I HEREBY CERTIFY THAT THE MAP ON THIS SHEET IS A TRUE COPY OF THE ORIGINAL CAYUGA RESERVATION MAP, AND OF THE WHOLE THEREOF, AS ON FILE IN THE OFFICE OF THE CLERK OF SENeca COUNTY N. Y. Faded and illegible parts of the original have been re-plotted from the field notes made by Joseph Ammin and J. C. Cantine as certified by them to Simeon De Witt Surveyor General which notes are on file in the office of the Clerk of Cayuga County Areas of lots of the maximum size (250 acres) as provided by the law, are not shown on the original.

C. Louis Pulever
LAND SURV. 11563
OCT. 19th 1934

THIS MAP HAS BEEN CHECKED WITH CERTIFIED COPY OF ORIGINAL MAP AT ALBANY, ON FILE IN SENeca COUNTY CLERK'S OFFICE AND ADDITIONAL DATA THEREON ADDED HERETO, SUCH DATA NOT SHOWING ON COPY IN CAYUGA CO. CLERK'S OFFICE
OCT. 22nd 1934

THIS MAP WAS TRACED ON FILM TO ALLOW FOR DUPLICATION. ACCURACY NOT CERTIFIED.

NOTE: THE FIELD NOTES GIVE BEARINGS OF LOT LINES OF EAST CAYUGA RESERVATION AS NORTH AND SOUTH, EAST AND WEST AND OF WEST CAYUGA RESERVATION AS NORTH 82 1/2 W and SOUTH 7 1/2 EAST



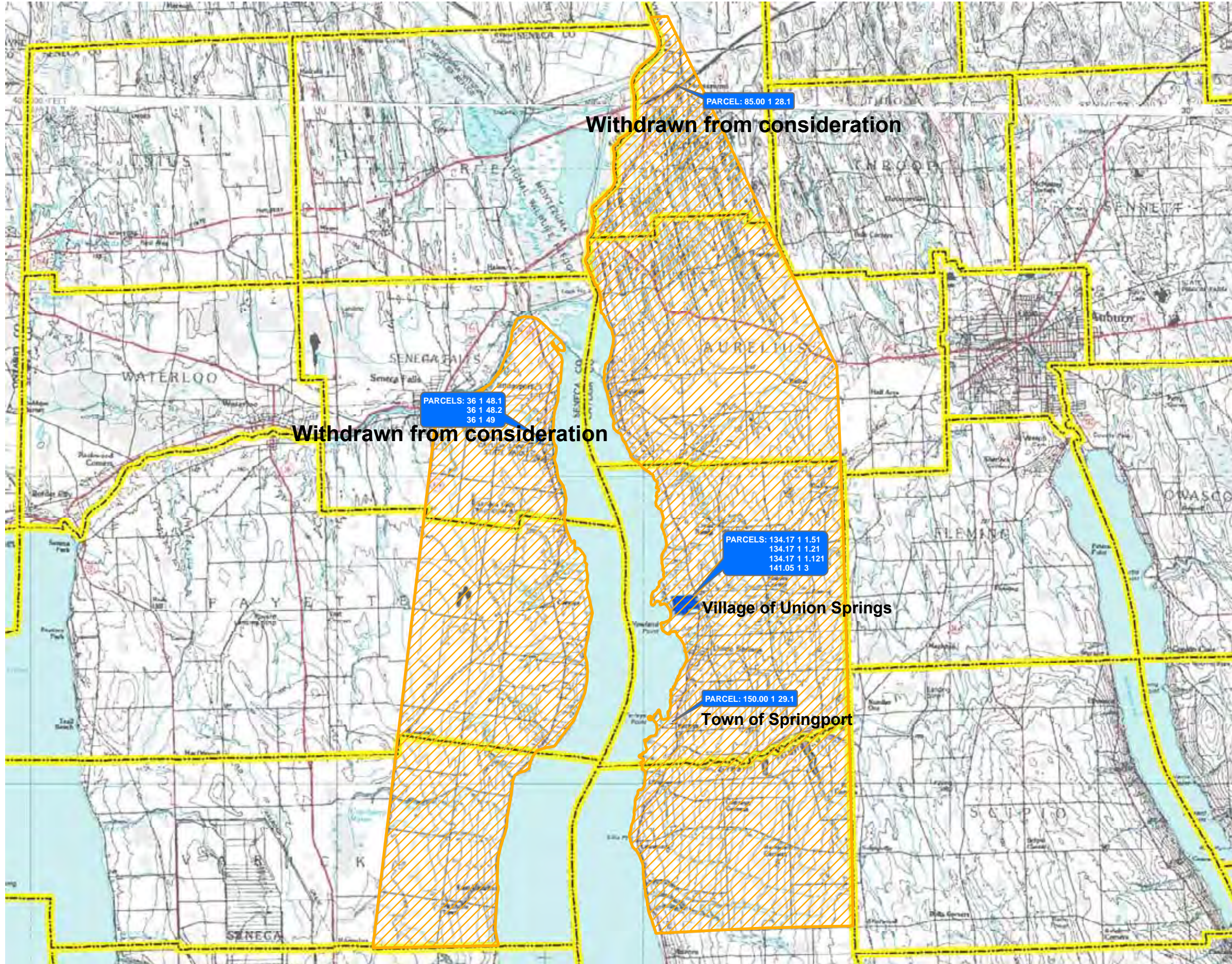


FIGURE 2



LEGEND

- CAYUGA INDIAN NATION LAND TRUST PARCELS
- TOWNSHIP BOUNDARY
- LAND CLAIM BOUNDARY



CAYUGA INDIAN NATION
LAND TRUST APPLICATION

**LAND CLAIM
BOUNDARY**



FEBRUARY 2006
2069.38238



ENCLOSURE III
RECORD OF DECISION

Record of Decision

Cayuga Nation Request to Transfer Land into Trust

U.S. Department of the Interior
Bureau of Indian Affairs
[DATE]

U.S. DEPARTMENT OF THE INTERIOR

AGENCY: Bureau of Indian Affairs

ACTION: Record of Decision for the Cayuga Nation's request to transfer land into trust

SUMMARY: The Cayuga Nation (Nation) submitted an application to the Department of the Interior (Department) requesting that the Secretary of the Interior transfer into trust approximately 129.14 acres of land in Seneca and Cayuga Counties, New York, for the benefit of the Nation. Following the Nation's withdrawal of certain lands from its application, including all lands in Seneca County, the Nation's application requests the transfer into trust of approximately 113.96 acres of land in Cayuga County. The Nation plans to continue the existing uses of the parcels, including a convenience store/gas station, small gaming facility, car wash, a vacant parcel, and an agricultural parcel. The Nation's use of the parcels will not change upon their transfer into trust.

The Bureau of Indian Affairs (BIA) made the Draft Environmental Impact Statement (EIS) for the project available for public review on May 22, 2009, and held a public hearing on June 17, 2009, in Seneca Falls. The BIA made the Final EIS available on October 22, 2010. In 2018, following the resolution of many years of administrative and legal proceedings regarding the Nation's leadership, the Nation requested that the Department re-initiate its review of the Nation's application and issue a final decision. The BIA conducted a review of the proposed activities and current conditions in 2018. Specifically, the proposed action was re-evaluated in accordance with National Environmental Policy Act regulations at 40 C.F.R. § 1502.9, and BIA's NEPA Guidebook (59 IAM 3-H). Based on this review, the BIA determined that a supplemental Final EIS was not required prior to the issuance of the Record of Decision (ROD). This determination was based on the BIA's conclusion that there are no new circumstances associated with the project that would result in new environmental concerns. In 2022, the Nation informed the Department that they plan to build a 4,928 square foot gaming facility near the existing structure. BIA decided to reevaluate the proposed action in accordance with 40 C.F.R. § 1502.9, to determine if a supplemental EIS was required. As part of this reevaluation, the BIA completed a Draft Environmental Assessment (Draft EA), dated September 2022, to determine if there were any significant environmental impacts that may result from the Proposed Action.

All environmental impacts associated with the entire project were evaluated and considered throughout the EA. The BIA provided the Draft EA by email to all interested state and local governments and resource agencies on September 19, 2022, for a comment period ending on October 19, 2022. The BIA published Notices of Availability for the Draft EA in The Citizen, a local newspaper, on September 22, 2022. The BIA also made the Draft EA available for public

review online at www.cayugatrustapplication.com. The Department received comments on the Draft EA and addressed them in the Final EA and in Appendix H, Response to comments. The Final EA is available online at www.cayugatrustapplication.com. The Final EIS is available online at www.cayuganationtrust.net/index.html.

With the issuance of this ROD, and the attached Decision Letter addressed to the Honorable Clint Halftown, Federal Representative, Cayuga Nation, (hereinafter 2023 Decision Letter) the Department announces that it will implement the Preferred Alternative (Alternative 1) and transfer into trust approximately 113.96 acres of land in Cayuga County. This decision is based on the Department's review of the Draft EIS, the Final EIS, its 2018 findings, the 2022 EA, comments received from the public, federal agencies, state agencies, local governmental entities, and the applicable statutory and regulatory criteria.

FOR FURTHER INFORMATION CONTACT:

Chet McGhee
Bureau of Indian Affairs
Eastern Regional Office

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Attachment I	EPA letter (Oct. 26, 2010)
Attachment II	List of parcels and legal descriptions
Attachment III	Responses to comments on the Draft EIS
Attachment IV	Cayuga Indian Nation of New York Conveyance of Land into Trust Technical Memorandum (Feb. 9, 2018)
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1.0 INTRODUCTION

1.1 Summary

In 2005, the Cayuga Nation (Nation) submitted an application to the United States Department of the Interior (Department), Bureau of Indian Affairs (BIA), requesting the transfer of approximately 129 acres of land into trust in Cayuga and Seneca Counties, New York, for gaming and other purposes. The Nation plans to continue the existing uses of the parcels as a convenience store/gas station, small gaming facility with electronic bingo, car wash, vacant parcel, and an agricultural parcel. Following the Nation's removal of certain lands from consideration, including all lands in Seneca County, the Nation's application requests the transfer into trust of approximately 113.96 acres of land (5 tax parcels) in Cayuga County (the Properties).

The BIA analyzed three reasonable alternatives in the Final Environmental Impact Statement (EIS):

Alternative 1 – Proposed Action and Preferred Alternative. The Department would transfer approximately 113.96 acres of land into trust for the benefit of the Nation.

Alternative 2 – No Action. The Department would transfer no land into trust and the Nation would continue to own the Properties in fee.

Alternative 3 – Enterprise Properties into Trust. The Department would transfer the Nation's commercial lands into trust to minimize the discontinuity of the parcels.

The Nation proposes no change in land use, construction, or ground-disturbing activities as a result of the Department's acquisition of the Properties in trust. The Nation is in the process of constructing a building to house its gaming facility and an expanded parking lot next to the existing gaming facility. That construction is independent of the Department's trust acquisition, however out of an abundance of caution, the Department has considered the potential impacts of that construction. There will be no impacts to the physical environment resulting from the transfer of the Properties into trust. Accordingly, the Proposed Action will result in no significant impacts. The U.S. Environmental Protection Agency concurred in this determination. *See Attachment I.*

With the issuance of this Record of Decision (ROD), the Department announces its intent to implement Alternative 1 and transfer approximately 113.96 acres into trust for the benefit of the Nation. This decision implements the Proposed Action. The list of the parcels the Department will transfer into trust is included in **Attachment II**. The Department's decision is based on its thorough review and consideration of the Nation's application pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108, and Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. The Department also reached its decision based on its review of the Draft EIS, the Final EIS, the 2018 Technical Amendment, the 2023 Environmental Assessment, the administrative record, and comments from the public, federal agencies, and state

and local governments. Information about the Final EIS is available online at www.cayuganationtrust.net/index.html. The 2023 Environmental Assessment is available online at cayugatrustapplication.com.

Unless otherwise noted, the Department's references to the Council on Environmental Quality's (CEQ) regulations at 40 C.F.R Parts 1500 – 1508 are to the 1978 regulations, which were in effect during the preparation of the Draft and Final EIS, and the 2018 Technical Amendment. On July 16, 2020, CEQ promulgated major revisions to the 1978 Regulations, which provided agencies the option to apply the new regulations to ongoing actives after the effective date of the 2020 Regulations. 86 Fed. Reg. 7037; 40 C.F.R. § 1506.13. On April 20, 2022, CEQ amended the 2020 regulations. 87 Fed. Reg. 23453. References herein to the 2020 Regulations are to the 2020 Regulations as amended in 2022. Consistent with section 1506.13 of the 2020 Regulations, the Department has opted to continue evaluating this action under the 1978 regulations.

1.2 Description of the Proposed Action

The Proposed Action is the transfer of approximately 113.96 acres in Cayuga County into trust, pursuant to the Secretary of the Interior's (Secretary) authority under Section 5 of the IRA. The Nation owns the Properties in fee. The Properties are located within the Nation's reservation boundaries.¹ The legal descriptions are included in **Attachment II**. The Properties are located in the Village of Union Springs and the Town of Springport in Cayuga County. The Union Springs parcel consist of four contiguous tax lots totaling approximately 110.03 acres:

- N. Cayuga St. (106.96 acres): vacant farmland
- 299/303 Cayuga St. (1.98 acres): convenience store/gas station, car wash, parking lot
- 271 Cayuga St. (1.36 acres): commercial building, parking lot, small gaming facility

The Town of Springport parcel consists of a single tax lot:

- Route 90 (3.65 acres): vacant lot

The Union Springs parcels include the gaming operation LakeSide Entertainment 1, which occupies a 2,300-square foot building with 86 class II electronic bingo machines. The Nation temporarily suspended gaming operations during the preparation of the EIS but resumed operation in 2013. The Nation also operates LakeSide Trading on the Union Springs parcels, which includes a convenience store/gas station and car wash. The Nation will continue the existing uses of the Properties for the foreseeable future.

¹ See Revised Proposed Findings of Fact and Conclusions for Cayuga Nation Fee-to-Trust Land Acquisition Application, Cayuga and Seneca Counties, New York (Oct. 4, 2019) [hereinafter Regional Director's Findings of Fact] at 1.

1.3 Purpose and Need for Action

The Proposed Action will facilitate tribal self-sufficiency, self-determination, and economic development. This purpose satisfies the Department's land acquisition policy articulated in the Department's trust land regulations at 25 C.F.R. Part 151, and is the principal goal of IGRA articulated in 25 U.S.C. § 2701 *et seq.* The Department is required to act on the Nation's application pursuant to the Department's regulations at 25 C.F.R. §§ 151.10(h) and 151.12.

The purpose of the Proposed Action is to address the Nation's need for self-determination, self-sufficiency, and economic independence by providing a sovereign tribal land base. The Proposed Action will preserve land within the Nation's Reservation boundaries for the Nation's members located elsewhere in New York State and throughout the United States. Further, the Proposed Action will provide the Nation, which has no trust land, with the best opportunity to establish and maintain a long-term and secure revenue stream, protect the Properties from alienation, and facilitate consolidation of the Nation's lands. Under such conditions, the Nation will be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Nation, its members, and local communities with greater opportunities for employment and economic growth.

1.4 The Cayuga Nation

The Nation is a part of the Six Nations Confederacy, an alliance of Iroquois-speaking tribes. Prior to the Revolutionary War, the Nation's territory comprised approximately 1,700 square miles, spanning from Lake Ontario southward into Pennsylvania.² In 1788 and 1789, the State of New York negotiated several treaties with constituents of the Six Nations, including the Cayuga Nation. Pursuant to these treaties, the Nation ceded 1,600 square miles of its land base to New York State, but retained a 64,000-acre reservation, "for their own use and cultivation but not to be sold, leased or in any other manner alienated or disposed of to others[.]"³

The Nation was a signatory to the 1794 Treaty of Canandaigua with the United States.⁴ The Treaty declared, "Peace and friendship are hereby firmly established, and shall be perpetual, between the United States and the Six Nations."⁵ In Article 2, the United States, "acknowledge[d] the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the State of New York, and called their reservation to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations."⁶

² *Cayuga Indian Nation of New York v. Pataki*, 165 F. Supp. 2d 266, 304 (N.D.N.Y. 2001), *rev'd on other grounds*, 413 F.3d 266 (2d Cir. 2005).

³ *Cayuga*, 165 F. Supp. 2d at 315.

⁴ Treaty with the Six Nations, 1794, 7 Stat. 44.

⁵ *Id.*

⁶ *Id.* at 45.

Between 1795 and 1807, the State of New York purchased the Nation’s reservation land in violation of the Nonintercourse Act.⁷

As a result of these purported sales, the Nation was dispossessed of aboriginal fee title to the lands within its Reservation. Additionally, the State, Counties, and local governments assumed some regulatory jurisdiction over the land within the Nation’s Reservation. However, because only Congress can disestablish Indian reservations, “the Cayuga Reservation has not been disestablished and persists today within the boundaries set forth in the Treaty of Canandaigua.”⁹ In recent years, the Nation has repurchased property within the Reservation, but because the land is no longer held in aboriginal fee title, it is subject to Federal, Tribal, State, and local regulatory jurisdiction.¹⁰ As a result, the Nation has remained *landless*, and as discussed below is thereby prevented from exercising its full sovereign jurisdictional authority over its land.

1.4 Procedural Background

1.4.1 Application

In 2005, the Nation submitted an application requesting the transfer of approximately 129 acres of land into trust in Cayuga and Seneca Counties, New York, for gaming and other purposes.¹¹ In 2007, the Nation revised its application to remove the approximately 0.05-acre Montezuma parcel in Seneca County.¹² In 2012, the Nation supplemented its application with additional information.¹³ In 2018, following the resolution of many years of administrative and legal proceedings regarding the Nation’s leadership, the Nation requested the Department to re-initiate its review of the Nation’s application and issue a final decision.¹⁴ In 2019, the Nation revised its

⁷ 25 U.S.C § 177.

⁸ *Cayuga Indian Nation v. Pataki*, 413 F. 3d 266, 269 (2d Cir. 2005) *internal citations omitted*.

⁹ *Cayuga Nation v. Tanner*, 6 F.4th 361, 378 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022).

¹⁰ *Id.* at 375-76.

¹¹ See letters from Clint Halftown, Federally-Recognized Representative Cayuga Indian Nation of New York (Nation), to Franklin Keel, Regional Director Eastern Regional Office, BIA (April 14, 2005) (May 25, 2005) [hereinafter Nation’s Application].

¹² Regional Director’s Findings of Fact, note 1.

¹³ See letter to Larry Echo Hawk, Assistant Secretary - Indian Affairs, from Daniel J. French, French-Alcott, PLLC (Feb. 16, 2012) responding to the Department’s letter notifying the Nation that its application was removed from consideration for incompleteness. See also letter to Cayuga Nation Council from Donald E. Laverdure, Principal Deputy Assistant Secretary – Indian Affairs (Dec. 20, 2011).

¹⁴ See letter to John Tahsuda, Office of the Assistant Secretary - Indian Affairs, from Raya Tresier, Wilmer Hale (March 26, 2018).

application to remove approximately 13.98 acres of land in Seneca County.¹⁵ The Nation's application now consists of approximately 113.96 acres in Cayuga County.

During the Nation's leadership dispute beginning in the early 2000s, the Council of the Cayuga Nation eventually split into factions. The Department suspended its review of the application to allow for a resolution. On July 13, 2017, the Acting Assistant Secretary issued a final agency decision recognizing the Cayuga Nation Council as the legitimate Cayuga Nation government.¹⁶ On March 12, 2019, the United States District Court for the District of Columbia upheld the Acting Assistant Secretary's decision, thus resolving the dispute.¹⁷

On July 31, 2020, the Department disapproved the Nation's application, citing opposition from neighboring communities and litigation between those communities and the Nation.¹⁸ The Department did not issue a Record of Decision or Notice of Cancellation for the Final EIS along with the 2020 Decision.

Shortly before the Department issued the 2020 Decision, the Nation sued the Department for failing to act on the Nation's application.¹⁹ After the 2020 Decision, the Nation amended its complaint to challenge the denial.²⁰ The suit has been stayed since the fall of 2021 because the Department and Nation began settlement negotiations. As part of the negotiations, the Nation provided the Department with two memoranda dated November 8, 2021, supported by seventeen exhibits.²¹ The Nation's submission provided significant new information. Accordingly, on November 22, 2021, the Assistant Secretary—Indian Affairs decided to reopen the Nation's application and reconsider the July 31, 2020 denial of that application.²² The 2023 Decision Letter contains the Assistant Secretary's decision on reconsideration of the Nation's 2005 application, as amended, for trust acquisition of the Properties which are located within the Nation's Reservation boundaries. This Record of Decision concludes the Department's compliance with both the letter and spirit of NEPA for the Nation's application to transfer the Property into trust.

¹⁵ See letter to Assistant Secretary Sweeney, from Clint Halftown, Council Member and Federal Representative of the Cayuga Nation.

¹⁶ See *The Cayuga Nation by its Council of Chiefs and Clan Mothers v. Eastern Regional Director, Bureau of Indian Affairs*, Decision of the Office of the Assistant Secretary – Indian Affairs, United States Department of the Interior (July 17, 2017).

¹⁷ See *The Cayuga Nation v. Bernhardt*, 374 F. Supp. 3d 1 (D.D.C. March 12, 2019).

¹⁸ Decision Letter from Tara Sweeney, Assistant Secretary – Indian Affairs, to Clint Halftown, Federal Representative of the Cayuga Nation (July 31, 2020) [hereinafter 2020 Decision].

¹⁹ Complaint, *Cayuga Nation v. United States*, Civ. No. 20-1581 (D.D.C. June 16, 2020).

²⁰ Amended Complaint, *Cayuga Nation v. United States*, Civ. No. 20-1581 (D.D.C. Sept. 9, 2020).

²¹ Letter from Ambassador (ret.) Keith M. Harper, Counsel to the Cayuga Nation, to Bryan Newland, Assistant Secretary – Indian Affairs (Nov. 8, 2021); Letter from Clint Halftown, Federal Representative of the Cayuga Nation, to Bryan Newland, Assistant Secretary – Indian Affairs (Nov. 8, 2021) [hereinafter Nation Submission].

²² Declaration of Bryan Newland, *Cayuga Nation v. United States*, Civ. No. 20-1581 (D.D.C. Dec. 8, 2021), ECF No. 34, Attachment #1.

1.4.2 Environmental Impact Statement

In evaluating the Nation's application, the Department undertook a review of potential impacts to the human environment pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

The Cayuga Nation proposes no change in land use. While the Nation is constructing a new gaming facility, that project will move forward regardless of whether the land is placed in trust. As discussed in this ROD, there will be no impacts to the physical environment resulting from the transfer of the Properties into trust. Accordingly, the Proposed Action will result in no significant impacts. The U.S. Environmental Protection Agency (USEPA) concurred in this determination.²³ See **Attachment I**.

Notice and Public Review

The BIA published a Notice of Intent to Prepare an EIS in the *Federal Register* on February 13, 2006.²⁴ On March 1, 2006, the BIA conducted a public scoping meeting in Seneca Falls, Seneca County.²⁵ The written comment period closed on March 15, 2006, and the BIA issued a scoping report in November 2006. The scoping report summarized and categorized the major issues and concerns based on the written and verbal scoping comments. The BIA considered the public scoping comments in developing the alternatives.

The BIA published the Notice of Availability (NOA) of the Draft EIS in the *Federal Register* on May 22, 2009.²⁶ The BIA conducted a public hearing on the Draft EIS in Seneca Falls on June 17, 2009. The written comment period ended on July 6, 2009. The BIA received comments at the hearing and written comments during the comment period. The BIA considered these comments in preparing the Final EIS.

The BIA published the NOA of the Final EIS in the *Federal Register* on October 22, 2010.²⁷ The BIA included its responses to comments on the Draft EIS in Appendix A of the Final EIS. The Final EIS is available at www.cayuganationtrust.net/index.html. The BIA's responses to comments on the Draft EIS are included here in **Attachment III**.

²³ See letter to Kurt Chandler, Regional Environmental Scientist, Environment and Cultural Resources, Bureau of Indian Affairs, Eastern Regional Office, from John Filippelli, Chief, Strategic Planning Multi-Media Programs Branch, United States Environmental Protection Agency (Oct. 26, 2010).

²⁴ 71 Fed. Reg. 7,568 (Feb. 13, 2006).

²⁵ The BIA selected Seneca Falls for the scoping meeting because it was a short distance from the subject properties at the time of scoping which included a Seneca Falls property.

²⁶ 74 Fed. Reg. 24,006 (May 22, 2009) for the Environmental Protection Agency; 74 Fed. Reg. 24,032 (May 22, 2009) for the BIA.

²⁷ 75 Fed. Reg. 65,372 (Oct. 22, 2010).

1.4.3 Final EIS Evaluation

The BIA, in consultation with the Nation, chose to prepare an EIS to ensure that the Nation's application received the most thorough environmental review available under NEPA. The BIA made this choice even though NEPA and BIA policy do not require an EIS where there is no change in land use. Further, the NEPA regulations do not require an EIS where potential socioeconomic impacts are not related to changes in the physical environment.

No Change in Land Use

The Nation plans no change in land use on the Properties and intends to continue its current operations. In summer 2022, the Nation informed the Department that it plans to build a 4,928 square foot gaming facility and associated parking near the existing gaming facility. This planned construction is independent of the Department's decision, and therefore is not considered a "change in land use." A transfer of land into trust that proposes no change in land use is subject to a "categorical exclusion" review, pursuant to BIA implementing procedures for NEPA. Categorical exclusions are categories of actions that federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and do not require an EA or an EIS.²⁸ Here, the Proposed Action is categorically excluded from further analysis under NEPA in accordance with Departmental policy found at 516 DM 10.5 (I) - *Land Conveyance and Other Transfers*.²⁹ Despite the applicability of a categorical exclusion, the BIA chose to prepare an EIS.

Review of Socioeconomic Impacts

The regulations of the Council on Environmental Quality (CEQ), the agency primarily charged with implementation of NEPA, require federal agencies to consider socioeconomic impacts only when they are interrelated to an action that impacts the physical environment. The regulations at 40 C.F.R. § 1508.14 state that, "economic or social effects are not intended by themselves to require preparation of an environmental impact statement." Thus, when a tribe submits an application that results in no impacts to the physical environment, as here, an EIS is not required. The BIA prepared an EIS even though an EIS is not required to analyze the socioeconomic impacts of the Proposed Action, and the socioeconomic impacts are analyzed in the review of the Nation's application pursuant to the Department's land acquisition regulations at 25 C.F.R. §§ 151.10(e) and 151.10(f). *See* **2023 Decision Letter**

The BIA prepared an EIS to evaluate the Proposed Action even though it was not required to do so. This level of environmental review far exceeds the Department's legal responsibilities

²⁸ See 40 C.F.R. § 1508.4; 43 C.F.R. § 46.205. The BIA's categorical exclusions are listed in 516 DM 10.5.

²⁹ Available at <https://www.doi.gov/elips/browse>: Series 31-Environmental Quality Programs, Part 516: National Environmental Policy Act 1969, Chapter 10: Managing the NEPA Process – BIA.

pursuant to NEPA. This Record of Decision concludes the Department's compliance with both the letter and spirit of NEPA for the Nation's application to transfer the Property into trust.

1.4.4 2018 Technical Amendment

Following the re-initiation of the Department's review of the Nation's application in 2018, the BIA reviewed the Final EIS in a 2018 Technical Memorandum.³⁰ The Technical Memorandum analyzed existing background conditions and considered the Proposed Action in the context of current conditions. The Technical Memorandum is included here as **Attachment IV**. The BIA analyzed the following issues:

Natural Resources: Changes to federal and state wetlands maps and lists of threatened or endangered species.

Historic Properties: New sites that are considered eligible for the National Register of Historic Places.

Land Use and Zoning: Changes to local land use policy documents and zoning codes to the extent they would affect the Proposed Action.

Traffic and Transportation: An updated Traffic Impact Study was prepared, and new traffic counts conducted, in October 2016 and January 2018.

Hazardous Materials: Updated Phase I and Phase II Environmental Site Assessments prepared in 2009, 2016, and 2018.

Socioeconomic Conditions: Updated economic modeling and tax revenue data.

For each issue, the BIA found no new significant circumstances or information relevant to environmental concerns. *See Section 3.0*, below.

1.4.5 2023 Environmental Assessment

In summer 2022, the Nation informed the Department of it plans to build a 4,928 square foot gaming facility and associated parking near the existing gaming facility. This planned construction is independent of the Department's decision. Given that minor change, BIA considered what additional NEPA analysis, if any, was necessary to inform its decision on the fee-to-trust application. The BIA reviewed both CEQ's 1978 Regulations, discussed above, and the 2020 Regulations. The 2020 Regulations, as amended, at 40 C.F.R. § 1502.9(d)(4) permit the Department to evaluate if changes to the proposed action or new circumstances are not significant, and therefore do not require the preparation of a supplement and may support such a

³⁰ Cayuga Indian Nation of New York Conveyance of Land into Trust Technical Memorandum (Feb. 9, 2018) [hereinafter Technical Memorandum].

finding with an environmental assessment. While this alternative form of analysis was not articulated in the 1978 Regulations, it was not prohibited by them; instead, the 2020 Regulations codified the existing practice of several Federal agencies.³¹ The BIA decided that, given the passage of time since the EIS was completed and the desire for transparency in review and decision-making, its analysis and findings regarding the need for a supplemental EIS should be documented via an Environmental Assessment (EA). This conservative approach is intended to support a robust NEPA analysis. The BIA completed a draft Environmental Assessment (EA), dated September 2022, to determine if there were any significant environmental impacts that may result from the Proposed Action.

All environmental impacts associated with the entire project were evaluated and considered throughout the EA. The BIA provided the Draft EA by email to all interested state and local governments and resource agencies on September 19, 2022, for a comment period ending on October 19, 2022. The BIA published Notices of Availability for the Draft EA in *The Citizen*, a local newspaper, on September 22, 2022. The BIA also made the Draft EA available for public review online at *cayugatrustapplication.com*.

The BIA received three comments on the Draft EA. The first two comments were from the United States Environmental Protection Agency (USEPA) which identified specific technical revisions the USEPA recommended the BIA include in the final EA. The USEPA also commented on difficulties it has experienced in seeking to inspect the Nation's underground storage tanks at the Nation's gas station. The third comment was received from Cayuga County's attorney who requested additional time to comment on the draft EA. The BIA declined to extend the comment period because of the limited changes to the proposed action. The BIA carefully considered and addressed the comments in the Final EA, and in Appendix H, Response to Comments. The Final EA (hereinafter 2023 EA or EA) including Appendix H are attached to this ROD as Attachment V.

1.4.6 Need for a Supplemental EIS

The BIA reviewed the Final EIS, Technical Memorandum, the 2023 EA, and supporting documentation in accordance with NEPA and CEQ regulations at 40 C.F.R. § 1502.9(c) to determine whether a supplemental EIS was required. This section states:

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.³²

³¹ 85 Fed. Reg. 1684, at 1700-1 January 10, 2020.

³² 40 C.F.R. § 1502.9(c).

The BIA found no changes to the Proposed Action that would result in new environmental concerns. The Nation's amendment to its application that eliminated lands in Seneca County did not result in new environmental concerns. Further, the BIA found no significant new circumstances, or information relevant to environmental concerns, bearing on the Proposed Action or its impacts. Accordingly, the CEQ regulations do not require a supplemental EIS.

Further, the BIA's NEPA Guidebook, *Indian Affairs National Environmental Policy Act (NEPA) Guidebook* explains in Section 8.5.4 a supplemental EIS is required when:

- 1) A DEIS is more than 3 years old and the FEIS has not been completed.
- 2) An FEIS is more than 5 years old for an action not yet taken.
- 3) Substantial changes have been made in the proposed action that may be relevant to environmental concerns (40 C.F.R. § 1502.9(c)(1)(i)).
- 4) Significant new circumstances or information relevant to environmental concerns have arisen (40 C.F.R. § 1502.9(c)(1)(ii)).
- 5) Comments received result in the inclusion of a new preferred alternative, which was not detailed as a reasonable alternative in the draft of final EIS.

The ages of the document under 1 and 2 above alone do not trigger the requirement for a supplemental draft or final EIS; one or more of items 3,4, or 5 must have occurred. In this case the Final EIS is more than five years old; however, numbers 3-5 above do not apply. The proposed Action has not changed: the Nation only reduced total acreage. There are no new circumstances associated with the project that would result in new environmental concerns and there is not a new preferred alternative based on comments received.

The EA supports the BIA's conclusion that while the new construction does represent new circumstances or information relevant to environmental concerns, it is not significant. Therefore, it does not require the preparation of a supplemental EIS. When determining whether to supplement an EIS due to new information, agencies are to apply a "rule of reason."³³ BIA is granted broad discretion here and "need not supplement an EIS every time new information comes to light after the EIS is finalized."³⁴ In order to merit a supplemental EIS, new information should be substantial or significant as it relates to environmental concerns.³⁵ As the EA's thorough analysis demonstrates, there are no such significant or substantial environmental concerns here. Finally, as explained in Section 1.4.3 above, this action would qualify for the use of a categorical exclusion.

³³ See *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373, 376-77 (1989).

³⁴ *Id.* at 373.

³⁵ See 40 C.F.R. § 1502.9(d).

After careful consideration, I have determined that a supplemental EIS is not required prior to issuing this ROD.³⁶

2.0 DESCRIPTION OF ALTERNATIVES

The BIA considered a range of reasonable alternatives for meeting the purpose and need for action, including alternative land configurations. The BIA developed and evaluated alternatives in the Final EIS to address the purpose and need, and to respond to concerns expressed by commenters regarding potential jurisdictional, socioeconomic, and environmental impacts of transferring the Properties into trust. The BIA identified three alternatives representing the reasonable range of alternatives for analysis in the Final EIS, including a No Action Alternative. The selection of these alternatives for detailed analysis reflects state and local government comments on the Nation's application, public comments received during scoping and on the Draft EIS, and the requirements of NEPA.

Because the Nation amended its application to remove the Seneca County properties from consideration, the alternatives would only be implemented for the Cayuga County Properties. The Alternatives below have been revised to reflect the removal of the Seneca County properties.

2.1 Alternative 1 – Proposed Action and Preferred Alternative

Under Alternative 1, the United States would transfer approximately 113.96 acres of land in Cayuga County into trust for the benefit of the Nation. The Nation would continue the existing uses of the parcels as a convenience store/gas station, small gaming facility, car wash, vacant parcel, and an agricultural parcel. The Nation would continue its planned expansion of the gaming facility on the Union Springs parcel. The Nation will continue the existing uses of the Properties for the foreseeable future.

2.2 Alternative 2 – No Action Alternative

Under the No Action Alternative, The United States would not transfer the properties into trust and the Nation would continue to own the properties in fee. The No Action Alternative analyzes the impacts on the Nation and Cayuga County from the properties remaining in fee. Under this alternative, the Nation would continue use of the Properties for the multiple purposes currently in operation. In addition, the Nation would continue its planned expansion of the gaming facility on the Union Springs parcel.

³⁶ See Concurrence of BIA Regional Director, Eastern Region on Memorandum titled *Environmental Review of Cayuga FTT Application* dated April 5, 2018.

2.3 Alternative 3 – Enterprise (Commercial) Properties into Trust

Under this alternative, the approximately 110.03-acre Union Springs parcel would be taken into trust by the United States. The Nation’s LakeSide Trading commercial enterprises and LakeSide Entertainment Class II gaming facility on the Union Springs property would continue to operate. In addition, the Nation would continue its planned expansion of the gaming facility on the Union Springs parcel. The Nation’s non-Enterprise property in the Town of Springport, in Cayuga County, would not be taken into federal trust.

The BIA added this alternative in the Final EIS in response to comments indicating concern that the transfer of the original approximately 129 acres into trust would result in a checkerboard of jurisdiction. The acreage of Alternative 3 now totals approximately 110 acres. The objective of this alternative is to analyze whether having two isolated trust parcels in a particular county would provide different impacts than a unified contiguous parcel in that county.

3.0 ENVIRONMENTAL ISSUES AND PUBLIC COMMENTS

3.1 Issues Raised During Scoping and Public Review of the Draft EIS

A number of issues were raised during the scoping process and during public review of the Draft EIS. Each of the alternatives considered in the Final EIS were evaluated relative to these and other issues. Given that the Nation is proposing no change in land use, the substantive issues did not relate to physical environmental impacts and instead related to the following impacts:

- Jurisdictional and land use regulation
- Socioeconomic
- Historic, cultural, and archaeological resource protection

The BIA thoroughly discussed and analyzed these issues in the Final EIS, the 2018 Technical Memorandum, and the 2023 EA. As discussed in this ROD, there will be no impacts to the physical environment resulting from the transfer of the Properties into trust. The Nation’s planned construction activities are independent of the Department’s action. Accordingly, the Proposed Action will result in no significant impacts. The USEPA concurred in this determination. *See Attachment I.*

3.2 Comments and Responses on the Final EIS

The BIA received comments from numerous parties during the 30-day waiting period after it published the NOA for the Final EIS locally and in the *Federal Register*.³⁷ The majority of commenters raised similar concerns as those raised during scoping regarding jurisdiction and socioeconomic impacts. They also raised similar concerns as those raised during the local

³⁷ 75 Fed. Reg. 65,372 (Oct. 22, 2010).

government comment period in 2018 and 2022, pursuant to 25 C.F.R. §§ 151.10(e)-(f). Those issues are discussed in the 2023 Decision Letter.

A representative for Seneca and Cayuga Counties did not believe the Final EIS adequately addressed their issues.³⁸ This ROD provides a thorough discussion of the Department’s findings regarding potential impacts from the Proposed Action and addresses the comments received. The discussion below highlights topics that warrant specific responses.

3.2.1 Need for a Supplemental EIS

Comment: Commenters discussed the need for a Supplemental Final EIS due to the passage of time since the issuance of the Final EIS.³⁹

Response: As discussed in detail in **Section 1.4.6** above, the BIA evaluated the Final EIS pursuant to NEPA, the CEQ regulations, and the BIA NEPA Guidebook. The BIA determined that there have been no changes to the proposed action that would result in new environmental concerns. Further, while the new construction does represent new circumstances or information relevant to environmental concerns, it is not significant, and there are no other significant new circumstances or information relevant to environmental concerns associated with the proposed action. Accordingly, a supplemental EIS is not required.

3.2.2 Jurisdictional and Land Use Impacts

Comment: Commenters expressed concern about potential jurisdictional conflicts due to the “checkerboarding” land ownership pattern of alternating federal and state jurisdiction that would result.⁴⁰ Commenters also expressed concern that the loss of jurisdiction over the Properties would impact the local government’s ability to effectively manage and supervise land in a cohesive manner.⁴¹

Response: Alternative 1 is responsive to these concerns. The Union Springs parcels consist of four contiguous tax lots comprising approximately 110.03 acres, and the Springport parcel consists of a single approximately 3.65-acre tax lot. Alternative 1 provides a

³⁸ See Fax to Franklin Keel from Joseph D. Picciotti, Harris Beach PLLC, regarding FEIS Comments, Cayuga Indian Nation of New York Trust Acquisition Project (Nov. 19, 2010).

³⁹ See e.g., letter to John Tahsuda, Acting Assistant Secretary, U.S. Department of the Interior, from United States Senators Charles E. Schumer and Kirsten Gillibrand (rec’d June 6, 2018).

⁴⁰ See e.g., letter to Franklin Keel, Regional Director, Bureau of Indian Affairs, from Joseph D. Picciotti, Harris Beach PLLC (Nov. 19, 2010).

⁴¹ See e.g., letter to Franklin Keel, Regional Director, Bureau of Indian Affairs, from David L. Dresser, Ph.D. (Nov. 17, 2010).

contiguous and compact trust land configuration to meet the Nation's immediate and short-term needs while minimizing the potential for jurisdictional disruption.

The Final EIS acknowledged and considered the existence of taxing authorities within the State, including the State, counties, townships, cities, and school districts, and that each of these authorities operate within their own jurisdictional boundaries. See Final EIS § 4.8. As explained in more detail in the Decision Letter, The Department determines that Alternative 1 would serve to simplify the current jurisdictional atmosphere by clarifying, rather than complicating, these existing layers of jurisdiction. See 2023 Decision Letter, section 151.10(f).

Comment: Commenters expressed concern that transferring the Properties into trust would result in significant negative impacts to the environment, public health, and public safety because the State and local governments would no longer have jurisdiction over the Properties.⁴²

Response: The USEPA directly administers all environmental regulations on Indian lands held in trust. Similarly, the U.S. Fish and Wildlife Service, in consultation with tribes and in accordance with Secretarial Order No. 3206 (June 5, 1997),⁴³ monitors fish and wildlife populations. The USEPA's Underground Storage Tank Program regulates the Nation's gas stations. The USEPA conducted an audit of the Nation's gas stations in June 2018.⁴⁴ The Proposed Action in no way diminishes, nor restricts, USEPA's statutory and regulatory authority to protect public health and the environment by regulating Underground Storage Tank compliance. Under Alternative 1, the Nation will be required to continue to work with the USEPA to ensure its activities comply with applicable environmental regulations. Further, the Nation has a land use ordinance that demonstrates its commitment to standards of public health and safety. See **Attachment II**, Final EIS, Appendix A, Common Response 11. The Nation's management of its lands show that there have not been significant adverse effects on environmental resources. See Final EIS § 4.0.

Comment: Commenters stated that the New York State Department of Environmental Conservation has more stringent regulatory standards, and, thus, the State's regulatory scheme is superior to that of the USEPA's.⁴⁵

Response: While in some cases state standards differ from federal and tribal standards, the Nation proposes no change in land use. Thus, differences between regulatory standards are not significant to the proposed action. In addition, federal environmental regulatory law is

⁴² See e.g., *supra*, note 29.

³² Secretarial Order No. 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997), *available at* www.fs.fed.us/r6/reo/monitoring/reports/secretarial-order-3206.htm.

⁴⁴ Memorandum to Acting Regional Director, Eastern Region, from Environmental Scientist, Eastern Region (Nov. 27, 2018) at 4.

⁴⁵ See e.g., *supra*, note 30.

comprehensive and sufficient to protect the resources on the Properties. *See Attachment II, Final EIS Appendix A, Common Responses 9 and 21.*

Comment: Commenters questioned whether the Nation's land uses are consistent with local land uses.⁴⁶

Response: The developed Properties are located within the Union Springs commercial zone. Developers constructed the convenience store/gas station, car wash, parking lot and the commercial building (former car parts store) in 1998, prior to the Nation acquiring the Properties. The Nation converted the car part store to house the Nation's small gaming facility with electronic bingo and continued the operation of the existing convenience store/gas station and car wash. Overall, the Nation's uses are generally consistent with local zoning and the uses of adjacent non-Nation lands. *See Final EIS § 3.0.*

3.2.3 Socioeconomic Impacts

Comment: Many commenters expressed concern about the impact of lost tax revenue and its impact on the local economy.⁴⁷

Response: The potential fiscal impacts of removing the Properties from the tax rolls were evaluated thoroughly in the Draft EIS, Final EIS, Technical Memorandum, and Section 151.10(e) of the Department's trust land acquisition regulations. The Department finds that the impacts of removing the Properties from the tax rolls and impacts on the local economy are not significant. *See 2023 Decision Letter, section 151.10(e).*

3.2.4 Historic, Cultural, and Archaeological Resource Impacts

Comment: Commenters expressed the need for additional analysis of historic resources.⁴⁸

Response: The Proposed Action will have no significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places. The transfer of land into trust with no planned change in land use is an activity that does not have the potential to cause impacts to historic properties. The Proposed Action will not result in construction, ground-disturbance, or alteration of structures. As explained above, the Nation's planned expansion of its gaming facility is independent of the Department's action. Furthermore, if the Nation proposes future development of the Properties, the Nation must comply with all

⁴⁶ *See e.g., supra*, note 29.

⁴⁷ *See e.g.*, letter to Franklin Keel, Regional Director, Bureau of Indian Affairs, from Richard E. Tallcot, Upstate Citizens for Equality, Inc. (Nov. 17, 2010).

⁴⁸ *See e.g.*, letter to Bruce W. Maytubby, Acting Regional Director, Bureau of Indian Affairs, from Brian Laudadio, Bond, Schoeneck & King (May 4, 2018).

federal laws regarding cultural and historic resource protection and preservation including, but not limited to, the National Historic Preservation Act (NHPA).⁴⁹

Federal laws provide additional protections for tribes and greater input than state law for the preservation and protection of historic, cultural, and archaeological resources. For example, the State Historic Preservation Act (SHPA),⁵⁰ which is the state counterpart to Section 106 of the NHPA, only applies when there is state agency involvement in a project. In comparison to the NHPA, the SHPA is also less inclusive regarding the role of tribes in the consultation process. The NHPA provides more opportunities for tribal involvement if issues arise. In addition, the New York State Education Law,⁵¹ the State counterpart to the Archaeological Resources Protection Act,⁵² and the Native American Graves Protection and Repatriation Act⁵³ apply when there is an excavation on state land. The State Education Law does not apply to the Nation's lands, because they are not owned by the State.

3.3 Issues Evaluated in 2023 Environmental Assessment and the 2018 Technical Memorandum

In addition to the issues raised by commenters, the BIA evaluated the following issues in the 2023 EA, as well as the 2018 Technical Memorandum.

3.3.1 Land Resources (Final EIS § 4.1; Tech. Mem. at 5; EA § 3.1).

The Department found no significant new circumstances or information relevant to concerns related to land resources since the publication of the Final EIS. There has been no development or changes to the Properties that would affect onsite soils or topography from what was presented in the Final EIS. Under Alternative 1, the Properties would be undisturbed or managed under their current management regime.

The Nation's planned gaming facility expansion includes converting exiting vacant land into a gravel parking lot and constructing a building on the existing parking lot. That site work is being conducted pursuant to the requirements of a New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001), which requires development of a Stormwater Pollution Prevention Plan (SWPPP) with an Erosion and Sediment Control Plan.

Any future land management activities would continue to be subject to all applicable federal environmental regulations. With no planned additional development or disturbances, there

⁴⁹ 16 U.S.C. § 470f.

⁵⁰ New York Parks Recreation and Historic Preservation Law § 14.09.

⁵¹ New York Education Law § 233.

⁵² 16 U.S.C. §§ 470aa *et seq.*

⁵³ 25 U.S.C. §§ 3001*et seq.*

would be no changes to onsite geology, topography, or soils under this alternative. Therefore, there would be no significant impacts to land resources from the Proposed Action.

3.3.2 Water Resources (Final EIS § 4.2; Tech. Mem. at 6-7; EA § 3.2)

The Department found no significant new circumstances or information relevant to concerns related to water resources since the publication of the Final EIS. There are no state-mapped streams, wetlands, or waterbodies on the Properties, nor are there any in the vicinity of the Properties beyond from what was identified in the Final EIS. In 2008, the U.S. Army Corps of Engineers (ACOE) Buffalo District confirmed that no approvals would be required, pursuant to the Clean Water Act Section 404, because at that time the Nation planned no development on the Properties.

The Nation's planned construction activities are independent of the Department's action, and ground disturbing activities are being conducted pursuant to the requirements of a NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001), which requires development of a SWPPP. The Nation developed a SWPPP which is included in the EA as Appendix F.

Under the Proposed Action, the Properties would be left undisturbed or managed under their current maintenance regime. If the Nation contemplates additional future development, a formal wetland delineation will be required on each of the affected Properties to confirm the presence/absence of wetlands, and to establish the extent of wetlands subject to ACOE jurisdiction. Future development would comply with all applicable federal laws. Therefore, there would be no significant impacts to water resources as a result of the Proposed Action.

3.3.3 Air Quality (Final EIS § 4.3; Tech. Mem. at 7-8; EA § 3.3)

The Department found no significant new circumstances or information relevant to concerns regarding background traffic conditions since the publication of the Final EIS. Changes in traffic volumes and levels of service (LOS) can affect air quality conditions. A screening level analysis was performed at locations where the Proposed Action would have the potential to increase traffic volumes and affect air quality. The area roadway intersections were reviewed based on the New York State Department of Transportation's Environmental Procedures Manual criteria for determining locations that may warrant a carbon monoxide microscale air quality analysis. The analysis determined that none of the project-affected intersections in the Village of Union Springs has an LOS that would indicate the need for a detailed microscale air quality analysis. Furthermore, no affected intersection would result in significant adverse air quality impacts to the immediate area. The Proposed Action would not result in any significant changes to existing traffic conditions near the Properties. As such, the condition described in the Final EIS would be expected to continue. Therefore, there would be no significant impacts to air quality from the Proposed Action.

3.3.4 Hazardous Materials (Final EIS § 4.4; Tech. Mem. at 8; EA § 3.11)

Based on site reconnaissance, owner interviews, records, subsurface investigations, and consultation with the U.S. Environmental Protection Agency, no conditions were identified that were indicative of releases or threatened releases of hazardous substance or petroleum products on the Properties. These reviews were conducted in 2009, 2016, 2018, and 2022 by environmental professionals as provided in 40 C.F.R. § 312.10. The Department will require that all components of the Phase I Environmental Site Assessments be updated as required by 40 C.F.R. Part 312 and current ASTM Standards prior to deed conveyance. As discussed in section 3.2.2 above, the Nation's gas station underground storage tanks have been under the regularity jurisdiction of the USEPA since 2010, irrespective of the trust status of the land. Further, while the Nation's planned gaming facility expansion is independent of this Decision, the construction activities have the potential to result in the incidental release of fuels, oil, and grease during the operation of construction equipment. However, with industry standard construction Best Management Practices implemented, the potential for any releases will be reduced and should spills occur, they will be contained, removed, and disposed of properly. Therefore, there would be no significant adverse impacts related to hazardous materials would result from the placement of the Nation's parcels into trust.

3.3.5 Noise (Final EIS § 4.5; Tech. Mem. at 16; EA § 3.10)

Traffic on adjacent roadways is the main source of ambient noise. Changes to traffic patterns could lead to changes in the ambient noise level. A screening analysis was performed which determined that the level of traffic associated with the Proposed Action would not result in any significant noise increases. The Department found no significant new circumstances or information relevant to concerns related to background traffic conditions since the publication of the Draft EIS or Final EIS. In addition, the Proposed Action would not result in any significant changes to existing traffic conditions in the vicinity of the Properties. As such, the conditions described in the Final EIS would be expected to continue. Therefore, no significant adverse noise impacts are anticipated to result from the Proposed Action.

3.3.6 Living Resources (Final EIS § 4.6; Tech. Mem. at 16-18; EA § 3.4)

The Properties have relatively low vegetation and wildlife values. The Union Springs parcels have a larger parcel of open agricultural land that is very common in the region. None of the Properties have unique habitats that may be rare in Cayuga County. The Department found no substantial changes in land use that would affect living resources or the character of the habitat. Therefore, there are no significant new circumstances that would affect living resources on the Properties.

3.3.7 Threatened and Endangered Species (Final EIS § 4.6; Tech. Mem. at 17-18; EA § 3.4)

The New York Natural Heritage Program (NHP) and U.S. Fish and Wildlife Service (USFWS) were contacted in 2016 for information on past records of occurrence of any state or federally listed plant and animal species in the vicinity of the Properties. The NHP did not respond in

2016. The BIA contacted NHP again in 2022, and received a response which identified two endangered, threatened, or special concern species within the vicinity of the Properties: lake sturgeon and bald eagle. As explained above, the Nation's planned gaming facility expansion is independent of this decision. The planned expansion includes converting some vacant land into a parking lot and is not expected to impact either species.

The New York State Department of Environmental Conservation Environmental Resource Mapper, which draws from the NHP database, does not indicate the potential presence of any other threatened or endangered species, or significant natural communities in the vicinity of the Union Springs parcels. It does indicate, however, that the Springport parcel is within ½ mile of a known significant natural community and within a zone for rare plants or animals.

The USFWS issued a “no effect” determination for the project in a letter dated November 15, 2017 and stated that no further coordination under the Endangered Species Act is required. Current USFWS records from the FWS IPaC website showed that the northern long-eared bat (*Myotis septentrionalis*), listed as Threatened, has the potential to occur on site; however, no critical habitats were listed. The current IPaC report showed no potential occurrence of the Indiana bat, which had been identified in the Final EIS. Under the Proposed Action, the Properties would continue to be used as per the baseline environmental conditions, and there would be no changes to onsite vegetation or wildlife resources.

Because the Proposed Action does not include any changes to onsite vegetation or wildlife resources, the conclusion in the Final EIS remains valid. There would be no significant impacts to living resources from the Proposed Action. Any future development would comply with all applicable federal laws. Therefore, there would be no significant impacts to threatened or endangered species as a result of the Proposed Action.

3.3.8 Cultural Resources (Final EIS § 4.7; Tech. Mem. at 19-20; EA § 3.5)

Since publication of the Final EIS, only two new historic resources: the Howland Mill Complex and the Schenk Farm, have been identified as eligible for the State and National Register of Historic Places. The Howland Mill is located approximately 0.5 miles south of the Unions Springs property. The Schenk Farm property is located approximately 0.9 miles east of the Union Springs parcels. The properties have been determined by the New York State Historic Preservation Office to be eligible for inclusion in the National Register because they embody the distinctive characteristics of a type, period, or method of construction. Due to the distance, existing vegetation, and topography, the Union Springs property is not visible to either the Howland Mill or the Shenk Farm. In a letter dated September 7, 2021, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) determined that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places would be impacted by the Proposed Action. The Department found no new significant circumstances of information relevant to concerns related to cultural resources since the issuance of the Final EIS. While the Properties are located in archeologically sensitive areas, there are no known archeological sites on any of the Properties. As explained above, the Nation's planned gaming facility expansion is independent of this

decision. The planned expansion includes converting some vacant land into a parking lot and is not expected to impact either species. While that construction is an independent action, no significant impacts to existing historical or cultural resources on or in the vicinity of the Properties are expected from the construction or the Proposed Action. Further, if development of the Properties was proposed in the future, the Nation would comply with all federal laws regarding cultural and historic protection and preservation.

3.3.9 Community Services (Final EIS § 4.10; Tech. Memo. at 31-32; EA § 3.9)

The current facilities on the Properties receive an adequate level of services from local service providers, including healthcare, emergency medical service, fire protection, and other community-supplied services. The same level of services is expected to continue. Any increased demand for services due to the planned expansion of the gaming facility or incremental growth in the community would not likely affect current response times for emergency services. The Nation would continue to pay for services it uses, and the Nation will explore cooperative agreements for community service providers to ensure that the Properties and patrons of its businesses are adequately protected.

3.3.10 Community Infrastructure (Final EIS § 4.9; Tech. Mem. at 30-31; EA § 3.9)

Under the Proposed Action, there would be no changes to onsite or area water supply, wastewater, energy, or solid waste from the environmental baseline condition. The Nation will continue to pay for all utility services, or negotiate agreements to provide them, as necessary. The Nation will have to pay for use of utilities or service would be discontinued. Fee-for-service utilities differ from tax-supported infrastructure and require equal treatment under the law. A concern about jurisdiction over utilities was raised, particularly that waterlines beneath the Properties could be tapped into without control or recourse for non-payment. The Final EIS does not support this assertion. Utility easements of record are recognized and acknowledged on the deed transferring that property into trust and are recorded as such by the BIA. The Nation would continue to pay for services it uses. Therefore, there would be no significant impacts to community infrastructure as a result of the Proposed Action.

3.3.11 Traffic and Transportation (Final EIS § 4.12; Tech. Mem. at 36-37; EA §)

Updated traffic impact studies were completed in Cayuga County in 2016, and 2022, including updated traffic counts and accident data. The existing conditions of traffic on the roadways in the vicinity of the Properties were assessed. No major development projects were identified in the immediate vicinity of the Nation's Properties. As such, under the "no build" conditions, it is projected that there would be no notable changes in level of service for any of the lane-groups/approaches at the study area intersections of the Properties. The Proposed Action is not anticipated to result in any changes to the existing trip generation at the Nation's Union Springs parcels. Because the Proposed Action would not change the existing use of the Union Springs parcels, the no-build traffic volumes also represent build traffic volumes at this location. As discussed above, the Nation's planned construction of an expanded gaming facility is independent of this decision. The expected new facility would generate some additional traffic,

however that increased traffic would not result in any noticeable changes in the level of service at the study area intersections. Therefore, no significant adverse traffic impacts are anticipated from the construction or the Proposed Action.

3.3.12 Visual Resources (Final EIS § 4.13; Tech. Mem. at 37-38; EA § 3.12)

The Department found no significant changes to visual resources that would affect the conclusions contained therein. Under the Proposed Action, there would be no changes that would negatively impact any of the visual resources in the vicinity of the Properties. The Nation's planned construction of an expanded gaming facility and handicap parking area would occur on an existing gravel lot, just west of the existing gaming facility. The proposed parking lot would be constructed just north of the existing gaming facility. As such, there would not be a substantial change to the visual character of the site from the Nation's construction. This planned construction is independent of this decision. Therefore, there would be no significant impacts to visual resources as a result of the construction or the Proposed Action.

3.3.13 Cumulative Impact Analysis

The Final EIS evaluated the impact of the Proposed Action when added to past, present, and reasonably foreseeable actions within the regional study area. The Proposed Action would not result in cumulatively considerable impacts to land resources, water resources, air quality, biological resources, cultural resources, visual resources, transportation, public services, noise, or socioeconomic conditions. Additionally, the Nation's planned construction, while an independent action from this decision, is expected result in minimal changes. The Proposed Action does not involve physical changes to the Properties and would not result in physical changes to the surrounding properties. Therefore, there are no known adverse impacts from the construction or the Proposed Action.

4.0 PREFERRED ALTERNATIVE

For the reasons discussed herein and in the Final EIS, the Department has determined that Alternative 1 is the Department's Preferred Alternative because it best meets the purpose and need for the Proposed Action.

Alternative 1 will address the Nation's need for self-determination, self-sufficiency, and economic independence by reestablishing a sovereign tribal land base within the Nation's Reservation boundaries. Alternative 1 will preserve land within the Nation's Reservation boundaries for the Nation's members located elsewhere in New York State and throughout the United States. Further, Alternative 1 will provide the Nation, which has no trust land, with the best opportunity to establish and maintain a long-term and secure revenue stream, protect the Properties from alienation, and facilitate consolidation of the Nation's lands. Under such conditions, the Nation will be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Nation, its members, and local communities with greater opportunities for employment and economic growth.

Alternative 2, the No Action Alternative, would not meet the purpose and need for the Proposed Action because it would not establish a sovereign tribal land base within the Nation's Reservation boundaries or facilitate maintaining a long-term, secure revenue stream for the tribal government on lands protected from alienation.

Alternative 3, with the withdrawal of the properties in Seneca County and exclusion of the Springport parcel, would not fully meet the purpose and need for the Proposed Action because it would provide a smaller sovereign land base.

5.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE

The Council on Environmental Quality defines the term “environmentally preferable alternative” to mean the alternative(s) that will promote the national environmental policy as expressed in NEPA Section 101. This definition refers to the alternative that causes the least damage to the physical and biological environment, and the alternative that best protects, preserves, and enhances historic, cultural, and natural resources.⁵⁴

Resource categories related to the physical environment (*e.g.*, soils, groundwater, air, noise, wildlife, vegetation, wetlands, etc.) would not be affected by any of the alternatives because the Proposed Action will not have a direct impact on the physical environment. Indirect impacts under the Alternatives 1 and 3 would depend on the effective application of federal and tribal jurisdiction in the management of the Properties. The Nation's management of its lands show that there have not been significant adverse effects on environmental resources.

Alternatives 1 and 3 would ensure the broadest application of federal laws regarding historic, cultural, and archaeological resources, which provide additional protections in relation to state laws. Alternative 2 could result in loss of protections that the Nation provides for such resources on the land it owns.

Because it would best preserve and protect historic, cultural, and archaeological resources, we identify Alternative 1 as the environmentally preferable alternative. As discussed in this ROD, there will be no impacts to the physical environment resulting from the transfer of the Properties into trust. Accordingly, the Proposed Action will result in no significant impacts. The USEPA concurred in this determination. *See Attachment I.*

6.0 MITIGATION

No impacts to the physical environment will occur from the Proposed Action. The Cayuga Nation is proposing no change in land use. While the Nation is building a new gaming facility, that construction is independent of our decision here.⁵⁵ While no mitigation is required, the EA

⁵⁴ See *CEQ's Forty Most-Asked Questions*, 46 Fed. Reg. 18,026 (Mar. 23, 1981).

⁵⁵ On July 26, 2022, the Nation obtained a building permit from the Village of Union Springs and has commenced construction.

details several best management practices, including post construction activity, that the Nation has committed to follow as part of its construction, in an effort to further minimize any potential impacts. There will be no impacts to the physical environment resulting from the transfer of the Properties into trust, because the Nation's planned construction is an independent action. Accordingly, the Proposed Action will result in no significant impacts. No mitigation is required.

7.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE

The Department has determined that it will implement the Proposed Action, as identified within the Preferred Alternative (Alternative 1), by transferring into trust approximately 113.6 acres in Cayuga County with the continuation of the Nation's existing uses of the Properties. The Department reached this decision based on the environmental impacts identified in the EIS, a consideration of economic and technical factors, statutory and regulatory requirements, and the purpose and need for the project. In its review, the Department conducted a thorough review of the alternatives and comments received from the public, the Nation, and federal, state, and local governments.

Alternative 1 would best meet the purpose and need for the Proposed Action. Alternative 1 will provide the Nation, which has no trust land, with the best opportunity to establish a sovereign tribal land base within the Nation's Reservation boundaries and maintain a long-term, secure revenue stream for the tribal government on lands protected from alienation. Under such conditions, the Nation will be better prepared to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Nation, its members, and local communities with greater opportunities for employment and economic growth.

Alternative 2, the No Action Alternative, would not meet the purpose and need for the Proposed Action because it would not establish a sovereign tribal land base within the Nation's Reservation boundaries or facilitate maintaining a long-term, secure revenue stream for the tribal government on lands protected from alienation.

Alternative 3, with the withdrawal of the properties in Seneca County and exclusion of the Springport parcel, would not fully meet the purpose and need for the Proposed Action because it would provide a smaller sovereign land base.

8.0 SIGNATURE

By my signature, I indicate my decision to implement the Preferred Alternative (Alternative 1). This Record of Decision concludes the Department's compliance with both the letter and spirit of NEPA for the Nation's application to transfer the Properties into trust. The attached Decision Letter contains my decision on reconsideration of the Nation's 2005 application, as amended, for trust acquisition of approximately 113.6 acres of land in Cayuga County which are located within the Nation's Reservation boundaries into trust for the benefit of the Cayuga Nation pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108.



Bryan Newland
Assistant Secretary – Indian Affairs

March 29, 2003

Date

ROD ATTACHMENT I
EPA COMMENT 10/26/2010



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 26 2010

Kurt G. Chandler
Regional Environmental Scientist
Environment and Cultural Resources
Bureau of Indian Affairs
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

Dear Mr. Chandler:

The Environmental Protection Agency (EPA) has reviewed the final environmental impact statement (FEIS) issued by the Bureau of Indian Affairs (BIA) for the Cayuga Indian Nation of New York Conveyance of Lands into Trust (CEQ #20100413). This review was conducted in accordance with Section 309 of the Clean Air Act, 42 U.S.C. 7609, and Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

The DEIS analyzed the environmental impacts of placing up to 125 acres of land in Cayuga and Seneca Counties, New York into trust for the Cayuga Nation of New York. The analysis assessed three alternatives, including the no action alternative. In the proposed alternative, six parcels of land, located in the Village of Union Springs and the Town of Springport in Cayuga County, and in the Town of Seneca Falls, in Seneca County, New York, would be placed into trust. (One of the original parcels described in the draft environmental impact statement, located in the Town of Montezuma in Cayuga County, has been withdrawn from the fee-to-trust application.) The Cayuga Nation would then reopen two Class II gaming facilities located in Union Springs and Seneca Falls, known as LakeSide Entertainment 1 and LakeSide Entertainment 2, which together comprise 120 Class II gaming machines.

The FEIS addressed EPA's concerns as discussed in our July 6, 2009 comment letter. Based on our review of the FEIS, we do not anticipate that conveying up to the 125 acres now owned by the Cayuga Nation of New York into trust will result in significant adverse impacts to the environment.

Thank you for the opportunity to comment on the FEIS. If you have any questions, please call Lingard Knutson of my staff at (212) 637-3747.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Filippelli".

John Filippelli, Chief
Strategic Planning Multi-Media Programs Branch

ROD ATTACHMENT II
TRACT LIST & LEGAL DESCRIPTION

EXHIBIT A

Table 2-1

Proposed Action – Five Parcels into Trust per Land Trust Application

County/ Municipality	Parcel Address	Parcel Deed Reference	Tax Lot Designations of Parcel	Approx. Acreage	Use
Cayuga County					
Village of Union Springs	North Cayuga Street	Book 1208 at page 236	134.17-1-1.51	106.96	Vacant lot/ <u>agriculture</u>
	299 and 303 Cayuga Street	Book 1129 at page 222	134.17-1-1.21 134.17-1-1.121	1.024 0.963	Gas station, car wash and convenience store
	271 Cayuga Street	Book 1129 at page 225	141.05-1-3	1.366	Gaming facility
Town of Springport	Route 90	Book 1215 at page 291	150.00-1-29.1	3.654	Vacant lot
Sources: Tax Assessors' records and real property tax bills/Tax Collector's office, Springport (including Village of Union Springs).					
Note: By letter dated March 20, 2019, the Cayuga Nation withdrew from consideration for fee-to-trust the properties located in Seneca County. The records of the affected municipalities as shown in this table report only properties considered for fee-to-trust in Cayuga County. Currently, the acreage of the five parcels included in the Nation's fee-to-trust application is an approximate 113.967 acres. Upon completion of the survey review, a more definite acreage determination can be made.					

Legal Description

The 113.96 acres, more or less, are described as follows:

Tax Lot No. 134.17-1-1.51 (106.960 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the west line of New York State Route No. 90 at the northeast corner of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1129 of deeds at page 225

Thence; North 83° 30' 22" West, along the north line of said lands of Cayuga Nation of New York, a distance of 371.99 feet to the northwest corner of said lands of Cayuga Nation of New York

Thence; South 04° 50' 25" West, along the west line of said lands of Cayuga Nation of New York, a distance of 160.00 feet to a point in the north line of Union Hose and Engine Company as recorded in the Cayuga County Clerk's Office in liber 860 of deeds at page 232

Thence; North 83° 30' 22" West, along the north line of said lands of Union Hose and Engine Company, a distance of 799.54 feet to the northwest corner of said lands of Union Hose and Engine Company

Thence; South 05° 25' 45" West, along the west line of said lands of Union Hose and Engine Company and other lands of Union Hose and Engine Company as recorded in the Cayuga County Clerk's Office in liber 697 of deeds at page 231, a distance of 534.30 feet to a point in the south line of aforesaid Lot No. 92

Thence; North 83° 30' 22" West, along the said south line of Lot No. 92, a distance of 1475.56 feet to a point

Thence; North 01° 58' 30" East, a distance of 418.74 feet to a point

Thence; North 83° 31' 30" West, a distance of 81.00 feet to a point in the former east line of Lehigh Valley Railroad

Thence; North 01° 58' 30" East, along the said former east line of Lehigh Valley Railroad, a distance of 387.06 feet to a point

Thence; North 01° 06' 13" East, continuing along the said former east line of Lehigh Valley Railroad, a distance of 484.62 feet to a point

Thence; North 04° 48' 31" West, continuing along the said former east line of Lehigh Valley Railroad, a distance of 733.54 feet to a point in the north line of aforesaid Lot No. 92

Thence; South 83° 18' 47" East, along the said north line of Lot No. 92, a distance of 2484.27 feet to the northwest corner of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1129 of deeds at page 222

Thence; South 00° 54' 40" East, along the west line of said lands of Cayuga Nation of New York, a distance of 176.89 feet to a point

Thence; South 04° 15' 56" East, continuing along the west line of said lands of Cayuga Nation of New York, a distance of 135.00 feet to the southwest corner of said lands of Cayuga Nation of New York

Thence; North 85° 44' 04" East, along the south line of said lands of Cayuga Nation of New York, a distance of 117.00 feet to a point

Thence; South 04° 15' 56" East, a distance of 173.22 feet to a point

Thence; South 01° 15' 36" East, a distance of 200.00 feet to a point

Thence; North 89° 40' 33" East, a distance of 199.62 feet to a point in the aforesaid west line of New York State Route No. 90

Thence; South 01° 15' 36" East, along the said west line of New York State Route No. 90, a distance of 305.60 feet to a point

Thence; South 01° 50' 03" West, continuing along the said west line of New York State Route No. 90, a distance of 184.98 feet to a point

Thence; South 04° 50' 25" West, continuing along the said west line of New York State Route No. 90, a distance of 184.59 feet to the point and place of beginning

Containing 4,659,193.3 square feet or 106.960 acres of land, more or less.

Tax Lot No. 134.17-1-1.21 (1.024 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at the intersection of the north line of said Lot No. 92 and the present west line of New York State Route No. 90

Thence; South $06^{\circ} 35' 57''$ East, along the said present west line of New York State Route No. 90, a distance of 120.03 feet to a point in the said present west line of New York State Route No. 90

Thence; South $85^{\circ} 44' 04''$ West, a distance of 308.04 feet to a point in the east line of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1208 of deeds at page 236

Thence; North $00^{\circ} 54' 40''$ West, along the said east line of lands of Cayuga Nation of New York, a distance of 176.89 feet to a point in the aforesaid north line of Lot No. 92

Thence; South $83^{\circ} 18' 47''$ East, along the said north line of Lot No. 92, a distance of 298.24 feet to the point and place of beginning

Containing 44,618.1 square feet or 1.024 acres, more or less

Tax Lot No. 141.05-1-3 (1.366 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the north line of lands of Union Hose & Engine Company as recorded in the Cayuga County Clerk's Office in liber 860 of deeds at page 232, said point being located South $83^{\circ} 30' 22''$ East, a distance of 799.54 feet from an existing rebar at the northwest corner of said lands of Union Hose & Engine Company

Thence; North $04^{\circ} 50' 25''$ East, a distance of 160.00 feet to a point

Thence; South $83^{\circ} 30' 22''$ East, a distance of 371.99 feet to a point in the west line of New York State Route No. 90

Thence; South $04^{\circ} 50' 25''$ West, along the said west line of New York State Route No. 90, a distance of 160.00 feet to a point in the aforesaid north line of lands of Union Hose & Engine Company

Thence; North 83° 30' 22" West, along the said north line of lands of Union Hose & Engine Company, a distance of 371.99 feet to the point and place of beginning

Containing 59,493.0 square feet or 1.366 acres of land, more or less

Tax Lot No. 134.17-1-1.121 (.963 acres more or less):

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the present west line of New York State Route No. 90, said point being located South 06° 35' 57" East, a distance of 120.03 feet from the intersection of the said present west line of New York State Route No. 90 with the north line of said Lot No. 92

Thence; South 06° 35' 57" East, along the said present west line of New York State Route No. 90, a distance of 135.11 feet to the northeast corner of lands of David J. Rouse Jr. & Lisa A. Rouse, now or formerly, as recorded in the Cayuga County Clerk's Office in liber 1244 of deeds at page 171

Thence; South 85° 44' 04" West, along the north line of said lands of David J. Rouse Jr. & Lisa A. Rouse and the westerly prolongation thereof, a distance of 313.54 feet to a point

Thence; North 04° 15' 56" West, a distance of 135.00 feet to a point

Thence; North 85° 44' 04" East, a distance of 308.04 feet to the point and place of beginning

Containing 41,957.0 square feet or 0.963 acres of land, more or less

Tax Lot No. 150.00-1-29.1 (3.654 acres more or less):

All that tract or parcel of land situate in the Town of Springport, County of Cayuga and State of New York, being part of Great Lot No. 7 of the East Cayuga Reservation, bounded and described as follows:

Beginning at a point in the present west line of New York State Route No. 90 as established by New York State Appropriation Map No. 31, Parcel No. 40 at the intersection of said west line of New York State Route No. 90 with the north line of lands of Patricia L. Thornton and David J. Thornton as recorded in the Cayuga County Clerk's Office in liber 999 of deeds at page 292

Thence; South 85° 55' 53" West, along the said north line of said lands of Patricia L. Thornton and David J. Thornton and continuing along the north line of lands of Robert C. Butler and Karolyn A. Butler as recorded in the Cayuga County Clerk's Office in liber 1012 of deeds at page 291, and also lands of Robert A. Markert and Kathleen M. Markert as recorded in the Cayuga County Clerk's Office in liber 1409 of deeds at page 244, a distance of 681.61 feet to a point in the east line of lands of Walter J. McDonald, now or formerly, as recorded in the Cayuga County Clerk's Office in liber 720 of deeds at page 338

Thence; northeasterly, along the said east line of lands of Walter J. McDonald on a curve to the left with a radius of 1891.50 feet, a distance of 292.17 feet to the southwest corner of lands of Lorie K. Fischer and Todd R. Fischer as recorded in the Cayuga County Clerk's Office in liber 1183 of deeds at page 206. Said curve having a chord bearing of North 23° 09' 17" East and a chord distance of 291.88 feet

Thence; North 85° 55' 53" East, along the said south line of said lands of Lorie K. Fischer and Todd R. Fischer, a distance of 553.31 feet to a point in the aforesaid present west line of New York State Route No. 90

Thence; South 02° 54' 59" East, along the said present west line of New York State Route No. 90, a distance of 259.60 feet to the point and place of beginning

Containing 159,162.6 square feet or 3.654 acres of land, more or less

**ROD ATTACHMENT III
RESPONSES TO DEIS COMMENTS**

A. INTRODUCTION

The public comment period elicited a number of written and oral comments on the Draft Environmental Impact Statement (EIS) from the State of New York, elected officials, various organizations, and individuals that were similar in nature and scope.

To facilitate the response to public comment process, these similar or repeated comments are addressed in this section of tabulated Common Responses. The Common Responses are listed below, followed by detailed responses.

Common Response 1: Trust Land Authority and NEPA Process

Common Response 2: Purpose and Need for Trust Land

Common Response 3: Constitutionality of Trust Land Process

Common Response 4: Cayuga Indian Reservation

Common Response 5: Legality of the Nation's Businesses

Common Response 6: Alternatives

Common Response 7: Real Estate Taxes and Economic Effects

Common Response 8: Sales Taxes

Common Response 9: Regulatory Jurisdiction

Common Response 10: Treaties with the Cayuga Indians of New York

Common Response 11: Land Use and Zoning

Common Response 12: Checkerboarding

Common Response 13: Use of New York State and Seneca and Cayuga County Information in Preparing the Draft EIS

Common Response 14: *City of Sherrill* Supreme Court Decision

Common Response 15: Community Services and Infrastructure

Common Response 16: Unfair Competition

Common Response 17: Future Development

Common Response 18: DEIS Completeness

Common Response 19: Special Treatment of Indians

Common Response 20: Pending Litigation

Common Response 21: Potential Environmental Impacts

Common Response 22: Traffic

Common Response 23: Criminal Jurisdiction

Common Response 24: Relocation of Cayuga Indians to the Project Area

Common Response 25: Cayuga Indian Nation 2003 Business Plan

Common Response 26: Cumulative Effects of Oneida and Cayuga Applications

Common Response 27: Hazardous Materials

Common Response 28: Segregated Community

Common Response 29: Potential Social Impacts

Common Response 30: Effects on Public Roadways, Right of ways, and Waterways

Common Response 31: Wildlife Harvesting

Common Response 32: Rights of Non-Indians on Tribal Lands

B. COMMON RESPONSES

COMMON RESPONSE 1: TRUST LAND AUTHORITY AND NEPA PROCESS

A number of commenters have stated that it is unconstitutional or unfair for the Federal government to place the Cayuga Indian Nation's (the "Nation") lands into federal trust. The Secretary of the Interior's primary statutory authority for the discretionary acquisition of land in trust status is Section 5 of the Indian Reorganization Act ("IRA") of 1934, 25 U.S.C. § 465¹. The IRA gives the Secretary of the Interior discretion to acquire land into trust for Federally-recognized Indian tribes and individual Indians. The IRA does not require the Secretary of the Interior to acquire any specific tract of land, any specific amount of land or to acquire any land at all. Authority for this statute derives from the Indian Commerce Clause of the Constitution, Art. I § 8, cl. 3. Section 5 of the IRA applies to tribes, like the Cayuga Indian Nation. Implementing regulations for Section 5 of the IRA are codified at 25 C.F.R. Part 151. The Secretary of the Interior's Land Acquisition Policy expressed in 25 C.F.R. § 151.3 states that land may be acquired in trust status "when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or when the tribe already owns an interest in the land; or when the Secretary of the Interior determines that acquisition of the land is necessary to facilitate tribal self-determination, economic development or Indian housing."

The claim that Section 465 of the IRA is unconstitutional insofar as it may constitute an unconstitutional delegation of Congressional authority to the Secretary of the Interior has been rejected, most recently in three Federal court decisions involving challenges to the Record of Decision issued by the Department of the Interior on the trust application of the Oneida Indian Nation. *State of New York v. Salazar*, 6:08-CV-644, 2009 WL 3165591 (N.D.N.Y. September 29, 2009); *Town of Verona v. Salazar*, 6:08-CV-647, 2009 WL 3165556 (N.D.N.Y. September 29, 2009); *City of Oneida v. Salazar*, 5:08-CV-0648, 2009 WL 3055274 (N.D.N.Y. September 21, 2009). These court decisions uniformly hold that agency regulations sufficiently limit the

¹ The United States Code (USC) and Code of Federal Regulations (CFR) referenced throughout this DEIS are available at <http://www.gpoaccess.gov>.

Secretary of the Interior's discretion and that Section 465 does not violate the non-delegation doctrine. *See, also, Michigan Gaming Opposition v. Kempthorne*, 525 F.3d 23, 33 (D.C. Cir. 2008); *Carciere v. Norton*, 497 F.3d 15, 43 (1st Cir. 2007)(en banc) ; *rev'd on other grounds sub nom. Carciere v. Salazar*, ___ U.S. ___, 129 S. Ct. 1058 (2009); *South Dakota v. United States Dep't of Interior*, 423 F.3d 790, 799 (8th Cir. 2005); *United States v. Roberts*, 185 F.3d 1125, 1137 (10th Cir. 1999); *Shivwitz Band v. Utah*, 428 F.3d 966, 872-74 (10th Cir. 2005); *Nevada v. United States*, 221 F.Supp 2d 1241, 1250-51 (D. Nev. 2002).

Currently about 56 million acres of land are held in trust by the Federal government for various tribes and individual Indians in a number of states throughout the country, including several of the thirteen original colonies. When the Secretary of the Interior acquires land in trust status, the United States acquires legal title to the land. The Indian tribe for whom the land is acquired holds beneficial or "trust" title. The Indian tribe exercises tribal sovereignty over the land, which is restricted against voluntary or involuntary alienation (conveyance of the land or an interest in the land). Trust lands are not subject to New York State or local taxation or land use controls, but are subject to the laws and administration of the tribal government and the Federal government. The land-into-trust process begins with the submission of a Trust Land Application to the BIA; in this case the Cayuga Nation submitted a Trust Land Application to the BIA on May 25, 2005. The Proposed Action is for the placement of 125± acres¹ in trust status. The Trust Land Application does not propose a change in land use.

The BIA prepared the Draft Environmental Impact Statement ("DEIS") as part of an environmental review process for the Nation's Trust Land Application under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., and the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 C.F.R. §§ 1500-1508), the United States Department of the Interior (USDO) Manual 516 DM 1-7 and 10, and the BIA NEPA Handbook 59 IAM 3-H (May 5, 2005).

Because the Nation proposed to change the ownership of the land without a change in land use, the proposed action would fall within a category of actions for which the BIA would not normally be required to prepare an EIS or an Environmental Assessment (a "categorical exclusion"). 516 DM 10.5.I. However, to further the spirit of NEPA in fully informing the public and the decision-makers of the possible impacts of the proposed action and alternatives on the quality of the human environment, the BIA has prepared the DEIS. The BIA issued the DEIS for public review on May 22, 2009.

Prior to preparing the DEIS, the BIA conducted a public scoping meeting on March 1, 2006, and received comments and input from the State of New York, local, and tribal governments and the public on the issues to be addressed in the EIS. A final Scoping Report was distributed and made available to the cooperating agencies (New York State Department of Environmental Conservation, Seneca County, Cayuga County, and Cayuga Indian Nation of New York) and the public on November 6, 2006. A prepublication Draft EIS was then prepared and issued to the cooperating agencies for review and comment on February 17, 2009. A Draft EIS was prepared and made available for public review and comment on May 22, 2009. There was a mandated 45-

¹ The notice of intent published in the Federal Register on February 13, 2006 (71 FR 7568) cited the conveyance into federal trust of seven parcels comprising 125± acres of land. The records of the affected municipalities report the actual acreage of the seven parcels included in the Nation's Land Trust Application to be 129.16 acres. Since the Proposed Action now excludes the Montezuma parcel, the fee-to-trust application comprises six parcels and 129.14 acres of land.

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day public comment period for the Draft EIS, which the BIA extended until July 6, 2009. During the public comment period, a public hearing was held at the New York Chiropractic College, in Seneca Falls, Seneca County, New York on June 17, 2009. A Final Environmental Impact Statement (FEIS – this document) was prepared and considers the comments received on the Draft EIS. The FEIS identifies the Preferred Alternative for the Nation’s Trust Land Application.

The next step in the process is for the BIA to prepare and issue a Record of Decision (ROD) setting forth the Secretary of the Interior’s final decision on the Trust Land Application. Notice of the final decision on the Nation’s Trust Land Application will be published in the Federal Register no earlier than 30 days after the publication of the FEIS. The Secretary of the Interior’s final decision on the Trust Land Application may or may not be to implement the Preferred Alternative. With regard to the BIA carrying out its trust responsibilities, the Secretary of the Interior is required to consider under the land-into-trust regulations the extent to which the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status. See 25 C.F.R. § 151.10(g). That determination will be reflected in the Record of Decision.

The Federal government provides specific services to tribes for the management of lands held in trust. While the BIA takes the lead in the oversight of Indian trust lands, other Federal agencies are charged with overseeing compliance with specific Federal laws. These other Executive Branch agencies provide assistance to tribes for compliance with Federal laws and regulations under their jurisdiction, many of which have a tribal liaison to coordinate assistance in their area of expertise. The BIA may provide both direct assistance and funding. Under Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, Titles I and III, have made it possible for Tribes to take specific program shares (dollars) under Title I, Annual Funding Agreement, or to become totally self-governing under Title III, Compacting/Self-Governance. See Common Response 9, below, for further information on the Federal policy of Indian Self-determination and providing Federal assistance for tribal programs and land management.

COMMON RESPONSE 2: PURPOSE AND NEED FOR TRUST LAND

Several commenters have asserted that the purpose and need for the Proposed Action has not been sufficiently established. These commenters have expressed the opinion that the proposal to place the subject parcels into trust is simply to facilitate the avoidance of paying taxes and compliance with New York State and local regulations.

The statutory preamble to the IRA describes it as “[a]n Act to conserve and develop Indian lands and resources.” 48 Stat. 984 (1934). As the United States Supreme Court has determined, “[t]he intent and purpose of the [IRA] was ‘to rehabilitate the Indian’s economic life and give him a chance to develop the initiative destroyed by a century of oppression and paternalism.’” *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152-54 (quoting H.R. Rep. No. 1804, 73d Cong., 2d Sess., 6 (1934)). It has also been judicially determined that “an intelligible principle exists in the statutory phrase ‘for the purpose of providing land for Indians’ when it is viewed in the statutory and historical context of the IRA.” *Michigan Gaming Opposition*, 525 F.3d at 31 (quoting 25 U.S.C. § 465). “This principle involves providing lands sufficient to enable Indians to achieve self-support and ameliorating the damage resulting from...prior federal policy.” *Id.*

The purpose and need for the Proposed Action is appropriately presented in the DEIS and is consistent with the foregoing Federal law and policy regarding Indian tribes. The purpose and need, as discussed in detail in Section 1.0 of the FEIS, addresses the Cayuga Nation’s need for

cultural and social preservation, expression and identity, political self-determination, economic development and self-sufficiency by providing a tribal land base and homeland. Economic need is only one element of the Nation's overall need. In addition, the basic features of trust land status – the ability to exercise tribal sovereignty, exemption of the land from taxation, and restriction of the land against alienation – are largely uncharacteristic of land held by private individuals or corporations, and are the primary reasons that Indian tribes and individuals apply to have lands placed into trust. These features of trust status are intended to foster and protect a tribe's culture and society, political self-determination, economic growth and self-sufficiency.

The IRA gives the Secretary of the Interior the discretion to acquire land into trust for Indian tribes and individuals. The IRA does not require the Secretary of the Interior to acquire any specific tract of land, any specific amount of land or to acquire any land at all. The amount of land accepted into trust is decided by the Secretary of the Interior on a case-by-case basis.

With regard to the Nation's Trust Land Application, the BIA's DEIS has presented and evaluated several alternatives to the Proposed Action, including the No Action alternative and several other trust land alternatives that include less land than requested by the Nation in its Trust Land Application. Under the No Action alternative, and other alternatives where some lands are not conveyed into trust, the BIA would assume that property taxes would continue to be assessed on those lands (however, the Nation would have to determine whether or not to continue paying such taxes), and those lands would continue to be subject to New York State and local environmental, health and safety, and zoning laws. However, an acquisition of any amount of land less than the amount applied for should not be interpreted as to preclude future applications to take the subject lands into trust. The Secretary of the Interior has discretion under NEPA and the IRA to select an alternative that does not meet the purpose and need expressed by an applicant, including the No Action alternative. The Secretary of the Interior may decide to acquire in trust less land than the applicant requested based on the land acquisition criteria contained in 25 C.F.R. Part 151. Accordingly, the Secretary of the Interior is considering the purpose and need and the extent to which the purpose and need would be met under each alternative in addition to the impacts of each alternative on the New York State and local governments. The Secretary of the Interior's final decision on the Nation's Trust Land Application will be made after consideration of the issues entered into the administrative record on the DEIS and FEIS, as well as criteria contained in 25 C.F.R. Part 151. The Secretary of the Interior's final decision on the Trust Land Application may be to implement the Preferred Alternative. The Secretary of the Interior may, however, choose to implement another alternative, including an alternative not identified in the FEIS but within the range of those evaluated in the FEIS.

COMMON RESPONSE 3: CONSTITUTIONALITY OF TRUST LAND PROCESS

A number of commenters have questioned the Secretary of the Interior's authority to acquire lands into trust for any Indian tribe in New York since the state is one of the thirteen original colonies. Some commenters have suggested that a "New York State Reservation" be created as an alternative to conveying the Nation's lands into trust.

AUTHORITY TO ACQUIRE LANDS IN NEW YORK STATE IN TRUST

The Secretary of the Interior's primary statutory authority for the discretionary acquisition of land in trust is Section 5 of the IRA, 25 U.S.C. § 465, with implementing regulations at 25 C.F.R. Part 151. Authority for this statute derives from the Indian Commerce Clause of the Constitution, Art. I § 8, cl. 3. As stated in Common Response 1, the constitutionality of the trust

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land process has been established in extensive Federal court litigation, including litigation arising out of the Record of Decision issued by the Department of the Interior on the trust land applications of the Oneida Indian Nation. The decisions in the cases involving the Oneida Indian Nation rejected the argument that New York, as one of the original thirteen colonies stands in a different position from most other States with respect to the issue of state sovereignty. *See, Town of Verona v. Salazar* at 7; *City of Oneida v. Salazar* at 9. The State of New York is not excluded from this framework by virtue of being one of the thirteen original colonies. Although the Secretary of the Interior has not to date exercised his discretionary authority under the IRA to acquire land in trust status in New York State, the United States currently holds lands in trust in several of the thirteen original colonies.

Furthermore, *Cayuga Indian Nation of New York v Cuomo*, 758 F. Supp. 107 (N.D.N.Y 1991) recognized the Federal Cayuga Indian Reservation as existing, that New York State owned no interest in the Cayuga Reservation, and that any interest it may have once held was ceded to the United States when they signed the Constitution. Therefore, New York does not have any special rights as an original colony which would give them jurisdiction over Indian Lands or otherwise create an exemption from the trust land process for lands in New York.

CREATION OF A NEW YORK STATE RESERVATION

The United States Constitution acknowledges Indian tribes to be sovereign nations and confers exclusive authority over Indian commerce on the Federal government. The Federal government's authority over Indian commerce is implemented by statutes enacted by Congress. The Federal government has not delegated any of its authority to create Indian reservations or set aside trust lands to the states, including New York State. Although a state may grant a tribe exemption from its own tax laws and regulations, states have no power to create federal Indian reservations or to place lands in federal trust. Lands within a state-designated Indian reservation or trust would not necessarily be treated the same as lands within a Federal Indian reservation or trust. Moreover, the initial and continuing designation of the land as a state reservation or trust would be at the will of the state.

DENIAL OF THE NATION'S TRUST LAND APPLICATION

Denial of the Nation's Trust Land Application (i.e., selecting the No Action Alternative) with the expectation that New York State would enact legislation or takes other action to create a state reservation or place the land in state trust status is not a reasonable expectation or alternative. The State could have taken such an action any time within the last 200 years, but has not done so.

COMMON RESPONSE 4: CAYUGA INDIAN RESERVATION

The Cayuga Indian Nation of New York is a federally recognized Indian tribe. Prior to the arrival of Europeans, the Cayuga Indian Nation commanded a major presence over a large part of the present-day central New York, extending north into Canada and south into Pennsylvania. The Nation had developed a sophisticated civilization with numerous towns and villages, centered around present-day Cayuga Lake in central New York. This well-defined Cayuga territory incorporated in excess of three million acres of land. This territory, which encompasses the land owned by the Nation subject to the Proposed Action, is part of 64,015 acres guaranteed to the Cayuga Indian Nation as reservation land under the Treaty of Canandaigua, which Congress ratified and President George Washington signed in 1794. In Article 2 of the Treaty of Canandaigua the United States "acknowledge[d] the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the State of New York, and called their

reservations to be their property.” 7 Stat. 45. Article 2 further provided that “the United States will never claim the same, nor disturb” the Tribes “in the free use and enjoyment” of those lands, and that “the said reservations shall remain theirs, until they choose to sell same to the people of the United States, who have the right to purchase.” *Id.* In the 1794 Treaty, the [U.S.] recognized the lands designated in the [State’s] Treaty of Albany of 1789, recognizing the existence of the Cayuga Reservation (i.e. the 64,000 acres.)

The present Cayuga Nation has its headquarters in North Collins, New York. The Nation consists of members who are the direct descendants of those whose land was lost to the State of New York in 1795 and 1807. The Nation intends to reestablish tribal presence in their homeland around Cayuga Lake, which holds for them cultural and religious significance.

The transfer into federal trust of the Nation’s Cayuga and Seneca County properties would provide cultural resource protections and enable the Nation to govern their lands as a sovereign Indian Nation. The transfer of Cayuga Nation lands into trust under 25 USC 465 and 25 CFR 151 is an appropriate and accepted means of furthering the federal government’s policy to support and protect federally recognized Indian nations. The properties subject to the Proposed Action were purchased by the Nation at fair market value from willing sellers. These lands were not taken by condemnation or given to them by the government, and the proposed fee-to-trust process is separate and distinct from any Nation land claims. The Nation’s prior land claims are not the subject of this application and therefore are not required to be addressed in this EIS. Any future fee-to-trust applications within the Nation’s 64,015 acres of reservation land guaranteed by the Treaty of Canandaigua are hypothetical, and analysis is not required under NEPA.

COMMON RESPONSE 5: LEGALITY OF THE NATION’S BUSINESSES

Some commenters have asserted that the tax-free sale of cigarettes and gasoline, as well as the operation of gaming machines is illegal.

The Nation’s right to sell tax-free cigarettes and gasoline derives from the status of the Nation’s land as a “qualified reservation” under the New York Tax Law and the State’s well-established policy of forbearance from taxation of Indian sales of cigarettes and gasoline.

In regard to gaming, the Indian Gaming Regulatory Act (“IGRA”) allows gaming to be conducted on “Indian lands,” defined as lands within the limits of an Indian reservation, lands held by the United States in trust, and lands held by an Indian tribe or individual in restricted status. See 25 U.S.C. § 2703(4). The Cayuga reservation has not been diminished or disestablished. Moreover, in *State v. Salazar*, the court dismissed the State’s IGRA claim, holding that inasmuch as the Oneida Nation’s Turningstone Casino is located on Indian lands, the provisions of 25 U.S.C. § 2719(b)(1)(A) do not apply. This holding is relevant and applicable to the present application by the Cayuga Indian Nation.

COMMON RESPONSE 6: ALTERNATIVES

A number of commenters, including Seneca and Cayuga Counties, have recommended the adoption of the No Action Alternative.

Commenters proposed that the Department not act on the Nation’s fee-to-trust request unless and until an agreement regarding placement of lands into trust and related issues is reached. This alternative was eliminated from further consideration because achieving a negotiated resolution is not reasonably foreseeable. In 2007, the Cayuga Nation proposed a settlement agreement that put a limit on how much property they would request to be placed into trust in exchange for other support from the Counties. Both Seneca and Cayuga Counties rejected the proposed

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settlement. The Nation and the State and local governments were free to reach and submit an agreement to the Department for its consideration prior to the issuance of this FEIS, but have not done so. Moreover, the issuance of this FEIS does not prevent them from doing so prior to formal acceptance of the subject lands into trust.

The NEPA regulations, 40 C.F.R. § 1500.14; 43 C.F.R. § 46.415; and the BIA NEPA Handbook, Part 6, collectively require the study and comparative presentation of the environmental effects of the Proposed Action, the No Action Alternative, and reasonable alternatives. The Proposed Action as expressed by the Nation is to convey ±125 acres of Nation-owned land to the United States government to be held in trust.

Section 2.0 of the DEIS evaluated three alternatives (The Proposed Action, No Action, and Enterprise Properties into Trust). These alternatives were developed through the scoping process in which the public and cooperating agencies participated. The BIA held public scoping hearings and reviewed the meeting transcripts, written scoping comments, and prior submissions by the New York State, local governments, and the Nation.

After consideration of the oral and written comments received on the Draft EIS, the BIA determined that the DEIS presented a sufficient range of alternatives. Therefore, this FEIS considers the same alternatives that were evaluated in the DEIS. The final decision on the Nation's Trust Land Application may or may not be to implement the Proposed Action. The Secretary of the Interior is still considering the requirements at 25 C.F.R. Part 151 and related information.

COMMON RESPONSE 7: REAL ESTATE TAXES AND ECONOMIC EFFECTS

Several commenters state that they want the Nation to pay their "fair share" of taxes. It should be noted that the Cayuga Indian Nation has at this time paid all of its duly assessed current State and local property taxes, including school and special district taxes.

When the Secretary of the Interior evaluates a land-into-trust application and decides which, if any, lands to acquire in trust, he must consider the impact of removing the land from the tax rolls pursuant to 25 C.F.R. § 151.10(e). The assessments provided in the DEIS and in this FEIS assist the Secretary in this evaluation. In 2005, the Supreme Court held, in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), that as a matter of Federal law, the Nation's reacquired lands were subject to taxation unless accepted into trust by the United States pursuant to Section 5 of the IRA.

The Treaty of Canandaigua, which established the Oneida reservation, also established the Cayuga reservation, as noted in Common Response 4. The Supreme Court's 2005 decision in *City of Sherrill v. Oneida Indian Nation of New York* did not impact the status of the Oneida Reservation, which was established by the 1794 Treaty of Canandaigua. Subsequent Federal district court decisions have supported the continued existence of the Oneida reservation. This position, therefore, is relevant and applicable to the present application by the Cayuga Indian Nation. The Proposed Action and Alternative 3: Enterprise Parcels into Trust would place the subject Cayuga Nation parcels into federal trust. 25 U.S.C § 465 requires that properties held in trust be exempt from property taxes.

The Cayuga Nation parcels subject to the fee-to-trust application comprise a total of ±125 acres of land. If these parcels are brought into trust, these parcels would no longer be subject to state or local taxation. Under the No Action Alternative, the BIA would assume that the Nation would continue to pay property taxes to the affected jurisdictions; however, should the subject parcels

not be taken into trust, the Nation would have to determine whether or not it would continue do so. The fiscal and taxpayer effects of the Nation no longer paying property taxes on the subject parcels is discussed in the DEIS and the FEIS, Section 4.8, “Socioeconomic Effects,” and additional analysis and summaries are presented below.

Several commenters expressed concerns about removing thousands of acres from the local property tax rolls as a result of the Proposed Action. This concern potentially arises due to the Cayuga Indian Nation being guaranteed approximately 64,000 acres of reservation land under the Treaty of Canandaigua, signed by President George Washington in 1794. It should be noted, however, that the Cayuga Indian Nation’s fee-to-trust application (“the Proposed Action”) involves the transfer of only ±125 acres into federal 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.

With regard to loss of taxes and potential undue burdens being placed on existing property taxpayers as a result of Cayuga land tax exemption, it is important to note that as a percentage of total affected tax base, the subject Cayuga Nation parcels contribute very little property tax. As shown in Table A.1, below, the Nation’s parcels represent only 2.61 percent of the Town of Springport/Village of Union Springs tax base; and 0.42 percent of the Town of Seneca Falls tax revenue base. In respect to Cayuga and Seneca County taxes, the subject Cayuga tax parcels comprise substantially less than one-tenth of one percent of the total county tax revenues collected.

Table A-1
The Nation’s Property Tax Payments as Percentage of Total County/Municipal Property Tax Collections

	Town of Springport (includes the Village of Union Springs)	Town of Seneca Falls ¹
County Taxes		
Total Property Taxes Collected	\$29,565,821	\$8,827,518
Cayuga Nation’s Property Tax Bill	\$16,784	\$3,740
Nation’s Percent of Total	0.057%	0.042%
Town/Village Taxes		
Total Property Taxes Collected	\$313,173	\$90,625
Cayuga Nation’s Property Tax Bill	\$8,173 ^{2,3}	\$3782
Cayuga Nation’s Percent of Total	2.61%	0.42%
Notes:	¹ Figures for Town of Seneca Falls provided by Seneca County in “Supplemental Seneca County Volume,” Harris Beach PLLC (see Appendix J of the DEIS). ² Town/Village figures for the Town of Springport and Town of Seneca Falls were provided per Note 1, above. The provider stated that the Town of Springport figure does not include tax amounts for college chargeback, fire districts, water districts or sewer districts. ³ Includes Town of Springport taxes and Village of Union Springs taxes.	
Sources:	http://www.orps.state.ny.us Accessed June 14, 2006. Town of Springport Fiscal Budget General Fund—Town-wide for 2006 “Estimated Revenues.” http://www.uscsd.info/departments.cfm?sublevel=8869&subpage=25&subsubpage=576 . Accessed June 14, 2006. Village of Union Springs Fiscal Budget General Fund for 2005-2006 “Estimated Revenues.” http://www.emsc.nysed.gov/mgt/serv/2005_property_tax.htm . Accessed June 14, 2006.	

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As shown above, only a marginal amount of tax revenue would be foregone by the affected counties, towns and village should the Proposed Action proceed and the Cayuga Nation properties become exempt from local and county property taxation.

In addition to voicing concern about the effects on municipal tax revenues, several commenters expressed concern that property taxes throughout the affected area would increase to compensate for the loss of property taxes now paid by the Nation’s. To assess the potential impacts on taxpayers, this analysis considers how individual households would be affected if they alone bore the entire burden of tax increases resulting from the loss of property taxes now levied on the Cayuga Nation’s proposed land-to-trust properties. The households considered are owner-occupied homes in the affected county, town, and village locations. Table A.2, below, shows the amount of county, town, and village property taxes generated by the Nation’s properties, and estimates the tax increases for each such homeowner in the affected jurisdictions.

Table A.2
Homeowner Tax Increases Resulting from Taking Cayuga Fee-to-Trust Lands off the Tax Rolls

	Cayuga County	Town of Springport (incl. Village of Union Springs)	Seneca County	Town of Seneca Falls
Median Household Income	\$ 37,487	\$43,785	\$37,140	\$37,245
Number of owner-occupied housing units	22,031	971	9,320	2,455
Cayuga Nation’s Property Tax Bill (County, Town or Village Taxes)	\$16,792	\$8,173	\$3,740	\$378
Increase in Property Taxes per Household Under Proposed Action	\$0.76	\$8.42	\$0.40	\$0.15
Notes:	U.S. Census Bureau 2000 (2007 estimates are available for counties but are not available for affected towns or village). See FEIS and DEIS Section 3.8 for data tables.			

As can be seen in the above table, the tax increases experienced by individual homeowners would, in most cases, be less than one dollar per year, with Springport/Union Springs residents expected to experience a potential increase of \$8.42 per year. To provide perspective and help assess the effect of increased taxes on household incomes, the table above also includes the median household incomes of the affected jurisdictions. These tax increases represent insignificant percentages of median household incomes. It should be noted that this analysis presents a worst-case scenario that overestimates the effect on taxpayers because it considers the effect on households bearing the entirety of any potential tax increases resulting from the Proposed Action, when, in actuality, any such increases would be spread more broadly among many classes of taxpayers, including commercial and non-residential properties, as well as owners of multi-family dwellings, such as apartment buildings.

SCHOOL DISTRICT EFFECTS

Several commenters have expressed concern regarding adverse impacts to school district tax revenue should the Nation no longer pay property tax. As discussed in “Section 4.8: Socioeconomic Effects” of the DEIS and the FEIS, impacts to school districts from decreases in property tax revenue as a result of the Nation no longer paying taxes would be minimal.

The Proposed Action would place nine tax lots comprising ±125 acres of Cayuga nation land into federal trust. If placed in trust, these Cayuga tax lots would no longer be subject to local property and school taxes. The amount of reduction in property tax revenues collected by the three affected school districts is shown in Table A.3, below.

The affected school districts would be expected to see decreases in property tax revenues of less than one-half of one percent, with such decreases in school district tax revenues ranging from a low of 0.15 percent to 0.54 percent, as more fully discussed below.

Looked at another way, the Proposed Action would result in minimal increases in an already significant number of properties that are not taxed for school district (and in most cases, for any municipal) purposes. The school district tax bases are comprised of taxable as well as tax-exempt land. Examples tax exempt land includes school district properties, and town, village, county, and New York State lands (e.g., parks, public works properties, public road rights-of-way, etc.). In addition, land owned by not-for-profit organizations is also given tax exemptions. These lands include, for example, religious institutions, scouting organizations, and land conservancies.

Also as shown in Table A.3, below, between 63 and 70 percent of the parcels comprising the affected school districts are exempt from paying school taxes. There are 2,797 tax exempt parcels in the Seneca Falls School District, and 837 parcels are off the tax rolls in the Union Springs School District. The Cayuga Nation fee-to-trust application includes only eight tax lots that would become tax exempt under the Proposed Action.

**Table A.3
Tax Exempt Lots per School District and the Nation’s Property Tax Payments as
Percentage of Total School District Property Tax Collections**

	Union Springs School District	Seneca Falls School District
Total Number of Tax Lots in District	1,332	3,997
Number of Tax Lots Exempt from School District Taxes (non-Cayuga Nation parcels)	837	2,797
Percentage of Tax Lots that are Exempt from School Taxes	63%	70%
Value of Existing Tax-exempt Tax Lots	\$54,831,000	\$209,803,000
Total Property Taxes Collected by District	\$6,767,703	\$9,301,887
Cayuga Nation’s School Tax Bill for Subject Tax Lots	\$36,222	\$13,979
Cayuga Nation’s Percentage of District’s Total School District Property Tax Revenue	0.54%	0.15%

Source: NYS Office of Real Property Services (see: http://www.orps.state.ny.us/cfapps/MuniPro/muni_theme/county/sumextax.cfm?roll_yr=2007&wis=05; and http://www.orps.state.ny.us/cfapps/MuniPro/muni_theme/county/sumextax.cfm?roll_yr=2007&wis=45); 2005-2006 Union Springs School Tax Bill for fiscal year beginning 7/01/2005 and ending 6/30/2006; “Supplemental Seneca County Volume,” letter from Harris Beach PLLC (see Appendix J of DEIS); and 2005 Town of Seneca Falls and County of Seneca Tax Bills as paid February 14, 2005.

As shown above, the Proposed Action would only place ±125 acres of land into trust, which would be exempt from property and school taxes. As such, the Proposed Action would reduce

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property tax revenue by \$36,222 (0.535 percent) for the Union Springs School District, and by \$13,978.76 (0.15 percent) for the Seneca Falls School District.

To further assess the potential effect of removing the subject Cayuga Nation parcels from the property tax base this analysis considered the relationship between the Nation’s property tax payments to the school districts and the educational expenditures directly incurred by the districts as reported to New York State Education Department. As shown in Table A.4, below, the percent of overall educational expenditures represented by the Nation’s property tax contributions ranges from one-one hundredth of one percent to one-third of one percent of the district’s total educational expenditure amount.

Table A.4
Cayuga Nation’s Property Tax Payments as Percentage of Total School District Instructional Expenses

	Union Springs School District	Seneca Falls School District
Instructional Expenditures (including special education)	\$11,141,130	\$15,169,116
Cayuga Nation’s School Tax Bill for Subject Tax Lots	\$36,222	\$13,979
Cayuga Nation’s Percentage of District’s Instructional Expenditures	0.33%	0.01%
Notes: Instructional Expenditures for General Education are K-12 expenditures for classroom instruction (excluding Special Education) plus a proration of building level administrative and instructional support expenditures. These expenditures include amounts for instruction of pupils with disabilities in a general education setting.		
Source: The New York State School Report Card Fiscal Accountability Supplement, 2006-2007. See, for example, http://www.emsc.nysed.gov/irts/reportcard/2008/supplement/051101040000.pdf . Tax data as per notes in Table A.3, above.		

Several commenters expressed concern about undue school district tax burdens being shifted to homeowners should the Cayuga Nation properties be taken off the tax rolls. Table A.5, below, presents the estimated property tax increase individual households would be expected to experience if the Cayuga Nation lands were taken off the school district tax rolls.

Table A.5
Homeowner School District Tax Increases Resulting from Taking Cayuga Fee-to-Trust Lands off the Tax Rolls

	Union Springs School District	Seneca Falls School District
Median Household Income	44,945	39,501
Number of Owner-Occupied Housing Units in District	3,335	3,869
Cayuga Nation’s School Tax Bill for Subject Tax Lots	\$36,222	\$13,979
Increase in Property Taxes per Household Under Proposed Action	\$10.86	\$3.61
Source: U.S. Census Bureau 2000 (2007 estimates are available for counties but are not available for affected towns or village). Tax data as per notes in Table A.3, above.		

As shown in the above table, taking the Cayuga Nation's proposed fee-to-trust lands off of the school district tax rolls would result in per-household property tax increases ranging from less than four dollars per year, to nearly \$11.00 per year. It should be noted, however, that this estimation presents a worst-case scenario, and overestimates the tax increases potentially shifted to homeowners. In actuality, it is expected that the school district tax amounts shown above would be lower because any such increases would not fall entirely on owners of single-family dwellings. Such increases would also be spread among all property owners paying school district taxes, including owners of multi-family dwellings, and as owners of commercial and non-residential properties.

ECONOMIC EFFECTS ON ADJACENT PROPERTIES

Many commenters have asserted that the Proposed Action would reduce assessed values of adjoining and surrounding properties. Evaluation of surrounding property values is outside the scope of NEPA requirements and not appropriate to address in this FEIS. However, the Cayuga Indian Nation is not proposing any land use changes in conjunction with the Proposed Action. In addition to operating existing businesses, the Nation would reinstate pre-existing gaming facilities that would operate as they did prior to 2005. As such, the Nation's properties would continue to exist as they do today, therefore effecting no change in land use and consequently there is no reason to expect changes to property values of adjacent properties.

POSITIVE ECONOMIC EFFECTS OF THE PROPOSED ACTION

Further, on balance, the economic benefits directly and indirectly generated by the Proposed Action would have a positive effect on the local economy, including the following:

The Nation's LakeSide Entertainment businesses would reinstate 19 jobs to the Seneca and Cayuga County employment market. These 19 jobs were the jobs previously held by LakeSide Entertainment employees and were lost when the facilities closed temporarily. Upon the re-opening of the facilities, the Nation intends to re-establish these 19 jobs, with the intent of hiring area residents.

Including the indirect and induced economic activity that will occur off-site as a result of the Proposed Action, the total employment supported in the two counties from the LakeSide Trading operations plus the reopened LakeSide Entertainment facilities is estimated at 72 jobs, an increase over the Nation's current total effect of 24 jobs. Total employment in the broader New York State economy resulting from the Nation's operations under this Alternative is estimated at approximately 81 jobs. Each job created or supported results in the spending of wages and salaries in the local and regional economies, generating sales taxes and employment (income) taxes.

The annual operations of the LakeSide Trading and reopened LakeSide Entertainment gaming businesses are projected to have direct employee compensation in the two counties equal to about \$1.3 million. Including indirect and induced activity that occurs off-site, the total employee compensation from the operation of the project are estimated at about \$1.8 million in the two counties, and \$3.8 million in New York State. Under this Alternative, the direct effect on the local economy, measured as output or demand, from the annual operation of the proposed project is estimated at \$3.1 million, an increase of approximately \$1.3 million over existing operations. Including activity that occurs off-site, the total effect from the annual operation of the proposed project on the two counties' economy is estimated at \$4.2 million. The total effect on the New York State economy is estimated at \$7.5 million annually.

COMMON RESPONSE 8: SALES TAXES

Commenters have asserted that the non-collection of taxes on the Nation's sale of gasoline and cigarettes 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, placing a burden on property owners and non-Indian business owners, and resulting in an adverse economic effect on the communities in the affected counties.

As stated in Common Response 5, the Nation's right to sell tax-free cigarettes and gasoline derives from the status of the Nation's land as a "qualified reservation" under the New York Tax Law and the State's well-established policy of forbearance from taxation of Indian sales of cigarettes and gasoline.

COMMON RESPONSE 9: REGULATORY JURISDICTION

Commenters have stated that placement of lands in trust would have an adverse effect by precluding New York State and local authorities from regulating uses and activities on trust lands. Further, commenters expressed that placement of lands in trust could complicate New York State and local governance, particularly in the area of applying environmental laws uniformly and equitably over an entire geographic area. Commenters have also asserted that some New York State and local regulations are more stringent than their Federal counterparts in several important areas (environmental, health and safety, zoning).

The BIA is aware that in some cases State standards differ from their Federal and tribal counterparts. The United States holds approximately 56 million acres in trust across the country and the BIA is familiar with issues that arise from differences between state/local and tribal jurisdiction. It is not necessary or appropriate to engage in a side-by-side comparison or critique of the protectiveness of Federal/Nation laws versus New York State/local laws. The Nation proposes no change in land use as part of its Trust Land Application. Thus, there would be no direct environmental impacts that would result from a change in jurisdiction following the acquisition of land in trust – regardless of differences between Federal/Nation and New York State/local and requirements.

Moreover, the Federal government supports tribal self-determination. The Congress enacted the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. § 461 et seq., to counteract the precipitous decline in the economic, cultural, governmental, and social wellbeing of Indians. The IRA reflects a Federal policy of encouraging tribal self-government, both politically and economically. See *Morton v. Mancari*, 417 U.S. 535, 542 (1974). Other statements of Federal support for tribal self-determination are contained, for example, in the Indian Self-Determination and Education Assistance Act of 1975. See 25 U.S.C. § 450a. One of the mechanisms under the IRA for fostering tribal self-government is the acquisition of land in trust. See 25 U.S.C. § 465. The Congress only requires trust lands to comply with Federal and tribal standards. It would undermine tribal self-government to compare and contrast tribal laws against state and local laws, and require equivalency between them as a prerequisite for placing land in trust. Instead, pursuant to the land-into-trust regulations, the Secretary of the Interior considers the jurisdictional problems and potential conflicts of land use that may arise by placing land in trust. 25 C.F.R. § 151.10(f).

The full effect of *City of Sherrill* on tribal versus New York State and local jurisdiction is a subject of dispute between the Nation and New York State and local governments. In any case, as noted above, the Nation's lands have always been subject to Federal laws. The baseline utilized for the Secretary of the Interior's consideration of potential jurisdictional problems and

land use conflicts arising from the Proposed Action is the conservative assumption that New York State and local governments currently have jurisdiction over the Nation's lands, and that by placing the land in trust status, jurisdiction would transfer to the United States and the Nation (except as otherwise provided by Federal law, e.g., 25 U.S.C. §§ 232, 233).

Irrespective of whether land is placed in trust or not, the land would continue to be regulated by Federal laws, including environmental laws. The Environmental Protection Agency (EPA) would continue to have primacy for environmental regulations and oversight. Through its policies, the Nation has indicated its commitment to standards of environmental protection, conservation, and public health and safety. Several commenters have questioned the qualifications and ability of Nation members to enforce federal regulations and statutes. It is the responsibility of the Nation to follow federal regulations, while it is the responsibility of the federal government to enforce these standards. The policing efforts and enforcement policies of federal regulatory agencies are not within the scope of this FEIS.

The combination of Federal and Nation regulatory oversight and the ongoing practice of consultation and coordination between the Nation and Federal, New York State, and local agencies could serve as a mechanism to mitigate potential effects stemming from the placement of lands in trust status. The fee-to-trust application associated with this Proposed Action would not affect government jurisdiction of any land outside the Nation properties. Area residents would continue to be subject to local, state, and federal laws, as they are now. Other comments are speculative and it is not appropriate to address them in this FEIS.

COMMON RESPONSE 10: TREATIES WITH THE CAYUGA INDIANS OF NEW YORK

Several commenters have recounted that New York State made treaties with Indian Tribes in state including the Cayuga. Commenters also express that subsequently, Indians sold lands to New York State, the lands were then re-sold to speculators and developers, and the lands have since changed hands on the open market.

The purpose of the EIS is not to reconcile the historical interpretation of the various treaties and the associated reservations and their respective lands that may exist with respect to the Cayuga or any other New York tribe. The history of treaties with the Cayuga and other New York tribes is extensive and has been the subject of much discussion and litigation. The Nation, New York State, and the Seneca and Cayuga Counties have provided extensive information including expert reports on the matter of the Cayuga which are a matter of public record.

An Act of the Congress is required to disestablish or diminish a Federal Indian reservation, and the Congress has not diminished or disestablished the Cayuga reservation.

COMMON RESPONSE 11: LAND USE AND ZONING

Under the Proposed Action, lands acquired in trust would be interspersed among non-trust lands. Several commenters expressed that local governments would have no control over the use of trust lands but would have control over the use of non-trust lands, and that this would have an adverse effect on their ability to cohesively plan and to uniformly enforce their zoning and land use regulations.

Under the land-into-trust regulations, the Secretary of the Interior must consider jurisdictional problems and potential conflicts of land use which may arise. See 25 C.F.R. § 151.10(f). [Is this taken into consideration or reflected in the EIS? Where?]The Nation is not proposing any change in land use as part of the Proposed Action, so no direct land use effects would result.

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Moreover, the Nation's current land uses are generally consistent with local zoning and land use plans in the surrounding communities.

In addition, the Nation has adopted and followed a Cayuga Indian Nation Land Use Ordinance and other ordinances to protect and preserve public safety and human welfare. The Cayuga Indian Nation Land Use Ordinance mandates that, "no existing land use shall be substantially changed or altered; nor shall any building be constructed, added to or renovated; nor shall any landscape construction or site development work be performed without a Land Use Permit or Special Land Use Permit issued by the Council, as required by this Ordinance."

An alternative analyzed in the EIS, The Enterprise Properties into Trust Alternative to the Proposed Action, which was developed for analysis in the DEIS presents a more contiguous assemblage of parcels over which the Nation would control land use. Under this alternative, the Nation's properties in Seneca Falls and Union Springs would be placed into trust. The smaller parcel in Springport would remain under local land use control.

COMMON RESPONSE 12: CHECKERBOARDING

Numerous comments addressed the issue of checkerboarding and the concern that trust lands interspersed with non-trust lands could have an adverse effect on New York State and local governments and neighboring non-Indian landowners. Commenters have expressed concern over uniformity of environmental regulations, health and safety regulations, zoning ordinances and land use planning. Some commenters have also suggested that any checkerboarding that may result from the placement of land in trust under the IRA is contrary to the Supreme Court's decision in *City of Sherrill*. In addition, commenters stated that cooperative agreements between Indian tribes and local governments can serve to ease or eliminate checkerboarding issues.

Checkerboarding occurs throughout the United States, primarily as a result of the General Allotment Act of 1887, ch. 199, 24 Stat. 388, and other governmental policies that eroded the tribal land base and weakened tribal organizations. The General Allotment Act of 1887 opened for settlement tracts of tribally owned lands by dividing them into individual "allotments" for conveyance to individual tribal members and "surplus" lands for conveyance to non-Indians. The allotment policy resulted in enormous losses of tribally owned lands. Indian land holdings diminished from 138 million acres in 1887 to 48 million acres in 1934. See *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 255-56 (1992); Readjustment of Indian Affairs: Hearings on H.R. 7902 Before the House Comm. on Indian Affairs, 73d Cong., 2d Sess. 16 (1934) (Memorandum of John Collier, Commissioner of Indian Affairs). The Congress enacted the IRA to reverse the disastrous consequences of the prior Federal policies on the economic, cultural, governmental, and social well-being of Indian and to promote Indian self-government and economic self-sufficiency. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152-54 (1973); *Hagen v. Utah*, 510 U.S. 399, 425 n.5 (1994). The "overriding purpose" of the IRA was to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Morton v. Mancari*, 417 U.S. 535, 542 (1974). The Congress recognized that Indian tribes could maintain political and economic self-sufficiency and improve the living conditions of their members only by halting the diminishment of tribal lands and by supplementing and protecting their land base. Of relevance here, IRA Section 5 provided the Secretary of the Interior discretionary authority to:

[A]cquire . . . any interest in lands within or without existing reservations . . . for purposes of providing land for Indians; . . . title to any lands acquired pursuant to the

Act . . . shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

25 U.S.C. § 465. Today, the United States holds title to over 56 million acres in trust for Indian tribes and individuals.

With respect to property taxes, the Supreme Court in *County of Yakima v. Confederated Tribes*, 502 U.S. 251, 265 (1992), found that checkerboarding is not a material concern because the tax assessor must make a property-by-property determination of whether or not a tax exemption or immunity applies. In addition, potentially significant issues of concern relative to checkerboarding can and in many cases have been addressed. With respect to civil and criminal jurisdiction, the Congress has given New York State jurisdiction over civil and criminal disputes, even if they involve Indians and even if they occur on tribal lands. See 25 U.S.C. §§ 232, 233. In addition, although local governments do not have the right to regulate use of trust lands, Federal laws, including Federal environmental laws, apply to those lands. See e.g., *Reich v. Sand & Gravel*, 95 F.3d 174, 181 (2nd Cir. 1996); *Smart v. State Farm Insurance Company*, 868 F.2d 929,935 (7th Cir. 1989); *Blue Legs v. Bureau of Indian Affairs*, 867 F.2d 1094, 1097 (8th Cir. 1989).

In other states where land has been placed into trust, Indian tribes and local governments have entered into cooperative agreements dealing with a range of issues, such as law enforcement, fire protection, transportation, and land use. See e.g., Cross-Deputization Agreement Among the City of Bennington, Oklahoma, the BIA, and the Choctaw Nation of Oklahoma (1994); Memorandum of Understanding between Squaxin Indian Tribe and Mason County Fire District (2002); Joint Powers Agreement between the Pueblo of Acoma and the New Mexico Department of Transportation (2003); see generally *Nevada v. Hicks*, 533 U.S. 353, 393 (2001). Such voluntary agreements can reduce or eliminate impacts potentially arising from the configuration of tribal trust lands. In substance, BIA has found that these agreements are essentially the same as intergovernmental accords that have been concluded between neighboring municipalities, competing regulatory agencies, and states that border each other for purposes of resolving jurisdictional issues and ensuring the health and safety of their respective citizens.

Beginning in 2003, the Cayuga Indian Nation began to reacquire within its historic reservation from willing sellers on the open market. The current land tenure pattern within the Cayuga reservation is largely the consequence of prior purchases of Cayuga lands by New York State without federal approval as required by the Trade and Intercourse Act, 25 U.S.C. § 177, subsequent sales to non-Indians, and reacquisition of certain lands by the Cayuga Nation as the lands have become available.

While Nation lands conveyed into trust would not be subject to local land use plans, zoning, and other local regulations, the Nation has adopted and implemented the Cayuga Indian Nation Land Use Ordinance and other ordinances to protect and preserve public safety and welfare and the environment.

The potential jurisdictional problems and conflicts of land use that may arise from the intermixing of Federal, New York State, local and Nation jurisdiction in areas where Nation land would be conveyed into trust could be resolved through a path of cooperative dialogue between the Nation and New York State agencies and local governments in Seneca and Cayuga Counties. As mentioned above, the BIA has many examples throughout the United States where Indian

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tribes have been able to successfully work with state agencies and local governments to resolve jurisdictional conflicts where an intermixing of land ownership occurs as a result of a trust decision.

Finally, the Supreme Court decision in *City of Sherrill v. Oneida Indian Nation of New York* indicated that the proper way for an Indian Nation to reassert sovereignty over the lands was to request the Secretary of the Interior to accept them into trust status under Section 5 of the IRA and its implementing regulations at 25 C.F.R. Part 151. The Supreme Court characterized these regulations as being “sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory.” *City of Sherrill v. Oneida Indian Nation of New York*, 554 U.S. 197, 220-221 (2005). Before approving an acquisition, the Secretary of the Interior must consider, among other things, jurisdictional problems and potential conflicts of land use which may arise. See 25 C.F.R. § 151.10.

A lack of contiguity or compactness due to checkerboard ownership could affect a community’s ability to effectively plan and regulate. Potential jurisdictional problems are addressed in the DEIS, which also addresses potential conflicts of land use that could occur as a result of conveyance of Nation lands into trust. Consideration of these issues, pursuant to 25 C.F.R. § 151.10, is reflected in the configuration of the Preferred Alternative that is identified in the Final EIS.

COMMON RESPONSE 13: USE OF NEW YORK STATE AND SENECA AND CAYUGA COUNTY INFORMATION IN PREPARING THE DRAFT EIS

Several commenters state that a complete EIS under NEPA must consider substantial and substantive comments and information previously submitted to the BIA on the Trust Land Application.

The comments on the DEIS submitted by Seneca and Cayuga Counties on multiple dates and all enclosures were reviewed and considered by the BIA in preparing the FEIS. The BIA also reviewed and considered all information submitted at the public hearing on the DEIS and comments submitted during the public comment period. Further, the BIA has reviewed and considered all previous information submitted by New York State and local governments on the Nation’s Trust Land Application and the Pre-publication DEIS. Additionally, the BIA considered all comments submitted during the EIS scoping process (including the public scoping meeting held on March 1, 2006).

The BIA, through its third party contractor, solicited supplemental information from various Federal, New York State, Seneca and Cayuga County and local sources during preparation of the Pre-publication DEIS and the DEIS. Additional information was also solicited from the Nation related to its governmental, economic, social and cultural programs and activities. Information provided by the various parties is referenced throughout the document and was considered by the BIA in the analysis of potential effects. The BIA’s consultation and coordination on this matter is found in Section 6 of this FEIS. Copies of consultation and coordination letters are found in Appendix C of the DEIS.

COMMON RESPONSE 14: CITY OF SHERRILL SUPREME COURT DECISION

A number of commenters have expressed various opinions and interpretations about the Supreme Court’s 2005 decision in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005). Commenters have referenced the Court’s opinion in relation to presenting their personal opinions on topics such as citizen’s rights, Indian sovereignty, reservation land, treaties,

checkerboarding, taxes, trust status, and Federal trust authority. Numerous commenters have suggested, based on their interpretation of the *City of Sherrill* decision that the Nation's Trust Land Application is in "violation" of the Supreme Court's decision.

City of Sherrill addressed the Oneida Nation's opposition to paying property taxes to the City of Sherrill on the grounds that the Nation's re-acquisition of fee title to discrete parcels of reservation land revived the Oneida's sovereignty over each parcel. The Supreme Court found that too much time (two centuries) had passed to allow the Nation to unilaterally reassert sovereignty over these parcels. The Supreme Court did not find that the Congress had disestablished or diminished the Oneida reservation. Referring to practical concerns associated with the Nation's unilateral reassertion of sovereign control and removal of the parcels from the City of Sherrill's tax rolls, and potential future litigation, the Supreme Court rejected the Nation's theory of the case and stated that "Section 465 [Section 5 of the IRA] provides the proper avenue for the Oneida Nation to reestablish sovereign authority over territory last held by the Oneidas 200 years ago." *City of Sherrill*, 544 U.S. at 221. The Supreme Court explained, "Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the areas governance and well being. Title 25 U.S.C. § 465 authorizes the U.S. Secretary of the Interior to acquire land in trust for Indians and provides that the land shall be exempt from New York State and local taxation." *Id.* At 220. Before doing so, the Secretary of the Interior must consider the criteria provided at 25 C.F.R § 151.10, including the purpose for which the land will be used, the impact on the state and its political subdivisions resulting from the removal of the land from the tax rolls, and jurisdictional problems and potential conflicts of land use which may arise. The Supreme Court found that the Department of Interiors' land-into-trust regulations "are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory."

Consistent with the Supreme Court's decision, the Cayuga Nation submitted a Trust Land Application to the Eastern Regional Office of the Bureau of Indian Affairs. Pursuant to Federal statutes and regulations, including 25 U.S.C. §§ 465, 2202 and 25 C.F.R. Part 151, the Cayuga Nation petitioned the Secretary of the Interior to accept the transfer of certain parcels of land into federal trust.

COMMON RESPONSE 15: COMMUNITY SERVICES AND INFRASTRUCTURE

A number of commenters have stated that the Nation's Trust properties will be a burden on the local infrastructure (roads, police, fire departments, schools, and emergency services etc.) since the properties will be exempt from sharing in the cost to maintain such infrastructure and will not pay for services that occupants of trust properties will continue to use. As stated in Sections 4.9, "Community Infrastructure Effects," and 4.10 "Community Service Effects," under the Proposed Action, the Nation's properties would continue to be used as they are now, and there will be no changes to onsite or area water supply, wastewater, energy or solid waste. Tribal nations have the ability to contract emergency services and utilities as needed, and do not receive these services for free. The Nation will continue to pay for all utilities, or negotiate agreements to provide them as necessary. Further, the Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements in regard to community service providers, including emergency services, to ensure that the Nation's properties and patrons of its businesses are adequately protected. Currently, Tribal members do not live on the properties subject to the trust application. As discussed in Common Response 24, members of the Cayuga Indian Nation are not anticipated to relocate to the Project Area.

Therefore, the Proposed Action is not anticipated to generate any increased school attendance, and the use of these services is not expected. Since they generally do not use the infrastructure, there would therefore be little direct impact from use of the local infrastructure from Tribal members by placing the land into trust. Please refer to Common Response 7: Real Estate Taxes and Economic Effects for a discussion of potential revenue losses to the schools. If Tribal members do live on the subject properties, they would typically be employed off-reservation, and subject to taxes on their wages and purchases off-reservation. The Nation's business concerns on the lands subject to the trust application serve the local population and employ local residents. By supporting local residents that do pay the taxes that support the infrastructure necessary to operate the businesses, there may be an indirect tax benefit.

COMMON RESPONSE 16: UNFAIR COMPETITION

A number of commenters have stated that the Cayuga Indian Nation has an economic advantage over competing businesses by not charging or collecting state taxes. Commenters have stated that since the Cayuga Indian Nation enterprises would not remit sales and excise taxes they would be able to offer their customers lower prices, attract more customers, and undercut their competitors. Commenters have further stated that the non-Indian businesses, which pay taxes, may be unable to compete and may be forced to decrease the size of their operations, number of employees, or shut down, which would result in additional tax losses and special assessment revenues.

The Nation currently operates two LakeSide Trading commercial enterprises, one in Seneca Falls, Seneca County, and the other in Union Springs, Cayuga County. No change in use is planned for these, or any other property, as part of this application. The DEIS cannot analyze speculation by projecting that there may be future applications. Approving the application would only exempt the ±125 acres from property taxes.

The other tax issues raised by commenters relate to the Nation's status as a sovereign Indian Nation, not whether their property is held in trust. These issues are subject to decisions made by Congress and the Federal Courts, and are not related to the Nation's fee-to-trust application. The payment or avoidance of other taxes is not part of the Nation's application. The Bureau of Indian Affairs ("BIA") does not support the nonpayment of any legally owed taxes by Indian Tribes. Approval of the application would only exempt the ±125 acres from property taxes, which is less than one percent of the Counties' property taxes, not businesses taxes. The BIA assumes that if the trust application is not approved the Nation would continue to pay property taxes to the affected jurisdictions, however, the Nation would have to determine whether or not it would continue to do so.

Commenters have also suggested that non-Indian businesses will be at a competitive disadvantage because they have to comply with all local regulations. While the Nation's properties would no longer be subject to local regulations, the Cayuga Indian Nation has adopted its own regulations which are contained in Appendix K of the DEIS. The absence of local regulations is not anticipated to give the Nation's businesses any competitive advantage over other businesses. Any differences between the Nation's and local government's land use ordinances are not considered a means to providing competitive advantage.

COMMON RESPONSE 17: FUTURE DEVELOPMENT

A number of commenters have stated that the DEIS should consider the potential environmental impacts future trust applications, the acquisition of more land, and the expansion of the Nation's business operations (i.e., gasoline sales, convenience store operations, campgrounds, and

gaming). Although the Nation has acquired additional land, this additional land is not part of the current Trust application. Should the Nation desire to place additional land into trust, additional applications would need to be submitted, and their consideration would be subject to review. At this time, the Nation has no plans to expand its businesses or place any of the new land into trust. Therefore, any consideration of these concerns would be hypothetical, and analysis is not required under NEPA.

COMMON RESPONSE 18: DEIS COMPLETENESS

A number of commenters stated that the Draft Environmental Impact Statement (DEIS) lacked the critical information needed for a thorough review of the application. They further stated that the DEIS did not require mitigation of known adverse impacts, and that it should be withdrawn from consideration. The Bureau of Indian Affairs reviewed and accepted the DEIS as complete for public review on May 8, 2009. Prior to this date, the DEIS was circulated to the Cooperating Agencies for their review. The DEIS was revised based on the comments received during this time. Therefore, the DEIS does contain sufficient information required for a thorough review of the application, and will not be withdrawn.

Furthermore, the DEIS, after a thorough analysis of the potential impacts, did not identify any significant adverse impacts that would result from the proposed action. Therefore, there are no known adverse impacts and no mitigation is required or proposed.

COMMON RESPONSE 19: SPECIAL TREATMENT OF INDIANS

A number of commenters indicated that in their opinion, descendants of original Indian tribes should be treated as citizens of the United States, that Indian Nations no longer exist, and that the federal government should dissolve the Bureau of Indian Affairs. Many of these comments have no basis in law. These policy issues are, however, outside the scope of this FEIS. The United States Constitution provides Congress the sole responsibility for regulating Indian affairs. The BIA is obligated to carry out the laws as designated by Congress regarding Indian tribes.

COMMON RESPONSE 20: PENDING LITIGATION

A number of commenters have stated that the DEIS did not address the pending litigation (such as appeals of *Cayuga Indian Nation v Gould*, 615.1CA 08-02582) and therefore should be withdrawn, and the NEPA process stayed until there is a final disposition of the pending litigation.

The Cayuga Nation is a federally recognized tribe, and has been so since Congress ratified and President George Washington signed the Treaty of Canandaigua of 1794. Lawsuits concerning cigarette taxes or land claims cannot alter the facts of their federal recognition nor their rights under the Indian Reorganization Act. Litigation over cigarette or gasoline taxes, Indian land claims or other issues involving the Cayuga Nation are unrelated to the land-to-trust application, and are outside the scope of the present NEPA analysis. Processing the land-to-trust application will not be put on hold pending the resolution of such issues, and comments on these issues will not be considered or addressed further in the present analysis.

COMMON RESPONSE 21: POTENTIAL ENVIRONMENTAL IMPACTS

A number of commenters stated that the proposed action would result in significant adverse impacts to wetlands and natural resources, including potential impacts to Cayuga Lake, since the State, counties, towns and villages would lose the jurisdiction 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; 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; and enforce the New York State Sanitary Code.

States have to demonstrate the adequacy of their environmental program and compliance with Federal statutes to receive primacy from the United States Environmental Protection Agency (EPA) for any specific environmental program implementing Federal environmental laws. EPA Indian Policy is that States applying to administer Federal environmental programs within Indian Country must adequately demonstrate their jurisdiction to do so. We are not aware of any such demonstration regarding the Cayuga Nation's properties. Environmental primacy still rests with the US EPA regarding the Cayuga Nation's properties.

Managing the potential for Underground Storage Tanks (UST) leaks is the only potentially significant environmental issue for managing the Cayuga Nation's properties. New York State has never been given primacy from EPA for UST. Without New York State holding UST primacy from EPA, managing any UST leaks would remain an EPA issue, regardless of the decision on the application. The Bureau of Indian Affairs Eastern Regional Environmental Scientist has reviewed the UST reconciliation logs and soil boring data and found no evidence of UST leaks at either convenience store.

COMMON RESPONSE 22: TRAFFIC

A number of commenters stated that the traffic analysis was outdated, and/or did not consider the potential impacts of the gaming in operation. The EIS explains that the environmental baseline for traffic is the actual traffic on the date of the Cayuga Nation's application. In addition, the EIS projects a return to that environmental baseline traffic. The traffic analysis, including the build years and no-build condition, has been updated as part of this FEIS, and the new information and analysis is provided in Sections 3.12 and 4.12.

Existing traffic conditions in the study area were established based on traffic counts conducted in August, 2009 (during the peak summer months). The data collection program consisted of manual and Automatic Traffic Recorder (ATR) counts conducted at various locations throughout the study area. No unusual weather or traffic conditions were observed during the count period.

The traffic analysis contained in this FEIS assesses the potential traffic impacts of the Proposed Action and its alternatives on traffic and transportation in the affected areas. The existing conditions traffic analysis does not reflect the actual environmental baseline on the date of the Nation's fee-to-trust application. Actual environmental baseline traffic conditions would reflect the existence of operating gaming facilities at the Seneca Falls and Union Springs properties. The temporary closing of these gaming operations necessitated the analyses presented.

However, the analysis of the future with the Proposed Action, or the "Build Condition," does consider the effects of reopening of the Nation's LakeSide Entertainment gaming facilities located on NYS Route 89 in the Town of Seneca Falls, Seneca County, and on NYS Route 90 in the Village of Union Springs, Cayuga County.

The trip generation rates used to compute the vehicular trips generated by the reopening of the gaming operation were developed based on information presented in the article "Trip Generation

Characteristics of Small to Medium-Sized Casinos” which was presented as part of the Institute of Transportation Engineers (ITE) 2001 Annual Meeting Compendium. These rates were compared with the trip generation rates presented in the *Institute of Transportation Engineers (ITE) Trip Generation Manual 8th Edition* for Land Use Code #473, “Casino/Video Lottery Establishment.” When the rates were compared side by side, the rates from the article provided for a more conservative analysis and thus were used for this analysis.

The updated traffic analysis contained in the FEIS confirms that the Proposed Action would not result in any significant adverse impacts to traffic and transportation.

COMMON RESPONSE 23: CRIMINAL JURISDICTION

A number of commenters expressed concern that the Nation’s properties would become a haven for criminals, terrorists, and illegal activities. In particular, commenters question how youths would be prevented from illegally purchasing tobacco products or gambling, and how local authorities would respond to criminal activities.

While the local governments would lose some jurisdiction, this is acknowledged within the Environmental Impact Statement. This issue will be further addressed within the separate review process required under the 25 CFR 151 regulations. Within New York State, Congress provided New York State police and courts jurisdiction over both criminal and civil offenses on reservations, as is codified in 25 USC 232 (July 2, 1948 for criminal jurisdiction) & 233 (September 13, 1950 for civil jurisdiction). As a result, there are no criminal or civil offense jurisdictional issues on Indian lands within the State of New York. As restricted-fee treaty lands the lands are defined by Congress as Indian Country by Federal statute in 18 U.S.C. 1151, by being within the borders of their reservation established by the Treaty of Canandaigua of 1794, signed by President George Washington.

COMMON RESPONSE 24: RELOCATION OF CAYUGA INDIANS TO THE PROJECT AREA

A number of commenters have noted that the EIS presented the following two statements which appeared inconsistent with each other:

“The Nation intends to reestablish tribal presence in their homeland around Cayuga Lake, which holds for them cultural and religious significance”

“It is not anticipated that members of the Cayuga Nation would relocate to the Project Area.”

The first statement was presented in the context of the purpose and need of the Proposed Action. The second statement was presented in the context of the overall demographic composition and employment base of Seneca and Cayuga counties. The second statement has been clarified in the FEIS to state the following:

“It is not anticipated that members of the Cayuga Nation would relocate to the Project Area in sufficient numbers to significantly alter the demographic composition or employment base of Seneca/Cayuga County.”

While the Proposed Action is not anticipated to involve a relocation of the Nation’s people to the project area, the Nation presence in the area will be established by the operation of its businesses.

COMMON RESPONSE 25: CAYUGA INDIAN NATION 2003 BUSINESS PLAN

A number of commenters have noted that the pre-publication draft of the EIS referenced a 2003 Cayuga Indian Nation Business Plan. Knowledge of this business plan was obtained from discussions between the EIS Contractor and Cayuga Indian Nation representatives. However, the physical plan was never provided to the BIA or the EIS Contractor, and was withheld from the EIS as confidential business information pursuant to Exemption 4, 383 DM 15, § 5.6; 5 U.S.C. §552(b). References to this plan were therefore removed from the draft prior to it being declared complete for public review.

COMMON RESPONSE 26: CUMULATIVE EFFECTS OF ONEIDA AND CAYUGA APPLICATIONS

A number have commenters have stated that the Oneida and Cayuga Indian Nation trust applications will result in cumulative impacts to New York State and its residents. As stated in the EIS, no cumulative impacts are anticipated for the Proposed Action under any of the analyzed alternatives. No other currently active proposals are similar to the proposal in either county. Tribal fee-to-trust applications in other New York counties, such as the Oneida application, are also not anticipated to produce statewide cumulative impacts, since any impacts from other proposals, if any, would be localized. Implementation of the Nation's proposal would return both Counties' conditions to those of the environmental baseline date of the Nation's application, which included the gaming operation. With no anticipated impacts resulting from the proposal, and no other proposals impacting the same resources, no cumulative impacts are anticipated.

COMMON RESPONSE 27: HAZARDOUS MATERIALS

A number of commenters have stated that the Proposed Action could impact soil and water resources, including Cayuga Lake, because of potential petroleum releases, or migration of other hazardous materials such as fertilizers and pesticides. The EIS included an analysis of the potential hazardous materials impacts of the Proposed Action and its alternatives. Managing the potential for UST leaks is the only potentially significant environmental issue for managing the Cayuga Nation's properties. No other potentially significant adverse impacts to the water quality of Cayuga Lake, adjacent farmland, groundwater, or soil contamination are anticipated from the Proposed Action.

Under all of the alternatives, including the No Action Alternative, the Nation's gasoline filling stations would continue to operate, and for any gasoline filling station, there is always the possibility of a release from continuing operations. For all of the alternatives, other than the possibility of a release from continuing operations at each retail gasoline station, no significant impacts associated with hazardous materials would result. Therefore, the Proposed Action is not any more likely to result in a hazardous materials impact than the No Action Alternative.

Furthermore, irrespective of whether land is placed in trust or not, the land would continue to be regulated by Federal laws, including environmental laws. The Environmental Protection Agency (EPA) would continue to have primacy for environmental regulations and oversight. As discussed above, under Common Response 21, New York State has never been given primacy from EPA for USTs. Managing the potential for UST leaks is the only potentially significant environmental issue for managing the Cayuga Nation's properties. Without New York State holding UST primacy from EPA, managing any UST leaks would remain an EPA issue, regardless of the decision on the application. The Bureau of Indian Affairs Eastern Regional Environmental Scientist has reviewed the UST reconciliation logs and soil boring data and found

no evidence of UST leaks at either convenience store. Through its policies, the Nation has indicated its commitment to standards of environmental protection, conservation, and public health and safety.

COMMON RESPONSE 28: SEGREGATED COMMUNITY

Many commenters have suggested that the Nation land-into-trust application would create a segregated community or a “reservation” community where none currently exists. The Nation would, however, continue to interact with the non-Indian community through continued operation of its existing businesses, which serve Indians and non-Indians. Further, over 64,000 acres of land were guaranteed to the Nation as reservation land under the Treaty of Canandaigua of 1794. Therefore, the Proposed Action would not introduce a reservation culture to the area, but would support a tribal community that has been present for many years. The DEIS has appropriately described the purpose and need of the Proposed Action and it is not appropriate to analyze the validity of the federal land-into-trust program in this FEIS.

COMMON RESPONSE 29: POTENTIAL SOCIAL IMPACTS

Many commenters have suggested that the Proposed Action would induce a burden to a number of social services, including addiction services, welfare, and Medicaid. Commenters have also expressed concerns over adequate resolution of disputes, attracting a population with higher rates of substance abuse to the community, and increasing social problems associated with gambling (such as divorce, abuse, bankruptcy, and crime).

There is no evidence to suggest that the above mentioned social issues would result from the Proposed Action. As discussed in the DEIS, the direct relationship between casino gambling and increases in local crime rates and corresponding increases in costs of community social services, has not been definitively established. Although the Nation recognizes that further study is needed, studies to-date have not shown a direct correlation between the relationship of gambling facilities and increases in crime rates or social problems. Under the Proposed Action, the Nation would operate small-scale gaming facilities, as it did prior to 2005, and that have historically attracted people primarily from the local area. The Nation and all presiding governmental agencies encourage responsible gambling practices; the Nation would provide information to its patrons regarding counseling services in the area.

COMMON RESPONSE 30: EFFECTS ON PUBLIC ROADWAYS, RIGHT OF WAYS, AND WATERWAYS

A number of commenters have suggested that the Nation has, or potentially will hold, claims to roadways and waterways that are encompassed by or adjacent to the Nation’s land. Commenters have also expressed concern regarding utility easements and other infrastructure rights-of-way. Commenters have stated that a number of important utility lines exist in the region and could be negatively affected by future Nation land acquisitions, such as high voltage electric transmission lines, intercontinental high pressure natural gas pipe lines, regional natural gas pipe line, liquid petroleum pipe line, and telecommunication cables including a fiber optic trunk cable. Commenters have expressed concern that the Nation could potentially seek to put these lands into trust.

Roadways and waterways are owned by and under the jurisdiction of the local, state, and federal government, as applicable. These thoroughfares are contained within rights-of-way under the purview of the appropriate government agency. Without the willing transfer of land from one of

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these rights-of-way to the Nation, the Nation cannot obtain ownership of any roadway or waterway that may pass through or be adjacent to Nation land. No municipal, state or federal government agency has expressed any intention to sell or offer any portion of these thoroughfares to the Nation.

With the exception of the Nation's Union Springs parcel, the subject properties do not incorporate any existing easements or rights-of-way. As discussed in the DEIS, New York State Electric and Gas ("NYSEG") has several easements over the property owned by the Nation to provide electric and gas service. There are NYSEG transmission lines that cross the Union Springs parcel that are a link in the infrastructure that provides electric and gas service throughout Cayuga County. The Union Springs parcel also contains a natural gas well to which Devonian Energy has access rights. These rights were transferred to the Union Springs Central School District in 1981 and a gas well was drilled. This well has been used as a source for fuel for heating the high school and district offices. Under the Proposed Action, the Nation's Union Springs parcel would be taken into trust subject to all of the existing access rights. Therefore, the Proposed Action would not impede existing utility or infrastructure lines.

Consideration of future land acquisition, including transfers of easements and rights-of-way ownership, and land-into-trust applications are hypothetical and are not required to be analyzed under NEPA.

COMMON RESPONSE 31: WILDLIFE HARVESTING

Many commenters have expressed concern that under the Proposed Action, the Nation would be exempt from NYSDEC hunting regulations, and will not be subject to any limitations for wildlife harvesting. Commenters have asserted that unregulated wildlife harvesting on the Nation's properties would negatively affect the local sporting industry, wildlife management in the area, and wildlife populations along the eastern seaboard.

The subject properties associated with the Proposed Action comprise a small overall land area of approximately 125 acres. Much of this area is noncontiguous, making each individual parcel much smaller in most cases. Any wildlife harvesting on such small areas of land would have minimal consequences on wildlife populations. There is no evidence to suggest that the subject properties harbor significant wildlife habitats, or great quantities of wildlife, that could affect the local or regional wildlife behaviors and patterns. As discussed in the DEIS, no significant adverse impacts to wildlife habitats are anticipated to result from the Proposed Action. Furthermore, no land use changes are associated with the Proposed Action.

COMMON RESPONSE 32: RIGHTS OF NON-INDIANS ON TRIBAL LANDS

Commenters have questioned the legal status of non-Indians on tribal lands. Commenters have asserted that non-Indians would unknowingly lose their legal civil rights when on tribal lands or when passing through tribal lands on public roadways.

The sovereign status of tribal lands in trust does not grant total immunity to consequences from unlawful actions. Tribal lands remain under federal and tribal jurisdiction, and New York State is given authority to settle civil and criminal disputes (codified in 25 USC 232 (July 2, 1948 for criminal jurisdiction) & 233 (September 13, 1950 for civil jurisdiction). Citizens of the United States would be protected under federal law on tribal lands, as well as New York State law for criminal and civil issues.

ROD ATTACHMENT IV
TECHNICAL MEMORANDUM 02/09/2018

**Cayuga Indian Nation of New York
Conveyance of Land into Trust**

Cayuga and Seneca County, New York

Technical Memorandum

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February 9, 2018

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A. INTRODUCTION AND DESCRIPTION OF THE PROPOSED ACTION

In 2005, the Cayuga Nation of New York (the “Nation”) applied to the Bureau of Indian Affairs (BIA) of the U.S. Department of Interior (DOI) for a fee-to-trust transfer of 129± acres¹ of land owned by the Nation (the “Previous Application”). The statutory authority for acquiring land in trust status for Indian tribes is provided in the Indian Reorganization Act of 1934 (IRA), with regulations under 25 U.S.C. § 465 and codified at 25 C.F.R. Part 151. Transfer of lands into trust is a real estate transaction which would convey title to the subject properties to the United States, and the subject properties would be held by BIA for the use and benefit of the Nation to ensure the cultural preservation, expression and identity, self-determination, self-sufficiency, and economic independence of the Nation as a federally recognized Indian tribe.

The fee-to-trust applications were individually dated April 14 and May 25, 2005 (hereinafter the inclusive application date is cited as May 25, 2005). The property proposed for fee-to-trust transfer had been comprised of seven separate parcels (nine tax map ID numbers) located in the Village of Union Springs and the Towns of Springport and Montezuma, in Cayuga County and the Town of Seneca Falls in Seneca County.

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. § 4321 et seq.), an Environmental Impact Statement (EIS) was prepared by BIA for the Previous Application and issued for public review on May 22, 2009. A public hearing for the DEIS was held at the New York Chiropractic College in Seneca Falls, New York, on Wednesday, June 17, 2009; public comments on the DEIS were accepted by BIA until July 6, 2009. A Notice of Availability (NOA) for the Final EIS (FEIS) was published on October 12, 2010. The NOA indicated that a Record of Decision (ROD) would be issued on or after November 22, 2010; however, a ROD was never issued.

The Nation now seeks to re-submit its application for a fee-to-trust transfer of land for six parcels located in Cayuga and Seneca Counties totaling 129± acres (the “Proposed Action”) and to continue the use of each property as described in **Table 1** (see **Figures 1** and **2**). The 0.018 acre property in the Town of Montezuma that was part of the Previous Application is not included in the Proposed Action. No new construction and no new uses not previously analyzed in the DEIS and FEIS are proposed.

¹ The notice of intent published in the Federal Register on February 13, 2006 (71 FR 7568) cited the conveyance into federal trust of seven parcels comprising 125± acres of land. The records of the affected municipalities report the actual acreage of the seven parcels included in the Nation’s Land Trust Application to be 129.16 acres.

Table 1
Tax Parcels Comprising the Proposed Action

Municipality	Parcel Address	Parcel Deed Reference	Tax Lot Designations of Parcel	Approx. Acreage	Use
Cayuga County					
Village of Union Springs	North Cayuga Street	Book 1208 at page 236	134.17-1-1.51	108.0	Vacant lot/ agriculture
	299 and 303 Cayuga Street	Book 1129 at page 222	134.17-1-1.21 134.17-1-1.121	1.98	Gas station, car wash, convenience store
	271 Cayuga Street	Book 1129 at page 225	141.05-1-3	1.48	Gaming facility
Town of Springport	Route 90	Book 1215 at page 291	150.00-1-29.1	3.70	Vacant lot
Seneca County					
Town of Seneca Falls	3149 Garden Street Extension/Rt. 89	Book 702 at page 66	36-1-48.1 36-1-48.2	13.29	Campground, daycare, school, and office use
	2552 Route 89	Book 674 at page 63	36-1-49	0.69	Gas station, convenience store, and gaming facility (temporarily closed)
TOTAL				129.14	
Source: Tax assessment data.					

B. METHODOLOGY

This Technical Memorandum provides an update to the background conditions since the publication of the FEIS in 2010, and analyzes the Proposed Action in the context of current conditions. In preparing this update, the following technical areas were specifically re-analyzed and considered due to potential changes in background conditions:

- Natural Resources – Changes to federal and state wetlands maps and lists of threatened or endangered species were assessed for all properties.
- Land Use and Zoning – Changes to local land use policy documents and zoning codes were analyzed to the extent they would affect the Proposed Action.
- Traffic and Transportation – An updated Traffic Impact Study was prepared and new traffic counts were conducted in October 2016 and January 2018 (see **Appendix C**).
- Hazardous Materials – Updated Phase I and Phase II Environmental Site Assessments (ESA) were prepared in October 2016 and January 2018 (see **Appendix D**).
- Socioeconomic Conditions – Tax revenue and current municipal budgets were analyzed.

The analysis is based on a review of publicly available records and physical site visits, where access was available.

There have been no substantial changes to the Proposed Action or significant new circumstances or information relevant to environmental concerns. The present use of each property is substantially the same as it was at the time of the DEIS and FEIS. Furthermore, for the reasons further described in this Technical Memorandum, the changes to the Proposed Action would not result in any potential impacts not previously identified in the DEIS or FEIS, and would not result in any significant adverse impacts to environmental or socioeconomic conditions.

C. PROPERTY DESCRIPTION

The Proposed Action is the fee-to-trust transfer of approximately 129± acres of land comprising seven separate parcels (eight tax map numbers) in the Village of Union Springs and the Town of Springport in Cayuga County and the Town of Seneca Falls in Seneca County, New York.

The properties are variously referred to in this Technical Memorandum individually, by their individual tax lot identification numbers, or as contiguous properties comprising one or more tax lots. As used herein, and as further described below, the “Union Springs Property” consists of four contiguous tax lots comprising approximately 111 acres, the “Springport Property” consists of a single 3.7-acre tax lot, and the “Seneca Falls Property” consists of three contiguous tax lots comprising 13.98 acres. The Union Springs and Seneca Falls Properties also comprise the Nation’s “Enterprise Properties” discussed herein and further described in Alternative 3, “Enterprise Properties into Trust.” **Table 1** above provides an overview of the Nation’s properties.

UNION SPRINGS PROPERTY

The Union Springs Property comprises four contiguous tax parcels totaling approximately 111 acres. The property consists of vacant land, 82 acres of which are in soybean production; LakeSide Trading, which consists of a convenience store, gas station, and car wash; and the gaming operation, LakeSide Entertainment 1, which occupies an approximately 2,300-square-foot building formerly occupied by a NAPA auto parts store. The gaming facility, comprising 86 electronic bingo machines, was in operation at the time of the fee-to-trust application (May 25, 2005). The gaming operation was temporarily suspended during preparation of the EIS, but resumed operation in 2013. The surrounding area consists of agricultural, residential, and recreational uses.

The property is bordered by undeveloped land to the north, retail properties to the east; a fire department, high school, and residential properties to the south; and residential properties to the west. Cayuga Lake is located approximately 500 feet west of the parcel. The bulk of this property is the approximately 108-acre tax lot 134.17-1-1.51, which consists of vacant land.

The Nation’s LakeSide Trading gas station\convenience store\car wash businesses are located on two separate tax parcels totaling approximately two acres (134.17-1-1.21 & 134.17-1-1.121). The immediate area is bordered by vacant land to the north, NYS Route 90 followed by residential properties to the east, local retail shops to the south, and vacant land to the west. There are several other commercial and professional office operations to the south and west of the subject parcels.

The LakeSide Entertainment gaming facility is located at 271 Cayuga Street, on an approximately 1.48-acre parcel (tax lot 141.05-1-3). This parcel is bordered by agricultural land to the north, NYS Route 90 followed by residential properties to the east, Union Springs Fire Department to the south, and vacant agricultural land to the west. The LakeSide Entertainment facility is comprised of a 2,304-square-foot, one-story building.

SPRINGPORT PROPERTY

The Springport Property consists of one tax parcel (150.00-1-29.1) of approximately 3.70 acres. This parcel is rectangular and bordered on the north and south by residential properties, on the east by NYS Route 90, and to the west by a former railroad bed followed by a wooded area.

SENECA FALLS PROPERTY

The Seneca Falls Property consists of three contiguous tax lots comprising a single approximately rectangular block of land encompassing 13.98 acres. The property is currently developed, consisting of the Nation's LakeSide Enterprise operations (a gas station and convenience store), LakeSide Entertainment 2 (the gaming operation), a campground, and a small office use. The Class II gaming operation occupying the rear portion of the convenience store building was in operation at the time of the fee-to-trust application, May 25, 2005. In 2005, subsequent to the application, the gaming operation was temporarily closed, but it is the intent of the Nation to re-open the gaming operation. The same was true at the time of the DEIS and FEIS. In recent years several new structures have been constructed in the vicinity of the campground (tax lot 36-1-48.1). These include six cottages and a school building. In addition, an existing trailer on the property was converted to a daycare.

The surrounding area consists of agricultural, residential, and recreational uses. In addition, there are several commercial operations directly east of the properties on Route 89. The New York Chiropractic College campus is located approximately 2,000 feet to the north of this property.

D. PURPOSE AND NEED

To generate revenues to fund tribal programs and services, the Nation acquired several properties on the Nation's ancestral lands in Cayuga and Seneca Counties. Included among its acquisitions were the convenience store/gas station businesses in Union Springs and Seneca Falls. The Nation operates this business for tribal revenue generation purposes. The Nation has generated additional revenue at its properties through the operation of a Class II gaming facility. These business operations are the sole source of tribal revenues.

The Proposed Action is the fee-to-trust transfer of the Nation's approximately 129± acres of land, including the parcels of land on which its business operations are located (the "Enterprise Properties"). The Nation wishes to continue use of the proposed fee-to-trust properties for multiple purposes, involving the continuation of previous and existing uses. Existing and previous uses of the Enterprise Properties include convenience store and gas station operations, gaming facilities, a car wash, camp ground, office, and related activities; the non-enterprise properties are vacant, open land. The Nation presently has no plans for further development (e.g., erection of new buildings) on the properties subject to the Proposed Action.

E. DESCRIPTION OF THE ALTERNATIVES

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

This alternative is the Preferred Alternative. Under this alternative, all of the land located in Cayuga and Seneca Counties, and included in the Nation's fee-to-trust application, would be taken and held in trust by the United States (see **Table 1**). These parcels are located in the Village of Union Springs, the Town of Springport, and the Town of Seneca Falls, New York.

Under this alternative, the Nation would continue use of its properties for multiple purposes, involving the continuation of previous and existing uses, including convenience store and gas station operations, gaming facilities, a car wash, campground, office, and related activities. Since gaming activities resumed at LakeSide Entertainment in Union Springs in July 2013, current use of that property is essentially the same as at the time of the initial fee-to-trust application. LakeSide Entertainment in Seneca Falls is temporarily closed, and the Nation intends to re-open this facility. This was also the case at the time the DEIS and FEIS were being prepared and

therefore does not constitute a change in proposed use. In addition, there have been some minor modifications to the Nation's Seneca Falls Property since the fee-to-trust application, consisting of the operation of a daycare and school. The six cottages utilize the campground sanitary facilities. The Nation may continue to operate these uses, but presently has no plans for new or further development of the subject properties.

The Nation would continue the existing operations of the Village of Union Springs Property where the existing businesses are located. The Nation plans to continue the agricultural use (field crops) of the 82 tillable acres of the 108-acre vacant parcel in Union Springs. The Nation has owned this parcel since 2005, and has continued its agricultural use for soybean cultivation. The Nation plans to use the soybean crop as an additional source of revenue.

ALTERNATIVE 2: NO ACTION

Under this alternative, the Nation's properties would not be placed into trust, and the Nation would continue to own the properties in fee. The Nation would continue use of its properties for the multiple purposes currently in operation, as well as in operation at the time of the fee-to-trust application (e.g., gas station, convenience store, car wash, and gaming). As stated in the FEIS, under this alternative BIA would assume that the Nation would continue to pay property taxes; however, the Nation will consider all options available to it under the law with respect to payment of real property taxes on these parcels.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the four tax lots included in the Nation's fee-to-trust application in the Village of Union Springs and three tax lots in the Town of Seneca Falls would be taken into trust by the United States. Under this alternative, the Nation's LakeSide Trading commercial enterprises and LakeSide Entertainment Class II gaming facility in Cayuga County would continue to operate, and the LakeSide Entertainment Class II gaming facility in Seneca County would resume operation. Under this alternative, the Nation's non-Enterprise property in the Town of Springport, in Cayuga County, would not be taken into federal trust.

F. POTENTIAL IMPACTS

LAND RESOURCES

There have been no significant new circumstances or information relevant to concerns related to land resources since the publication of the FEIS. There has been no development or changes to the Nation's properties that would affect onsite soils or topography (see **Figures 3 and 4**) from what was presented in the FEIS.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the properties would otherwise be left undisturbed or managed under their current maintenance regime. That is, any land management activities, such as mowing, clearing, and agricultural uses, would continue to be subject to all applicable federal environmental regulations. No additional development or disturbance to the subject properties is anticipated to occur, and as a result of this alternative, there would be no changes to onsite geology, topography, or soils. Therefore, there would be no significant impacts to land resources as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

Under this alternative, there would be no changes to onsite geology, topography, or soils, and no changes would occur to land resources. Therefore, there would be no significant impacts to land resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the properties would otherwise be left undisturbed or managed under their current maintenance regime. That is, any land management activities, such as mowing, clearing, and agricultural uses, would continue to be subject to all applicable federal environmental regulations. No additional development or disturbance to the subject properties is anticipated to occur, and as a result of this alternative, there would be no changes to onsite geology, topography, or soils. Therefore, there would be no significant impacts to land resources as a result of the Enterprise Properties into Trust Alternative.

CUMULATIVE IMPACTS

No cumulative impacts on land resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on land resources resulting from the Proposed Action, no cumulative impacts are anticipated.

WATER RESOURCES

There have been no significant new circumstances or information relevant to concerns related to water resources since the publication of the FEIS. Updated maps of New York State Department of Environmental Conservation (NYSDEC) and National Wetlands Inventory (NWI) wetlands have been prepared (see **Figures 5 and 6**).

As shown in Figure 5, there are no NYSDEC-mapped streams, wetlands, or waterbodies on the Nation's properties in Union Spring, Springport, or Seneca Falls. In addition, there are no new NYSDEC-mapped streams, wetlands, or waterbodies in the vicinity of the Nation's properties from what was identified in the FEIS, and the water quality classifications of the surface waters remain the same.

As shown in Figure 6, there are two open water pond features within the Union Springs Property, one on the north side of the property and one on the eastern side of the property. Both are mapped by NWI as PUBHx-palustrine, unconsolidated bottom, permanently flooded, excavated wetlands. As discussed in the FEIS, the more northerly NWI-mapped wetland pond is located adjacent to an unmapped wooded wetland stream. In addition, the westernmost portions of the Union Springs Property contain areas dominated by facultative wetland trees and shrubs. These two regions exhibiting wetland vegetation are not mapped by NWI but may contain federally regulated wetland pursuant to Section 404 of the Clean Water Act. Nevertheless, the vast majority of the Union Springs Property, including the open field conditions that predominate throughout, consists of upland habitat. The Nation has continued to farm the property since the publication of the FEIS. As such, on-site conditions remain as detailed in the FEIS.

West of the Springport Property, across from the dirt access road marking the site's western boundary, mapped wetlands occur. NWI has mapped these offsite wetlands as Palustrine Forested (PFO1E), Palustrine Scrub-Shrub (PSS1E), and Palustrine Emergent wetlands (PEM1E) seasonally flooded, saturated (see Figure 6). The NWI map indicates a small portion of the mapped scrub-shrub wetland as extending into the western edge of the subject parcel itself.

However, this area is currently cleared of vegetation, has been maintained as lawn for some time, and is separated from the bulk of the wetland to the west by the dirt access roadway defining the property's western boundary. As such, it is unlikely to constitute a federally regulated wetland pursuant to Section 404 of the Clean Water Act. This condition has not changed since the publication of the FEIS.

There are no NWI mapped wetlands or watercourses on the Nation's Seneca Falls properties.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

In 2008, the U.S. Army Corps of Engineers (ACOE) Buffalo District (Snead, October 29, 2008 and Snead, December 17, 2008) confirmed that no approvals or authorizations would be required at this time pursuant to the Clean Water Act Section 404 because no development is planned for the properties subject to the fee-to-trust application. Since the Proposed Action does not contemplate any new development, results of this determination remain valid.

Under the Proposed Action the properties would otherwise be left undisturbed or managed under their current maintenance regime. That is, any land management activities, such as mowing, clearing, and agricultural uses, would continue to be subject to all federal wetland regulations applicable to the properties at present. At such time as development is contemplated in the future, a formal wetland delineation would be required on each of the affected subject properties to confirm the presence/absence of wetlands and to establish the extent (e.g., the boundaries) of wetlands subject to ACOE jurisdiction. Any future development of the Nation's lands would comply with all applicable federal laws²; therefore, there would be no significant impacts to water resources as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

Under this alternative, there would be no changes to existing water resources onsite and in the vicinity of the Nation's properties. Therefore, there would be no significant impacts to water resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the property would continue to be used as it is now and there would be no changes to existing water resources onsite and in the vicinity of the Nation's properties. Therefore, there would be no significant impacts to water resources as a result of the Enterprise Properties into Trust Alternative.

CUMULATIVE IMPACTS

No cumulative impacts on water resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on water resources resulting from the proposal, no cumulative impacts are anticipated.

AIR QUALITY

As discussed in the FEIS, changes in traffic volumes and levels of service (LOS) can affect air quality conditions. In order to identify any potential impacts, a screening level analysis was performed at locations where the Proposed Action would have the potential to increase traffic

² See Appendix C of the DEIS for correspondence with United States Army Corps of Engineers dated October 29, 2008 and December 17, 2008.

volumes and therefore affect air quality. The area roadway intersections were reviewed based on the New York State Department of Transportation's (NYSDOT) Environmental Procedures Manual (EPM)³ criteria for determining locations that may warrant a CO microscale air quality analysis. The screening analysis determined that none of the project-affected intersections in the Village of Union Springs or Town of Seneca Falls have a LOS that would indicate the need for detailed microscale air quality analyses, and that no affected intersection results in significant adverse air quality impacts to the immediate area.

As further discussed in "Traffic and Transportation," below, there have been no significant new circumstances or information relevant to concerns related to background traffic conditions since the publication of the DEIS or FEIS. In addition, the Proposed Action would not result in any significant changes to existing traffic conditions in the vicinity of the Nation's properties. As such, the conditions described in the FEIS would be expected to continue at the Nation's properties in Cayuga and Seneca Counties. Therefore, no significant adverse air quality impacts are anticipated to result from the Proposed Action.

HAZARDOUS MATERIALS

The following section describes the potential for hazardous materials to occur on or in the vicinity of the Nation's properties. As further described below, new environmental site assessments were prepared for each of the Nation's properties. However, with the exception of the information described below, no new environmental conditions since the issuance of the FEIS were identified.

PHASE I ENVIRONMENTAL SITE ASSESSMENTS

Site conditions observed during each inspection were consistent with the observations documented during the 2009 ESAs. A new condition for the Seneca Falls Property (Parcel 36-1-49) included a July 2017 NYSDEC spill report that documented a potential for gasoline to have leaked to the subsurface, the details of which are included below. Beyond this observation, no solid waste, debris or evidence of illegal dumping activity were noted at any of the properties. No evidence of material releases, such as stained surfaces, oil sheen, odors, or stressed vegetation were noted at the property and no other significant observations were made. This technical summary includes either new findings, or findings that are now defined differently with respect to the 2009 ESAs.

The ESAs completed in 2009 followed American Society for Testing and Materials (ASTM) Standard Practice E 1527-05, which was applicable at the time of the assessments. The 2016 and 2018 Phase I ESAs were performed in accordance with ASTM E 1527-13, which included documentation of conditions defined by ASTM as Recognized Environmental Conditions (RECs) and *de minimis* conditions.

DE MINIMIS CONDITION FOR ALL CAYUGA COUNTY PROPERTIES

A site identified as the Cayuga Groundwater Contamination Site was identified in the Federal database. Low levels of chlorinated volatile organic compounds (CVOCs) were detected during routine testing of the Union Springs municipal drinking water supply, and extensive investigations thereafter identified a plume approximately 4.8 square miles in size that extended

³ Available at <https://www.nysdot.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm>.

7 miles from the city of Auburn to Union Springs. Investigations completed by EPA and NYSDEC documented that the plume was mainly located within the bedrock aquifer, the plume was not detected in drinking water wells near the Nation's properties, and the closest wells that contained the target compounds were a minimum of a half-mile from the Nation's properties. Based on the investigation data provided by USEPA, vapor intrusion is not considered a risk for the current or future structures. There are no groundwater uses associated with the Nation's properties, and potable water is provided by the municipal supply.

EXISTING CONDITIONS – CAYUGA COUNTY PROPERTIES

Parcel 134.17-1-1.51

The parcel 134.17-1-1.51 comprises approximately 108 acres of farm land with undeveloped areas and an unpaved right-of-way vehicular access road used for access to a natural gas well that supplies the Union Springs School District. The Phase I ESA did not reveal evidence of RECs, HRECs, or CRECs in connection with the property. The following *de minimis* conditions and/or other environmental concerns were identified as summarized below.

- Historic maps and interviews with knowledgeable site personnel indicated that herbicides and pesticides are applied to the farming portions of the property on an as-needed basis.
- Possible future activities associated with the natural gas well, including well maintenance or re-drilling to improve capacity, may present a situation where on-site soil or groundwater could be contaminated near the well.
- The following recommendations were developed for the property based on the environmental conditions documented during the investigation.
- In the event that future development plans include earthwork on the property, a limited subsurface (Phase II) investigation should be conducted to ascertain environmental conditions in the areas where soil disturbance is anticipated. The investigation should evaluate whether pesticides and/or herbicides exist as a result of agricultural use and for general soil characterization during construction.

Parcels 134.17-1-1.21 & 134.17-1-1.121

The parcels located at 299 Cayuga Street (Parcel No.134.17-1-1.21) and 303 Cayuga Street (Parcel No. 134.17-1-1.121) included a convenience store, associated gasoline filling station, a single-story concrete car wash structure, and an asphalt-paved surface parking lot. The Phase I ESA did not reveal evidence of HRECs or CRECs in connection with the property. The following REC, *de minimis* condition, and other environmental concerns were identified as summarized below.

Recognized Environmental Condition

- The current and past use of the property as a gasoline filling station with multiple USTs could potentially have caused a release of petroleum contamination to soil or groundwater. Registration for the current USTs was not up to date with NYSDEC. In, addition, there was no documentation found for maintenance, leak detection, fluid measurement records, closure sampling related to the former underground tanks, or activities related to the former site building. Field screening and laboratory analysis of soil samples collected in March 2009 and September 2016 did not indicate a release of petroleum. The underground storage tank leak detection system reported in the environmental database for all the tanks currently in use at the property did not indicate any releases of petroleum. Although no evidence of a

release of petroleum was documented, contamination due to historical or undocumented spills could be present in soil and/or groundwater beneath the tank and dispenser pump area.

De Minimis Condition

- The Cayuga County Clerk's Office reports the structures to have been constructed in 1994 and 1999, at a time when asbestos-containing materials (ACM) were rarely used in construction; however, suspect ACMs may be present in sheetrock, within pipe chases, behind walls, or in other hidden locations.

The following recommendations were developed for the property based on the environmental conditions documented during the investigation:

- The compliance status of the USTs, including registration with NYSDEC, should be further evaluated and addressed, as warranted.
- Prior to any significant subsurface disturbance of on-site soil and/or groundwater required for future development, a subsurface (Phase II) investigation should be conducted to evaluate soil, groundwater, and soil vapor to determine if any remediation is required prior to, or during redevelopment, and ensure proper handling of soil and/or groundwater during any future subsurface disturbance.
- A pre-renovation or pre-demolition ACM survey should be performed prior to any disturbance of suspect ACM and any ACM with the potential to be disturbed during renovation or demolition activities should be removed and disposed of in accordance with local, state and federal requirements. ACM should be maintained in good condition in accordance with applicable regulations.

Parcel 141.05-1-3

Parcel 141.05-1-3, located at 271 Cayuga Street, includes a one-story commercial building and associated asphalt-paved and gravel parking areas. The Phase I ESA revealed no evidence of RECs, HRECs, or CRECs. The following *de minimis* conditions and/or other environmental concerns were identified as summarized below.

- Historical aerial photographs show that the property was vacant land as recently as 1995, with the potential for agricultural uses up until that time. Agricultural activities include the potential for application of pesticides and herbicides to shallow soil.
- The structure was reported to have been constructed in 1998, at a time when ACMs were rarely used in construction; however, suspect ACMs may be present in sheetrock, within pipe chases, behind walls, or in other hidden locations.

The following recommendations were developed for the property based on the environmental conditions documented during the investigation:

- In the event that future development plans include earthwork on the property, a limited subsurface (Phase II) investigation should be conducted to ascertain environmental conditions in the areas where soil disturbance is anticipated. The investigation should evaluate whether pesticides and/or herbicides exist as a result of former agricultural use and for general soil characterization during construction.
- A pre-renovation or pre-demolition ACM survey should be performed prior to any disturbance of suspect ACM and any ACM with the potential to be disturbed during renovation or demolition activities should be removed and disposed of in accordance with local, state and federal requirements. ACM should be maintained in good condition in accordance with applicable regulations.

Parcel 150.00-1-29.1

Parcel 150.00-1-29.1, located in the Town of Springport, New York, is approximately 3.7 acres, and consists of an open, vacant field with some wooded areas along the sides of the site.

The Phase I ESA revealed no evidence of RECs, HRECs, or CRECs. The following *de minimis* condition was identified as summarized below.

- Historical data suggests that the property and surrounding land has been used for agricultural purposes or maintained as a vegetated field. Pesticide and herbicide application associated with these uses has the potential to have affected shallow soils at the site.

The following recommendations were developed for the property based on the environmental conditions documented during the investigation:

- In the event that future development plans include earthwork on the property, a limited subsurface (Phase II) investigation should be conducted to ascertain environmental conditions in the areas where soil disturbance is anticipated. The investigation should evaluate whether pesticides and/or herbicides exist as a result of agricultural use and for general soil characterization during construction.

EXISTING CONDITIONS – SENECA COUNTY PROPERTIES

Parcels 36-1-48.1 and 36-1-48.2

Parcels 36-1-48.1 and 36-1-48.2 is located at 3149 Garden Street Extension and consists of approximately 13.3 acres. Parcel 36-1-48.1 consisted of a 10.4 acre grass-covered field that was formerly used as a camping park and included a one-story double-wide mobile home used as Lakeside Enterprises of the Cayuga Nation offices, and a bath house/restroom wood constructed building of approximately 1,000 square feet, several small cabins, a mowed baseball field, raised gardening beds and a brown 1 ½ story building. Parcel 36-1-48.2 consisted of a 2.9 acre grass-covered lot that contained a gravel drive and a commercial building formerly used as a boat repair shop, currently used as the Cayuga Indian Nation of New York offices.

The following RECs and *de minimis* conditions and/or other environmental concerns were identified as summarized below.

Recognized Environmental Condition

- The Property formerly included a boat repair shop. This could have included storage or use of fluids such as gasoline, motor oil, and gear oil, boat painting and cleaning, etc. Improper storage, handling, or dumping of waste fluids could have resulted in releases to the soil or groundwater at the Property. A 2008 Phase I ESA for the Property indicated that the repair shop building contained a floor trench in the maintenance area that was filled with gravel. There was no information indicating if the trench was used as a collection pit or where it drained to. In addition, due to the age of the Property buildings (and former buildings), fuel oil may have historically been used for heating.
- Although groundwater flow is most likely eastwards, towards the Lake, releases from the southeast adjacent gasoline station may have impacted the Property subsurface. Releases have been reported at this gasoline station.

De Minimis Conditions

- Based on the construction history, the age of some structures on the Property, and the aerial photographs showing site disturbance at the time that buildings were remodeled or constructed, the Property could contain debris or other historical fill of unknown origin.

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- Herbicide and insecticide associated with landscaping on the Property may be present in the subsurface.
- Two pole-mounted transformers were noted on a utility pole adjacent to the northeast corner of the former boat maintenance building. The age of the transformers was unknown and there is a potential for the transformers to have included PCB-containing fluids. Any release could have affected the subsurface. However, there were no signs of stained soil or stressed vegetation in the vicinity.
- Suspect asbestos-containing materials (ACM) observed during the previous reconnaissance included: flooring materials, window and door caulk and glazing, floor tiles and associated mastic, plaster and sheetrock, and roofing materials. Additional ACM may be present within pipe chases, behind walls, beneath existing flooring, under the new roof, or in other hidden locations. Prior to any renovation or demolition activities with the potential to disturb suspect ACM, an asbestos survey should be conducted to determine if these materials are ACM. If these materials prove to contain asbestos, they should be properly removed and disposed of in accordance with applicable regulations. If any of the aforementioned ACM are to be unaffected by any future renovation activities, they can remain but need to be managed in accordance with Occupational Health and Safety Administration (OSHA) regulations 29 CFR 1910.1001 and 1926.1101.
- Lead-based paint has the potential to be present in painted surfaces, under existing layers of paint, or in fill material.

The following recommendations were developed for the property based on the environmental conditions documented during the investigation:

- A Subsurface (Phase II) Investigation and geophysical survey should be conducted prior to the any redevelopment to identify and characterize potential subsurface contamination, to characterize soil that would be disturbed during any planned construction, and to determine whether any releases are associated with the boat yard and/or any historic underground storage tanks (at the Property or the neighboring gasoline station).
- Any excavated soil requiring off-site disposal should be managed in accordance with applicable regulatory requirements. If contaminated soil or unforeseen underground storage tanks are discovered during any future soil excavation activities, they should be removed and disposed of in accordance with applicable regulatory requirements, including those relating to tank registration and spill reporting, if necessary.
- A pre-renovation or pre-demolition ACM survey should be performed prior to any disturbance of suspect ACM and any ACM or PACM with the potential to be disturbed during renovation or demolition activities should be removed and disposed of in accordance with applicable regulations. ACM and PACM should be maintained in good condition in accordance with applicable regulations.
- Any renovation or demolition activities with the potential to disturb lead-based paint must be performed in accordance with the applicable Occupational Safety and Health Administration regulation (OSHA 29 CFR 1926.62—*Lead Exposure in Construction*). Other lead-based paint requirements may be associated with the school/residential uses at the Property.

Parcel 36-1-49

Parcel 36-1-49 consisted of approximately 0.7-acre and comprised a convenience store, gasoline filling station and an asphalt-paved surface parking lot. The following RECs and *de minimis* conditions and/or other environmental concerns were identified as summarized below.

- The current and past use of the property as a gasoline filling station, with multiple USTs, could be associated with a release of gasoline affecting soil and/or groundwater. A release of gasoline occurred according to a July 2017 NYSDEC spill report documenting that a tank testing contractor witnessed a dispenser pump leaking gasoline below ground. It was not confirmed if the release encountered the underlying soil. Also, registration for the current USTs are not up to date with NYSDEC, however NYSDEC has documented that they do not have jurisdiction over the property. This lack of NYSDEC jurisdiction might indicate that other UST requirements under the NYSDEC Petroleum Bulk Storage (PBS) program (e.g., relating to testing and monitoring) may not have been completed. There was no documentation indicating recent maintenance, leak detection, or fluid measurement records. Based on the age of the facility and known previous USTs and UST removals, there is a potential for abandoned USTs (containing gasoline or potentially fuel oil for heating) or contamination from these prior USTs to remain in the subsurface. A 2009 Subsurface Investigation identified typically gasoline-related VOCs in one soil sample collected from near the USTs, but only at concentrations meeting the most stringent state guidelines.

De Minimis Conditions

- The area was historically undeveloped surrounded by some residences and agricultural or wooded land. Potential herbicide and pesticide use may have affected shallow soils at the Property.
- Historical fill: a 2008 Phase II ESA of the Property indicated that fill containing asphalt was present with the top 5 feet of subsurface material.
- Suspect asbestos-containing materials (ACM) observed during the previous 2009 Phase I reconnaissance included: flooring materials, window and door caulk and glazing, floor tiles and associated mastic, plaster and sheetrock, and roofing materials. Additional ACM may be present within pipe chases, behind walls, beneath existing flooring, under a new roof, or in other hidden locations. Prior to any renovation or demolition activities with the potential to disturb suspect ACM, an asbestos survey should be conducted to determine if these materials are ACM. If these materials prove to contain asbestos, they should be properly removed and disposed of in accordance with all applicable regulations. If any of the aforementioned ACM are to be unaffected by any future renovation activities, they can remain in the buildings but should to be managed in accordance with applicable Occupational Health and Safety Administration (OSHA) requirements (29 CFR 1910.1001 and 1926.1101).
- A violation was issued by SCCE on November 3rd, 2015 for No Building Permit for work being done on the Property. An inspection by SCCE on November 10th, 2015 revealed several violations including improperly stored combustible waste and lack of daily logs monitoring fuel levels. On December 30, 2015, SCCE noted many of the issues had been corrected.
- Lead-based paint has the potential to be present in painted surfaces, under existing layers of paint, or in historical fill material.

The following recommendations were developed for the property based on the environmental conditions documented during the investigation:

- A subsurface (Phase II) investigation should be conducted to evaluate soil, groundwater, and soil vapor to determine whether the documented spill or other gas station operations, have affected soil, groundwater, or soil vapor at the Property. Prior to any site development, a subsurface investigation should be conducted to ensure proper handling of soil and/or groundwater during any future subsurface disturbance.
- A pre-renovation or pre-demolition ACM survey should be performed prior to any disturbance of suspect ACM and any ACM or presumed ACM (PACM) with the potential to be disturbed during renovation or demolition activities should be removed and disposed of in accordance with applicable requirements. ACM and PACM should be maintained in good condition in accordance with applicable regulations.
- Any renovation or demolition activities with the potential to disturb lead-based paint must be performed in accordance with Occupational Safety and Health Administration requirements (OSHA 29 CFR 1926.62—*Lead Exposure in Construction*).

OVERLYING RECOMMENDATION FOR ALL CAYUGA AND SENECA COUNTY PROPERTIES

In the event that future development is considered, soil excavated as part of any proposed development activity should be managed in accordance with all applicable regulations. If areas of soil contamination, unforeseen tanks, buried debris, or other materials are discovered, they should be delineated, remediated, and/or removed in accordance with all applicable regulations. Soil intended for off-site disposal should be tested in accordance with the requirements of the intended receiving facility; and transportation of material leaving the property must be in accordance with federal, state, and local requirements covering licensing of haulers and trucks, placarding, truck routes, manifesting, etc.

Radon levels should be tested in accordance with applicable regulations for any future on-site development.

SUBSURFACE (PHASE II) INVESTIGATION

Using the findings of the Phase I ESAs, a Phase II investigation was conducted at Parcel 134.17-1-1.21 as summarized below. The Phase II investigation was intended to determine whether current or former on- or off-site activities had adversely affected environmental conditions at the site.

Parcel 134.17-1-1.21 (299 Cayuga Street, Union Springs, NY)

On September 27, 2016, AKRF completed a Phase II Subsurface Investigation at the gas station portion of the property. The investigation consisted of drilling six soil borings to depths ranging from 7 to 16 feet below grade, collection of continuous soil samples from each boring, field screening each soil sample for evidence of contamination, and laboratory analysis of a selected soil sample from each boring. In general, soil samples were localized in and around known areas of petroleum use (i.e. underground tanks and the dispenser pump islands). An additional boring was drilled on the western side of the property in an unsuccessful attempt to reach groundwater.

Soil collected from a two-foot shallow interval (two to four feet below grade) at soil boring SB-5, which was drilled next to the gasoline dispenser pump island, contained evidence of contamination (i.e. dark coloring, volatile vapors detected with a meter at low levels) in a two-

foot zone (two to four feet below grade). The zone also contained evidence (i.e., wood) of fill. Laboratory results for a sample collected from this zone contained volatile organic compounds at concentrations that were below the NYSDEC Cleanup Objective for unrestricted use. An adjacent boring did not contain the noted fill material, indicating that the fill material is likely isolated. The field observations and laboratory results indicated that limited petroleum contamination was likely confined to a small area in the vicinity of the dispenser island.

No evidence of petroleum contamination observed in the remaining soil samples, and the laboratory results were below the NYSDEC Cleanup Objective for unrestricted use. Overall, the investigation data did not identify any areas that had been adversely affected by current or former on-site operations.

In addition to the recommendations included in the Phase I ESA, the Phase II included the following recommendation:

- The tank and dispenser systems should be inspected to confirm that the secondary containment and leak detection systems are in compliance with applicable NYSDEC and federal regulations. Any deficiencies and/or evidence of a release, if present, should be addressed in accordance with applicable requirements.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, which involves placing the Nation's properties into trust, no changes to the use of the property are proposed. With the exception of the report of an observed gasoline release from a dispenser pump at the Nation's Seneca Falls property (Parcel 36-1-49), no new recognized environmental conditions were identified. Based on these observations, an assessment should be conducted at Parcel 36-1-49 to determine whether the reported spill at the Seneca Falls property resulted in a release to the subsurface soil, and to confirm the nature and extent of any documented release. The potential for a release from the gasoline station was previously considered and identified, and managing the potential for a release is a part of the daily routine of any gasoline station. The potential impacts from a release can be managed through established investigation and any completed remediation activities that are consistent with the requirements of the NYSDEC Spills program. Prior to any site development, an investigation and/or soil characterized should be completed as recommended in this Section to ensure proper handling of soil and/or groundwater during any future subsurface disturbance. Construction measures are available to mitigate the potential for impacts during any future development. Therefore, with the appropriate actions completed, no significant adverse impacts related to hazardous materials would result from the placement of the Nation's parcels into trust.

ALTERNATIVE 2: NO ACTION

Under this alternative, no changes are proposed and the properties would continue to be used as they are now. As with the Preferred Alternative, the potential for a release from the gasoline station was previously considered and identified, and managing the potential for a release is a part of the daily routine of any gasoline station. The potential impacts from a release can be managed through established investigation and any completed remediation activities that are consistent with the requirements of the NYSDEC Spills program. Although the No Action alternative assumes no change in current operations, should any site development occur in the future, an investigation and/or soil characterized should be completed as recommended in this Section to ensure proper handling of soil and/or groundwater during any future subsurface disturbance. Construction measures are available to mitigate the potential for impacts during any

future development. With these measures in place, no significant impacts associated with hazardous materials are anticipated to result from the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the four tax lots included in the Nation's fee-to-trust application in the Village of Union Springs would be taken into trust by the United States. The Nation's LakeSide Trading commercial enterprise and LakeSide Entertainment Class II gaming facility in Union Springs would continue to operate, and the Lakeside Entertainment gaming facility in Seneca Falls would resume operation. The Nation's non-Enterprise Property in the Town of Springport, in Cayuga County, would not be taken into federal trust.

Under this alternative, the properties would continue to be used as they are now, and the potential impacts related to hazardous materials are the same as those related to the Preferred Alternative.

CUMULATIVE IMPACTS

No cumulative impacts on hazardous materials are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on hazardous materials resulting from the proposal, and no other proposals impacting the same resources, no cumulative impacts are anticipated.

NOISE

As discussed in the FEIS, traffic on adjacent roadways is the main source of ambient noise; changes to traffic patterns or volumes could lead to changes in the ambient noise level. In order to identify any potential impacts, a screening level analysis was performed at locations where the Proposed Action would have the potential to increase traffic volumes and therefore increase noise levels. The screening analysis determined that the level of traffic associated with the Proposed Action, even with gaming resumed, would not result in any significant noise increases.

As further discussed in "Traffic and Transportation," below, there have been no significant new circumstances or information relevant to concerns related to background traffic conditions since the publication of the DEIS and FEIS, both of which assumed that both gaming facilities would be operational. In addition, the Proposed Action would not result in any significant changes to existing traffic conditions in the vicinity of the Nation's properties. As such, the conditions described in the FEIS would be expected to continue at the Nation's properties in Cayuga and Seneca Counties. Therefore, no significant adverse noise impacts are anticipated to result from the Proposed Action.

LIVING RESOURCES

The following section describes the existing vegetation and wildlife resources on the Nation's properties. This information is based on site inspections, and from published sources and databases of species occurrence, including the NYS Breeding Bird Atlas Project, "Checklist of Amphibians, Reptiles, Birds and Mammals of New York State (NYSDEC), "New England Wildlife" (DeGraaf and Yamasaki 2001), the NYS Natural Heritage Program database, and the U.S. Fish and Wildlife Service (FWS) IPac records (see **Appendix A**).

Each of the properties was visited in preparation of the DEIS on June 1, 2006 to inspect general habitat conditions, the presence of water features and wetlands, and to inventory the primary species of vegetation and habitat cover types. At that time it was established that the subject properties have relatively low vegetation and wildlife values due to their current condition as

mowed lawn—particularly the Springport and Seneca Falls Properties. The Union Springs Property has a larger parcel of open agricultural land and forested hedgerow habitat that is more botanically diverse. Nevertheless, it is primarily open agricultural land—a vegetative cover type that is very common in the region. In sum, none of the subject properties comprised unique habitats rare in Cayuga or Seneca Counties.

Since the publication of the FEIS, there have been no substantial changes in land use that would affect living resources on the Nation’s properties or the character of the habitat described therein. The only physical change of note was the construction of six small cabins and a small school building on the Seneca Falls Property. However, these structures were constructed in an area that was part of the campground and was characterized by open lawn. Therefore, there have been no significant new circumstances that would affect living resources on the properties since the publication of the FEIS.

THREATENED AND ENDANGERED SPECIES

The NHP and the FWS were contacted for information on past records of occurrence of any state- or federally listed plant and animal species in the vicinity of the subject properties. A letter was sent to NHP on September 29, 2016 (see **Appendix A**) regarding the Cayuga County properties but no response was received. However, the NYSDEC Environmental Resource Mapper, which draws from the NHP database, does not indicate the potential presence of any threatened or endangered species or significant natural communities in the vicinity of the Union Springs or Seneca Falls properties.⁴ The Environmental Resource Mapper does indicate that the Springport Property is within 1/2 mile of a known significant natural community and within a rare plants or animals check zone. However, this parcel is currently vacant land and no development is contemplated at this time.

FWS, in correspondence dated November 15, 2007, acknowledges the determination of no effect, and states that no further coordination under the Endangered Species Act is required. This correspondence from FWS is provided in **Appendix F**. As a follow-up to this consultation, the current FWS records were reviewed through the FWS IPac website (see **Appendix A**).

FWS’ IPac report revealed the northern long-eared bat (*Myotis septentrionalis*) (Threatened), as having the potential to occur on site; however no critical habitats were listed. The northern long-eared bat’s decline is greatly due to the white-nose syndrome. Preferred roosting sites are in caves or in cavities or crevices of both live and dead trees. The northern long-eared bat was listed as threatened under the Endangered Species Act on April 2, 2015, and therefore was not identified in the FEIS. Follow-up consultation with FWS would confirm the locations of the closest hibernacula. However, since no tree clearing or other disturbance is proposed, no impacts to northern long eared bat are anticipated.

It is also of note that the current IPac report showed no potential occurrence of Indiana bat, which had been identified in the FEIS. The FWS’ IPac report does not identify any other species not previously analyzed.

The NYSDEC Breeding Bird Atlas was also consulted (see **Appendix A** for a complete list of species). Eighty-five (85) species were listed as being likely to occur on site. The Red-headed woodpecker (*Melanerpes erythrocephalus*) (NYS Special Concern), the Grasshopper Sparrow

⁴ <http://www.dec.ny.gov/gis/erm/> (accessed January 2018)

(*Ammodramus savannarum*) (NYS Special Concern), and Northern Harrier (*Circus cyaneus*) (NYS Threatened) all have the potential to occur on site. All of these species were previously identified in the FEIS. The open farmland/woodland buffer nature of the property could potentially provide suitable habitat for these species; however, due to the lack of new construction they would be unlikely to be impacted by the Proposed Action.

The NYSDEC Herp Atlas was also consulted. NYSDEC listed fourteen (14) amphibians and four (4) reptiles as having the potential to occur on site, but none of these species are listed with special protection (see **Appendix A** for a complete list of species).

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the property would continue to be used as per the baseline environmental conditions, and there would be no changes to onsite vegetation or wildlife resources. NHP and FWS were contacted for information on past records of occurrence of any state- or federally listed plant and animal species in the vicinity of the Nation's properties. In 2007, FWS indicated that there is potential for the federally and state-listed endangered Indiana bat (*Myotis sodalists*) to occur within the vicinity of the Nation's properties, which are approximately four to ten miles from known roosts and approximately 33 to 36 miles from known hibernacula in Onondaga County. Recent consultation with the FWS' IPac report showed no potential occurrence of Indiana bat, but showed potential for the threatened northern long-eared bat. However, as discussed above, since no tree clearing or other disturbance is proposed no impacts to northern long eared bat are anticipated.

Since the Proposed Action would not result in any changes to onsite vegetation or wildlife resources, the conclusion in the FEIS that there would be no significant impacts to living resources as a result of the Proposed Action remains valid. Correspondence received from FWS dated November 15, 2007 acknowledged the determination of no effect, and stated that no further consultation regarding endangered species was required. Since the publication of the FEIS, the northern long-eared bat has been added as a potential resource; however, since no new development is proposed, no effect on threatened or endangered species is anticipated. Furthermore, any future development of the Nation's lands would comply with all applicable federal laws. Therefore, there would be no significant impacts to threatened or endangered species as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

Under this alternative there would be no changes to onsite vegetation or wildlife resources. Therefore, no significant impacts to living resources are anticipated as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

As with Alternatives 1 and 2, there would be no changes to onsite vegetation or wildlife resources. Therefore, no significant impacts to living resources are anticipated as a result of the Enterprise Properties into Trust Alternative.

CUMULATIVE IMPACTS

No cumulative impacts on living resources are anticipated for the Proposed Action under any of the analyzed alternatives. With no impacts on living resources resulting from the proposal, no cumulative impacts are anticipated.

CULTURAL RESOURCES

Potential impacts to cultural resources in the vicinity of the Nation's properties were analyzed. Since the publication of the FEIS, only one new historic resource, the Schenck Farm, has been identified as eligible for the State and National Register of Historic Places. The Schenck Farm property is located approximately 0.9 miles east of the Nation's Union Springs Property. The property has been determined by the New York State Historic Preservation Office to be eligible for inclusion in the National Register because it embodies the distinctive characteristics of a type, period, or method of construction. The Schenck Farm is a distinctive Federal-style brick farmhouse built in 1820 with an early twentieth century barn.

However, due to the distance, existing vegetation, and topography, the Schenck Farm is not visible from any of the Nation's properties.⁵ No other new historic or archeological resources have been identified on or in the vicinity of the Nation's properties. Accordingly, there have been no new significant circumstances of information relevant to concerns related to cultural resources since the issuance of the FEIS.

As disclosed in the FEIS, the Nation's Union Springs and Springport properties, and much of the Finger Lakes Region, are located in areas deemed to be archeologically sensitive by the New York State Historic Preservation Office. However, there are no known archeological sites on any of the Nation's properties. The Seneca Falls property is not located in an archeologically sensitive area. Over the years, the Nation's Union Springs Property, with the exception of the approximately 100-acre field, have been extensively disturbed. The Nation's Union Springs Property has potential to yield archaeological resources given its proximity to Cayuga Lake and favorable conditions that could have potentially supported village life. However, during the historic era this property was intensively farmed and the soil disked and tilled. Therefore, it is anticipated that any potential prehistoric resources that might have been present on this property were disrupted and scattered over the years of farming and agricultural uses.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

The Proposed Action will not have an impact on locally significant historical or archeological sites due to the proximity of the Nation's properties to sites of known or potential historic significant, and due to the low potential of most of the Nation's properties to yield archeologically significant artifacts. A letter was sent to the New York State Historic Preservation Officer on October 14, 2005 (see **Appendix F**) to confirm that no historic properties would be affected by the Proposed Action. The fee-to-trust property transfer is an undertaking as defined in Section 301 of the National Historic Preservation Act. On October 17, 2005, the New York State Historic Preservation Officer (SHPO) in Albany, New York, acknowledged receipt of the fee-to-trust notification package submitted by BIA for environmental review and compliance. The package documented BIA's finding that no historic properties would be affected.

BIA also submitted a copy of the fee-to-trust notification package to the Deputy State Historic Preservation Office in Peebles Island, New York, by fax on October 19, 2006. BIA did not receive comments from the offices of the SHPO or Deputy SHPO concerning the proposed fee-to-trust property transfer. According to 36 CFR §800.4(d)(1)(i), "if the SHPO/DHPO, or the

⁵ Resource Evaluation Form, USN 01118.000029, dated 10/30/2000.

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Advisory Council on Historic Preservation if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under Section 106 are fulfilled." While the absence of a response from SHPO cannot establish or disestablish the cultural significance of the properties, the proposed action does not include any physical changes to the subject parcels.

Therefore, no significant impacts to existing historical or cultural resources on or in the vicinity of any of the properties are expected. Furthermore, if any development of the Nation's property were to be proposed in the future, the Nation would comply with all Federal laws regarding cultural and historic resource protection and preservation, including but not limited to the National Historic Preservation Act of 1966 (Public Law 89-665, as amended).

ALTERNATIVE 2: NO ACTION

No changes are expected to archeological or historically significant sites in the vicinity of the Nation's properties. Therefore, no significant adverse impacts to cultural resources on or in the vicinity of the Nation's properties are expected.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative will not have an impact on locally significant historical or archeological sites, because of the distance of these sites to other known sites, and the low potential of the Nation's properties to yield archeologically significant artifacts. No changes are proposed to any of the properties, and if any development were to be proposed in the future, the Nation would comply with all Federal laws regarding cultural and historic resource protection and preservation. Therefore, no significant impact on existing historical or cultural resources on or in the vicinity of any of the properties is expected.

CUMULATIVE IMPACTS

No cumulative impacts on cultural resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on cultural resources resulting from the proposal, no cumulative impacts are anticipated.

SOCIOECONOMIC CONDITIONS

The following section describes the socioeconomic conditions in the vicinity of the Nation's properties. As previously discussed, the Nation has resumed operation of its LakeSide Entertainment facility in Union Springs, and the Nation intends to resume operation of the LakeSide Entertainment facility in Seneca Falls, as assumed in the DEIS and FEIS. For the reasons identified below and in the FEIS, no significant adverse socioeconomic conditions are expected to result from the Proposed Action.

FISCAL CONDITIONS

Cayuga County Properties

The Cayuga County Properties are located within the taxing jurisdictions of Cayuga County, the Town of Springport, the Springport Town Fire District, Sewer District 1, Water District 1, and the Union Springs Central School and Library Districts. In addition, the Nation's Enterprise

Property is located within the Village of Union Springs taxing jurisdiction. **Table 2** summarizes the current property taxes based on the 2016 County, Town, and Village assessment rolls.⁶

In 2016, the Nation’s Springport properties were assessed a total of \$59,923 in property taxes. This total includes \$17,730 to Cayuga County, \$890 to the Town of Springport, \$135 to the College Charge Back, \$2,259 to the Springport Town Fire District, \$268 to Sewer District 1, \$248 to Water District 1, \$30,522 to the Union Springs Central School District, and \$288 to the Union Springs Library District. In addition, the Union Springs Property was assessed \$7,584 in property taxes by the Village of Union Springs.

Table 2
Existing Property Taxes – Cayuga County Properties

Taxing Jurisdiction	Nation’s Union Springs Property				Nation’s Springport Property	TOTAL
	134.17-1-1.121	134.17-1-1.21	134.17-1-1.51	141.05-1-3	150.00-1-29.1	
Cayuga County	\$10,909	\$1,794	\$3,636	\$1,048	\$342	\$17,730
Town of Springport	\$547	\$90	\$182	\$53	\$17	\$890
College Chargeback	\$83	\$14	\$28	\$8	\$3	\$135
Springport Town Fire District	\$1,390	\$229	\$463	\$134	\$44	\$2,259
Sewer District 1					\$268	\$268
Water District 1					\$248	\$248
Village of Union Springs	\$4,758	\$782	\$1,586	\$457		\$7,584
Union Springs School District	\$18,780	\$3,088	\$6,260	\$1,805	\$589	\$30,522
Union Springs Library District	\$177	\$29	\$59	\$17	\$6	\$288
TOTAL	\$36,645	\$6,026	\$12,215	\$3,521	\$1,517	\$59,923
Notes: 2016 Taxes						
Source: http://imate.cayugacounty.us/IMO/search.aspx						

According to the 2016 Assessment Roll Total Parcel Count, there are 1,366 tax lots in Springport (including the Village of Union Springs) with a taxable assessed value of \$173,825,207. The total assessed value of the Nation’s Springport and Union Springs Properties is \$1,828,400, which represents 1.05% of the total assessed value of the Town of Springport.

Seneca Falls Properties

The Seneca Falls Properties are located within the taxing jurisdictions of Seneca County, the Town of Seneca Falls, the Seneca Falls Central School District, the Bridgeport Fire District, the Bridgeport Sewer District, and the Seneca Falls Refuse District. **Table 3** summarizes the current property taxes based on the 2017 County and Town assessment rolls.

In 2017, the Nation’s Springport properties were assessed a total of \$51,933 in taxes. This includes \$13,593 to Seneca County, \$6,045 to the Town of Seneca Falls, and \$30,773 to the Seneca Falls Central School District.

⁶ <http://www.cayugacounty.us/Departments/Real-Property/Assessment-Rolls>

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According to the 2017 Assessment Roll Total Parcel Count, there are 3,727 tax lots in Seneca Falls with a taxable assessed value of \$475,825,725. The total assessed value of the Nation’s Seneca Falls Properties is \$1,213,900, which represents 0.26% of the total assessed value of the Town of Seneca Falls.

Table 3
Existing Property Taxes – Seneca County Properties

Taxing Jurisdiction	36-1-48.1	36-1-48.2	36-1-49	Total
Seneca County	\$4,615	\$4,005	\$4,973	\$13,593
Town of Seneca Falls	\$1,942	\$1,862	\$2,241	\$6,045
Seneca Falls Central School District	\$9,887	\$9,479	\$11,408	\$30,773
Bridgeport Fire	\$339	\$325	\$392	\$1,056
Bridgeport Sewer	\$89	\$89	\$89	\$266
Seneca Falls Refuse	\$67	\$67	\$67	\$200
TOTAL	\$16,938	\$15,826	\$19,168	\$51,933
Notes: 2017 Taxes				
Sources: http://imo.co.seneca.ny.us/				

Alternative 1: The Proposed Action – The Preferred Alternative

The Proposed Action would place five tax lot parcels in Cayuga County and three tax lot parcels in Seneca County into trust. As a result, these tax lots would not be subject to state or local taxation. **Table 4** summarizes the loss in property taxes as a percent of each taxing jurisdiction.

The Proposed Action would result in a net loss of \$17,730 in property tax revenue for Cayuga County and \$13,593 in property taxes for Seneca County. In total, this represents approximately 0.05 percent of the Cayuga County and 0.14 percent of the Seneca County total revenue from property taxes.

The change in tax revenue generated by the Nation’s properties since the publication of the FEIS is *de minimis* when considered in the context of the total tax base of the Village of Union Springs, the Towns of Springport and Seneca Falls, and Cayuga and Seneca Counties. Therefore, as previously analyzed in the FEIS, the Proposed Action would not have a significant adverse impact on local taxing jurisdictions.

Table 4
The Nation's Property Tax Payments as Percentage of Total County/Municipal Property Tax Collections

	Cayuga County ¹		Seneca County ²
	Town of Springport Property	Village of Union Springs Property	Town of Seneca Falls Property
County¹			
Total Property Taxes Collected	\$38,635,189	\$38,635,189	\$9,490,528
The Nation's Property Tax	\$342	\$17,388	\$13,593
Nation's Percent of Total	0.0009%	0.0450%	0.1432%
Town/Village			
Total Property Taxes Collected	524,008 ³	\$260,347 ⁴	\$ 2,303,623 ⁵
The Nation's Property Tax	\$890	\$7,584	\$6,045
Nation's Percent of Total	0.1698%	2.9131%	0.2624%
School (including Library)⁶			
Total Property Taxes Collected	\$7,435,313	\$7,435,313	\$12,543,536 ⁷
Total Nation Property Tax	\$595	\$30,215	\$30,773
Nation's Percent of Total	0.0080%	0.4064%	0.2420%
Notes: All values reported for 2016.			
Sources: ¹ Cayuga County 2016 Budget, http://www.cayugacounty.us/Portals/0/Leg/Published%20budget/Budget%20Records/2016%20Adopted%20Budget.pdf			
² Seneca County 2016 Budget, https://www.co.seneca.ny.us/wp-content/uploads/2015/12/2016-Seneca-County-Budget-ADA.pdf			
³ http://orpts.tax.ny.gov/MuniPro/ (Accessed November 1, 2016).			
⁴ 2016 Union Springs Assessment Roll, http://www.cayugacounty.us/Departments/Real-Property/Assessment-Rolls			
⁵ Seneca Falls Town Budget http://www.senecafalls.com/minutes/town/2017/2017-ADOPTED-BUDGET.pdf			
⁶ Union Springs Central School District 2015-2016 Budget Proposal, http://www.unionspringscsd.org/tfiles/folder181/2015%2016%20BUDGET%20NEWSLETTER.pdf			
⁷ Seneca Falls 2016-17 Budget, https://www.senecafallscsd.org/site/handlers/filedownload.ashx?moduleinstanceid=528&dataid=1910&FileName=bdgt%2017-18%20overall%20budget%20final%205_1_17.pdf			

Alternative 2: No Action

Under this alternative, the Nation will consider all options available to it under the law with respect to payment of real property taxes on these parcels. Therefore, no significant adverse fiscal conditions are anticipated.

Alternative 3: Enterprise Properties into Trust

Under this alternative, only the Nation's Enterprise Property would be taken into trust. The vacant property in the Town of Springport would remain under the taxing jurisdiction of the relevant authorities and the Nation will consider all options available to it under the law with respect to payment of real property taxes on this parcel. The overall effect of removing the Enterprise Property from local real property taxation would be the same as those for the affected properties as enumerated above, under the Preferred Alternative.

As with the Proposed Action, this alternative would result in positive fiscal benefits to the Nation as a result of continuation and security of its commercial enterprises. These revenues would enable the

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Nation to further its goals of cultural preservation, expression and identity, self-determination, self-sufficiency and economic independence as a federally recognized Indian tribe.

Cumulative Impacts

No cumulative fiscal impacts are anticipated to result from the Proposed Action, or any of the analyzed alternatives. The Nation's properties represent a small fraction of the total taxable land base within Cayuga and Seneca Counties, the Towns of Springport and Seneca Falls, and the Village of Union Springs. Even when considered with other non-taxable entities (e.g., religious institutions and not-for-profit organizations), the cumulative fiscal impacts are not considered to be significant.

ECONOMIC EFFECTS

The Nation's LakeSide Trading and LakeSide Entertainment operations at its Union Springs Property and the LakeSide Trading operation at the Seneca Falls Property generate economic activities that benefit the Towns of Springport and Seneca Falls, the Village of Union Springs, Cayuga County, Seneca County, and New York State as a whole. As analyzed in the 2010 FEIS and updated below, the Nation has created jobs that employ local workers, and its business ventures generate operating expenditures that provide wide-ranging effects. This section discusses the estimated economic effects that result from the Nation's current business operations at its Union Springs and Seneca Falls locations, as well as future benefits associated with the re-opening of the gaming facility in Seneca Falls. The analysis considers benefits to Cayuga County, Seneca County, and to the wider New York State economy.

The principal model used in the DEIS and FEIS to analyze the estimated economic effects of the existing operations was IMPLAN (IMPact analysis for PLANning), an input-output modeling system. IMPLAN was originally developed by the U.S. Department of Agriculture Forest Service in 1979 and was subsequently privatized by the Minnesota IMPLAN Group (MIG). The model uses the most recent economic data from sources such as the U.S. Bureau of Economic Analysis, the U.S. Bureau of Labor, and the U.S. Census Bureau to predict estimated effects on the local economy from direct changes in employment or spending. The model contains data on more than 500 economic sectors, showing how each sector affects every other sector as a result of a change in the quantity of its product or service.

Economic benefits were projected based on actual business expenditures reported by the Nation, as well as on actual employment provided by the Nation at its business locations.⁷ Using IMPLAN terminology, estimated economic effects are broken into three components: direct, indirect, and induced. These terms are described below.

Direct effects represent the benefits to the economy of the Nation's actual spending on employment, goods, or services.

Indirect effects represent the benefits that are generated by the Nation or its employees making purchases or spending money that benefit other businesses or industries as a result of their spending. This would include, for example, indirect employment. Indirect employment is the creation or support of jobs in other (e.g., non-Nation) businesses that result from the Nation's expenditures. These would, for instance, include jobs in businesses or industries that provide

⁷ Pursuant to Exemption 4, 383 DM 15, § 5.6; 5 U.S.C. §552(b), further information related to the business plan of the Cayuga Indian Nation is withheld as confidential business information.

goods and services to the Nation. These non-Nation businesses in turn purchase goods and services from other businesses, causing a ripple effect through the economy. The ripple effect continues until leakages from the region (caused, for example, by imported goods) stop the cycle. The sum of these iterative inter-industry purchases is called the *indirect effect*.

Induced effects represent the impacts caused by increased income in a region. In this analysis, the Nation’s employment or workers result in both direct and indirect effects that generate more worker income by increasing employment and/or salaries throughout the region in certain industries. Households of the Nation’s employees and households of workers whose jobs are supported by the indirect effects of the Nation’s employment and business spending in turn spend some of their additional income on local goods and services, such as food and drink, recreation, and medical services. Again, these expenditures cause a ripple effect through the entire economy. Benefits generated by these household expenditures are quantified as *induced effects*.

Direct Investment in the Cayuga County Economy

The Nation’s Union Springs Property is the location of a LakeSide Trading operation, which consists of a convenience store, gas station, and car wash facility. In addition, the Nation’s LakeSide Entertainment 1 gaming facility is located in a nearby 2,304-square-foot one-story building which houses a gaming room, which includes 86 electronic bingo machines and a cashier’s booth. The Springport site is currently vacant; therefore, no economic analysis was done for this property.

The Nation currently maintains a workforce consisting of 30 employees in Cayuga County. This includes nine administrative employees, as well as employees at the Nation’s convenience store and gaming operations. These jobs and the wages and salaries paid to these employees also represent a direct investment in the local economy by the Nation.

In addition to paying wages and salaries to employees, the Nation’s Union Springs gas station, car wash, and convenience store make expenditures in the order of \$560,011 in Cayuga County per year to purchase goods and services, therefore supporting local businesses. The major categories of recurring purchases made on an annual basis to support the Nation’s Union Springs operations are shown in **Table 5**.

Table 5
LakeSide Enterprise Purchases in Cayuga County

Category of Expenditure	Annual Amount Spent
Non-cigarette/gas items for resale	\$400,000
Print Advertising	\$28,050
Office Supplies	\$14,433
Other Professional Services	\$16,664
Repair & Maintenance	\$68,771
Supplies	\$32,093
TOTAL	\$560,011
Notes: This table reflects amounts expended for normal business operations based upon an analysis of actual expenditures during Fiscal Year 2017.	

In addition to the payment of wages and salaries and the expenditures made to purchase goods and services, the Nation’s annual operating expenses for its Union Springs operations include water and sewer fees of approximately \$6,000 per year, gas and electric fees of approximately \$1,500 per year, and rent of approximately \$3,500 per year.

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Modeling Assumptions for Cayuga County

The economic effect of the annual operations of the Nation’s Lakeside Enterprise in Union Springs has been estimated for Cayuga County and New York State using the IMPLAN model and operating data provided by the Cayuga Indian Nation in 2018. Two IMPLAN sectors were used in the model: Sector 402-Gasoline station with convenience store, and Sector 495-Bingo Parlor. Administrative payroll expenses were divided between the two sectors based on the Nation’s employment ratios by employee class.

Indirect and Induced Economic Impacts

Employment. The Nation’s existing operations in Cayuga County directly provide 30 permanent full- and part-time jobs. Total employment includes these direct jobs, as well as jobs in business establishments providing goods and services to the Nation’s employees (indirect jobs), and jobs resulting from new household spending (induced jobs). Based on the IMPLAN model’s economic multipliers for Cayuga County, the total number of direct, indirect, and induced jobs from the annual operation of the Nation, including its Union Springs LakeSide Trading operations, is 42 jobs (see **Table 6**).

Table 6
Economic Benefits from Operation of the Nation’s
Cayuga County LakeSide Enterprise

Employment Under the Proposed Action³	Cayuga County	New York State
Employment (Permanent Jobs)		
Direct (on-site)	30	30
Indirect (jobs in support industries)	5	8
Induced (jobs from household spending)	7	9
Total	42	47
Employee Compensation (2018 dollars)		
Direct (on-site)	\$1,622,632	\$1,622,632
Indirect (earnings in support industries)	\$142,435	\$349,921
Induced (earnings from household spending)	\$212,674	\$330,614
Total	\$1,977,741	\$2,303,167
Output (2018 dollars)		
Direct (on-site)	\$3,098,383	\$3,098,383
Indirect (output in support industries)	\$847,369	\$1,481,443
Induced (output from household spending)	\$928,909	\$1,292,952
Total	\$4,874,661	\$5,872,778
Notes:		
¹ Detailed amounts may not add to totals due to rounding. ² The total economic output (or demand) is the effect on the local economy, including the sum of the cost of goods and services used to produce a product and the associated payments to workers, taxes, and profits. ³ Data reflects the existing condition in 2018 with the gaming in operation.		
Sources: The characteristics of operations; and the IMPLAN economic modeling system.		

In the larger New York State economy, the IMPLAN model estimates that the Nation’s business operations generate five jobs of indirect and induced employment, bringing the total number of direct, indirect, and induced jobs in New York State to 47. For both Cayuga County and the State, the direct, indirect, and induced employment estimates represent jobs that would either be new to or retained in Cayuga County and New York State.

Employee Compensation. The Nation’s direct employee compensation in Cayuga County, including its annual operation of the Union Springs LakeSide Enterprise, is approximately \$1,622,632 (in 2018 dollars, see **Table 6**). Total direct, indirect, and induced employee compensation resulting in Cayuga County from the Nation’s annual operations is estimated at \$1,977,741. In the broader New York State economy, total employee compensation from annual operation is estimated at \$2,303,167.

Total Annual Effect on the Local Economy. The direct effect on the local economy from the Nation’s activities in Cayuga County, measured as economic output or demand, is estimated at approximately \$3,098,323 annually. Based on the IMPLAN models for Cayuga County and New York State, the total annual economic activity that results from the Nation’s existing operations is estimated at \$5.87 million in New York State. Of that, \$4.87 million would occur in Cayuga County (see **Table 6**).

Direct Investment in the Seneca County Economy

The Nation’s Seneca Falls Property is the location of a LakeSide Trading and Entertainment operation, which consists of a convenience store, gas station, and gaming facility, which is temporarily closed. The gaming room includes 33 electronic bingo machines and a cashier’s booth.

In addition, a 6-cabin campground, small school house, and day care are operated in ancillary buildings on the Seneca Falls Property. It is unknown if these ancillary operations would continue to operate once the land is placed into trust. Therefore, to provide a conservative estimate of the Nation’s economic benefit to the region, these uses were excluded from the economic analysis. If these uses were to continue, they would provide additional economic benefits to the region beyond what is estimated below.

The LakeSide Trading and Entertainment operation at Seneca Falls, including the resumption of operation at the Seneca Falls gaming facility, requires a workforce of 26 employees. These jobs, and the wages and salaries paid to these employees, represent a direct investment in the local economy by the Nation.

In addition to paying wages and salaries to its employees, the Nation’s Seneca Falls gas station and convenience store have historically made annual expenditures in the order of \$256,455 in Seneca County to purchase goods and services, which further supports local businesses. The major categories of recurring purchases made on an annual basis to support the Nation’s Seneca Falls operations are shown in **Table 7**.

Table 7
LakeSide Enterprise Purchases in Seneca County

Category of Expenditure	Annual Amount Spent
Non-cigarette/gas items for resale	\$221,777
Print Advertising	\$15,987
Repair & Maintenance	\$9,326
Supplies	\$9,365
TOTAL	\$256,455
Notes: This table reflects amounts expended for normal business operations based upon an analysis of actual expenditures during Fiscal Year 2005 (while the gaming facility was in operation) adjusted for inflation and shown in 2018 dollars.	

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Modeling Assumptions for Seneca County

The economic effect of the annual operation of the Nation’s LakeSide Enterprise in Seneca Falls has been estimated for Seneca County and New York State using the IMPLAN model and operating data provided by the Cayuga Indian Nation. Two IMPLAN sectors were used in the model: Sector 402-Gasoline station with convenience store, and Sector 495-Bingo Parlor. Administrative payroll expenses were divided between the two sectors based on the Nation’s employment ratios by employee class.⁸

Indirect and Induced Economic Impacts

Employment. With the resumption of gaming, the Nation’s LakeSide Enterprise in Seneca Falls would directly provide 26 permanent full- and part-time jobs. Total employment would include these direct jobs, as well as jobs in business establishments providing goods and services to the Nation’s employees (indirect jobs), and jobs resulting from new household spending (induced jobs). Based on the IMPLAN model’s economic multipliers for Seneca County, the total number of direct, indirect, and induced jobs from the annual operation of the Nation’s Seneca Falls LakeSide Trading operations is 39 jobs (see **Table 8**).

Table 8
**Economic Benefits from Operation of the Nation’s
Seneca County LakeSide Enterprise**

Employment Under the Proposed Action ³	Seneca County	New York State
Employment (Permanent Jobs)		
Direct (on-site)	26	26
Indirect (jobs in support industries)	9	16
Induced (jobs from household spending)	4	7
Total	39	49
Employee Compensation (2018 dollars)		
Direct (on-site)	\$800,820	\$800,821
Indirect (earnings in support industries)	\$102,054	\$546,670
Induced (earnings from household spending)	\$98,310	\$273,286
Total	\$1,001,184	\$1,620,776
Output (2018 dollars)		
Direct (on-site)	\$4,335,767	\$4,335,767
Indirect (output in support industries)	\$820,960	\$2,245,016
Induced (output from household spending)	\$491,123	\$1,026,356
Total	\$5,647,849	\$7,607,139
Notes:		
¹ Detailed amounts may not add to totals due to rounding. ² The total economic output (or demand) is the effect on the local economy, including the sum of the cost of goods and services used to produce a product and the associated payments to workers, taxes, and profits. ³ Data reflects the proposed condition in 2018 with gaming resumed.		
Sources: The characteristics of operations; and the IMPLAN economic modeling system.		

In the larger New York State economy, the IMPLAN model estimates that the Nation’s business operations generate five jobs of indirect and induced employment, bringing the total number of

⁸ The employment (jobs) data provided in 2007 for the FEIS was inputted into the IMPLAN model. The resulting economic benefits are reported in 2018 dollars.

direct, indirect, and induced jobs in New York State to 49. For both Seneca County and New York State, the direct, indirect, and induced employment estimates represent jobs that would either be new to or retained in Seneca County and New York State.

Employee Compensation. Under the Proposed Action, which assumes the resumption of gaming, the Nation's anticipated direct employee compensation from annual operation of the Seneca Falls LakeSide Enterprise would be approximately \$800,820 (in 2018 dollars, see **Table 8**). Total direct, indirect, and induced employee compensation resulting in Seneca County from the annual operations is estimated at \$1,001,184. In the broader New York State economy, total employee compensation from annual operation is estimated at \$1,620,776.

Total Annual Effect on the Local Economy. Under the Proposed Action, which assumes the resumption of gaming, the direct effect on the local economy from the Nation's Seneca Falls activities, measured as economic output or demand, is estimated at approximately \$4,335,767 annually. Based on the IMPLAN models for Seneca County and New York State, the total annual economic activity that results from the Nation's operations with gaming resumed is estimated at \$7.6 million in New York State. Of that, \$5.6 million would occur in Seneca County (see **Table 8**).

Alternative 1: The Proposed Action – The Preferred Alternative

Under the Proposed Action, the Nation's LakeSide Enterprises at its Union Springs and Seneca Falls Properties would continue with the current gas stations and convenience stores, and the car wash operation in Union Springs. The Nation would also continue its gaming operation on the Union Springs Property and resume the gaming operation on the Seneca Falls Property, as described in the DEIS and FEIS. Although the Nation's gaming facilities are significantly smaller in scale than the other Upstate gaming operations, there is considerable research showing that Indian casinos in rural and poorer markets have a net positive economic impact on the surrounding non-Indian communities.⁹ In fact, research indicates that gross incomes rise, public assistance payments and unemployment rates decline, and certain crime rates fall when Indian casinos are introduced near non-Indian communities.¹⁰ Additionally, if the Nation chooses to continue to operate the school, day care, and campground facilities at its Seneca Falls Property, there will be additional economic benefit not realized in the above analysis.

As discussed above, the operation of the Nation's business enterprises generates positive economic benefits in the form of jobs and local spending. The Proposed Action would ensure the long-term viability of the Nation's enterprises, and positive economic benefits to the region.

In addition, the Nation's lifestyle and cultural values receive critical financial support from its gaming revenues. The revenues from its LakeSide Enterprises are critical to the Nation's plan to establish economic self-sufficiency, as well as its desire to maintain a strong tribal government.

⁹ Numerous studies and analyses are evaluated and presented in Taylor, Jonathan B., Matthew B. Krepps, and Patrick Wang, *The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities*, Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University, April 2000.

¹⁰ See National Opinion Research Center at the University of Chicago, Report to the National Gambling Impact Study Commission – Chapter 5: Impacts of casino proximity on social and economic outcomes: 1980-1997, April 1999; and National Research Council, *Pathological Gambling: A Critical Review*, April 1999.

The continuance of gaming facilities as a revenue source is critical to the Nation's fiscal and cultural well-being.

Alternative 2: No Action

Under this alternative, the Nation would continue to operate its current businesses and would consider all options available to it under the law with respect to payment of real property taxes on these parcels. While the Nation's business enterprises would continue to benefit the local and regional economy, the long-term viability of the properties would be less secure, as they would not have the benefit of being held in federal trust.

Alternative 3: Enterprise Properties into Trust

Under this alternative, only the Nation's enterprise properties would be taken into trust. Since the economic benefits of the Nation's business enterprises are primarily realized through the Union Springs and Seneca Falls Properties, this Alternative would have the same effect as the Proposed Action.

Cumulative Impacts

No cumulative economic impacts are anticipated to result from the Proposed Action, or under any of the analyzed alternatives.

COMMUNITY INFRASTRUCTURE

There have been no significant new circumstances or information relevant to community infrastructure since the publication of the FEIS that would affect the Proposed Action, or the conclusions contained therein.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the properties would continue to be used as described in the FEIS, and there would be no changes to onsite or area water supply, wastewater, energy, or solid waste from the environmental baseline condition which included the operation of the gaming facilities. Under this alternative, the Nation will continue to pay for all utility services or negotiate agreements to provide them as necessary. The Nation will pay its appropriate share of expenses for any community infrastructure services and utilities they use, and use levels would be expected to be the same as under the environmental baseline conditions at the time of the fee-to-trust application. Therefore, there would be no significant impacts to community infrastructure as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

Under this alternative, there would be no changes to on site or area water supply, wastewater, energy or solid waste. The Nation would continue to pay its appropriate share of expenses for any community infrastructure services and utilities they use, and use levels would be expected to be the same as under current conditions. Therefore, there would be no significant impacts to community infrastructure as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the properties would continue to be used as described in the FEIS, and there would be no changes to onsite or area water supply, wastewater, energy or solid waste from the environmental baseline condition which included the operation of the gaming facilities. The Nation will continue to pay for all utilities or negotiate agreements to provide them as

necessary. The Nation will pay its appropriate share of expenses for any community infrastructure services and utilities they use. Therefore, there would be no significant impacts to community infrastructure as a result of the Enterprise Properties into Trust Alternative.

CUMULATIVE IMPACTS

No cumulative impacts on community infrastructure are anticipated for the Proposed Action under any of the analyzed alternatives. No other currently active proposals are similar to the proposal in the county. Implementation of the Nation's proposal would continue the baseline environmental condition of the properties with regards to utility and infrastructure use. With no impacts on community infrastructure resulting from the proposal, no cumulative impacts are anticipated.

COMMUNITY SERVICES

There have been no significant new circumstances or information relevant to community services since the publication of the FEIS that would affect the Proposed Action, or the conclusions contained therein (see **Figure 7**).

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation's use of the properties would remain the same as under the existing conditions. Due to the small size and small scale of the LakeSide gaming facilities, and due to lack of on-site entertainment venues or food and alcoholic beverage services, it is the Nation's experience that patrons are drawn from the localized Cayuga and Seneca County areas. The current facilities are adequately serviced by local emergency service providers. The same level of business operations and local service needs would be anticipated in the future under this alternative.

As discussed in "Socioeconomic Conditions," as trust land, the Nation's property would not be subject to local or county taxation, and would therefore not contribute to the funding of these services through the property taxation system. The Nation, however, would assume the full range of jurisdiction over the subject properties. Further, the Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements in regard to community service providers, including emergency services, to ensure that the Nation's properties and patrons of its businesses are adequately protected.

ALTERNATIVE 2: NO ACTION

Under this alternative, the Nation's properties would continue to be serviced by existing community services, including all Town and Village emergency service providers.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under Alternative 3, the Nation would consider all options available to it under the law with respect to payment of real property taxes on the parcel in Springport. The effects on community services of this alternative would be the same as those of Alternative 1: Proposed Action. While no increased demand for community services is anticipated under this alternative, the Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements with regards to community service providers, including emergency services, to ensure that the Nation's properties and patrons of its businesses are adequately protected.

Cayuga Indian Nation

CUMULATIVE IMPACTS

Although the Nation has acquired additional land, this additional land is not part of the current fee-to-trust application subject to this NEPA analysis. Should the Nation desire to place additional land into trust, additional applications would need to be submitted, and their consideration would be subject to review. At this time, the Nation has no plans to expand its businesses or place any additional parcels of land into trust. Therefore, any consideration of these concerns would be hypothetical, and analysis is not required at this time.

RESOURCE USE PATTERNS

The following section describes the resource use patterns in the vicinity of the Nation’s properties. Although there have been changes to local land use plans and zoning since the publication of the FEIS, the changes are not significant as they relate to the ongoing use of the Nation’s properties, and they do not affect the conclusions of the FEIS. The current zoning of each property is presented in **Table 9** below. There have been no changes to agriculture or recreation since the issuance of the FEIS, and the land use patterns remain relatively unchanged (see **Figure 8**). For the reasons discussed below, no significant adverse impacts to resource use patterns are anticipated to result from the Proposed Action.

**Table 9
Existing Land Use and Zoning**

Tax Number	Lot Acreage	Building Dimensions square footage (sf)	Land Use	Zoning
Village of Union Springs Property				
134.17-1-1.121	0.98	store = 2,480 sf. canopy & pumps = 3,336 sf. storage shed = 168 sf.	Gas station/ convenience store	Commercial (C)
134.17-1-1.121	1	1,800 sf. 3 bays, 10-foot wide	Car Wash	Commercial (C)
141.05-1-3	1.48	2,304 sf.	LakeSide Entertainment (gaming facility)	Commercial (C)
134.17-1-1.51	108	N/A	Vacant/ Open Land/Agriculture	Commercial (C) and Agricultural/ Residential
Town of Springport Property				
150.00-1-29.1	3.70	N/A	Vacant/ Open Land	Agricultural Residential (AR) [current] R1-Residential [proposed] ¹¹
Town of Seneca Falls Property				
36-1-48.1	10.42	Building one = 1,240 sf.	Office buildings (Former Campground)	Agriculture (A-1) and Residential (R-1)
36-1-48.2	2.87	Building two: 1,296 sf.	Former boat repair	Residential (R-1)
36-1-49	0.69	Store front = 1,800 sf.	LakeSide gas station and convenience store and LakeSide Entertainment (gaming facility – temporarily closed)	Residential (R-1)
Sources: Village of Union Springs Tax Collector, Town of Springport Tax Collector Town of Seneca Falls Tax Collector				

¹¹ http://www.cayugacounty.us/portals/1/springport/untitled-2/draft-z-map_archd.pdf (Accessed 11/1/16)

ZONING

Union Springs Property

On November 19, 2013, the Village of Union Springs adopted a new zoning law and map. As such, the Nation's Union Springs Property was rezoned from Commercial (C) and Industrial (I) to Commercial (C) and Agricultural/Residential (AR). Specifically, the 0.98-acre, 1-acre and 1.48-acre parcels were zoned Commercial (C); and the 108-acre parcel was split-zoned, with the portion of the property abutting Route 90 zoned Commercial (C), and the western portion of the property zoned Agricultural/Residential (AR). With the exception of the gaming facility, the uses of the Union Springs Property existed prior to the Nation's acquisition of the Property, and all of the current uses existed prior to the amendment of the zoning ordinance. However, the current uses are consistent with the permitted uses of the amended zoning ordinance.¹²

Springport Property

The three-acre Springport Property is currently located in the Town of Springport's Agricultural Residential (AR) Zoning District. However, the Town of Springport is current considering an update to its zoning ordinance and map. The Nation's property is proposed to be rezoned to Residential-1 (R1).¹³

Currently, the AR Zoning District comprises the entirety of the Town of Springport. Permitted uses in the AR Zoning District include single-family residential dwellings; farms; farm structures; and normal farm practices and operations. **Figure 9** shows the zoning in the vicinity of this property.¹⁴

The proposed zoning for the Town of Springport includes five different zones: Agricultural (AG), Residential (R1), Waterfront Residential (R2), Commercial (C), and Industrial (I). The Springport Property would be located within the R1 district, and be surrounded by R2 to the west, AG to the east, and R1 to the north and south. The subject property is currently a vacant lot and is therefore consistent with the zoning district in which it is located whether or not the proposed zoning is adopted by the Town of Springport.

Seneca Falls Property

The Seneca Falls property is predominantly located in the Town of Seneca Falls Residential (R-1) Zoning District. A portion of the campground is located in the adjacent Agricultural A-1 Zoning District.

The existing LakeSide gas station and convenience store, which would qualify as an automobile service station within the Town Code is not a permitted use in the R-1 Zoning District. However, this property existed in its current developed condition prior to the Nation's acquisition, and the property has been in this use prior to the Nation's acquisition and assumption of the business operations and therefore qualifies as a legal non-conforming use.

¹² Village of Union Springs zoning code available at <http://co.cayuga.ny.us/unionsprings/government/laws/pdffiles/zoningord.pdf>

¹³ http://www.cayugacounty.us/portals/1/springport/untitled-2/draft-z-map_archd.pdf accessed 11/1/16

¹⁴ Town of Springport zoning code available at the Town Office, 859 State Route 326, Cayuga, NY 13034.

Cayuga Indian Nation

The currently operating daycare and school are permitted uses in both the R-1 and A-1 Zoning Districts. The campground use is a Special Permit Use in the A-1 Zoning District.

PUBLIC POLICY

Town of Springport Vision Plan¹⁵

Since the publication of the FEIS, the Town of Springport prepared the Town of Springport Vision Plan (adopted December 12, 2011). The Vision Plan provided a foundation for the Town to develop a new Comprehensive Plan for the future of the community that would reflect the community's values and hopes for what the Town will be in twenty years. The plan also included the implementation of a new Local Waterfront Revitalization Plan.

The Vision envisions its future as “continuing to be a rural community, focusing on Cayuga Lake, a strong agricultural community, a rural village center, an abundance of open space, and valuable natural resources.” To do so, the plan sets five different goals: preserve the rural character of the Town; develop the waterfront with compatible uses consistent with the rural character of the Town; support the current economy and promote the establishment of new enterprises; ensure the viability of farming and agricultural lands; and preserve and enhance open space and the environment.

Town of Springport Draft Comprehensive Plan¹⁶

In May 2013, the Town of Springport prepared the Town of Springport Draft Comprehensive Plan. The purpose of the new Comprehensive Plan was to provide a framework for leaders and residents of the Town to guide the future growth and development of their community to the year 2033 and beyond; and was based on the Town of Springport Vision Plan adopted in 2011. The vision for the future of the Town set by the Comprehensive Plan is relatively similar to the 2011 Vision Plan: “The Town of Springport envisions itself in the future as a rural community that utilizes the aspects which make it unique: Cayuga Lake, a strong agricultural sector, a rural village center, an abundance of open space and valuable natural, cultural and educational resources.” The Town values itself as a “forward-thinking community, strengthened by local governance, responsible for land use control, and community programs balances with respect for individual property rights.” According to the Draft Comprehensive Plan, the Town should focus on the following resources: waterfront revitalization, agriculture, economic development, housing, environmental resources, outdoor recreation, community resources, infrastructure, and governance.

Based on the recommendations of the 2013 Comprehensive Plan, the Town of Springport is currently considering updating its zoning map and code.

Seneca Falls Property

The Town of Seneca Falls is currently in the process of updating its comprehensive plan. However, a draft is not available for public review at this time. Therefore, the 2006 Comprehensive Plan, as evaluated in the 2010 FEIS, remains valid.

¹⁵ <http://www.cayugacounty.us/portals/1/springport/untitled-2/vison-plan-final.pdf>

¹⁶ http://www.cayugacounty.us/portals/1/springport/untitled-2/05-28-13_complan_finaldraft.pdf

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under the Proposed Action, the Nation would gain jurisdiction over the land, and local land use and zoning requirements that currently apply to the Nation's lands would no longer apply. Under this alternative, land use regulation would be conferred on the Nation and be subject to the Cayuga Nation Land Use Ordinance, Ordinance No. CN-2003-01, adopted in 2003 (see **Appendix B**). This ordinance provides for the regulation of the type and scale of development that occurs on the Nation's lands, including trust lands. This ordinance mandates that no existing land uses can be substantially changed or altered unless a Land Use Permit is obtained. The provisions of the Nation's ordinance further require that the Nation consider compatibility of use, location of the proposed use, its congruity with the area, and the environmental effect of the use. These requirements provide a measure of protection to adjacent land uses and serve to protect the public health and safety of residents, and neighborhood character in a manner similar to the type of protection provided by local zoning, land use, and other regulations. The application of this ordinance is expected to ensure the health, safety, and welfare of the Nation and the surrounding communities.

However, the number of parcels to which this would be applicable is less than what was analyzed in the FEIS. For each affected municipality, Nation lands proposed for conveyance into trust under the Proposed Action and other alternatives comprise only a small percentage of the entire area of the community, minimizing the geographic extent of the effect. In addition, the Nation's lands are currently consistent with existing zoning and land use regulations in the communities in which they are located.

Irrespective of whether land is placed in trust or not, the land would continue to be regulated by federal laws, including environmental laws. EPA would continue to have primacy for environmental regulations and oversight. Through its policies, the Nation has indicated its commitment to standards of environmental protection, conservation, and public health and safety. The combination of Federal and Nation regulatory oversight and the ongoing practice of consultation and coordination between the Nation and Federal, New York State, and local agencies could serve as a mechanism to mitigate effects stemming from the placement of lands in trust status. Therefore, there would be no significant impacts to the resource use patterns as a result of the Proposed Action and the Nation's resource use policies would be applicable to its trust lands.

ALTERNATIVE 2: NO ACTION

As noted above, the Village of Union Springs and the Towns of Springport and Seneca Falls have recently updated (or are in the process of updating) their local zoning ordinances and maps. However, the Nation's existing land uses are consistent with the existing and proposed ordinances. Therefore, there would be no impacts to resource use patterns. However, under this alternative the properties will continue to be subject to local land use and zoning regulations.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, no changes are proposed that would affect existing resource use patterns. As described in Alternative 1, above, the local land use and zoning requirements that currently apply to the Nation's lands would no longer apply to the subject Enterprise Property if the land is placed into trust. Environmental baseline conditions would continue to exist on the non-Enterprise property in the Town of Springport, as discussed under Alternative 2. Therefore, there would be no significant impacts to resource use patterns as a result of the Enterprise Properties into Trust Alternative.

CUMULATIVE IMPACTS

At this time, the Nation is not proposing any future fee-to-trust applications. Should future fee-to-trust applications occur and if those lands were brought into trust, the local governments would no longer have jurisdiction over land use plans and zoning for the applicable Cayuga Indian Nation properties. The Congressional support for providing tribes a suitable landbase is documented within the 25 USC 465 provisions which necessitate jurisdictional changes to comply with the law. Jurisdictional impacts for fee-to-trust applications are subject to review under the 25 CFR 151 process implementing 25 USC 465 for such applications. Should future fee-to-trust applications occur, jurisdictional impacts will be considered according to these procedures. Jurisdictional impacts of each proposed action are considered in the review process required by this regulation. Therefore, cumulative jurisdictional impacts under the Nation's proposed alternative and the Enterprise Properties into Trust Alternative are not considered significant. No cumulative jurisdictional impacts are anticipated from the No Action Alternative.

TRAFFIC AND TRANSPORTATION

This section describes the existing traffic conditions in the immediate and affected vicinity of the Nation's properties subject to the Proposed Action. Updated traffic impact studies were done in Cayuga County (2016) and Seneca County (2018), including updated traffic counts and accident data (see **Appendix C**). The Cayuga County study accounted for the reopening and operation of the Nation's gaming facility on the Union Springs Property. It also accounted for the reopening and operation of the Nation's gaming facility on the Union Springs Property.

The existing conditions of traffic on the roadways in the vicinity of the Nation's Union Springs, Springport, and Seneca Falls Properties were assessed. Roadway and intersection characteristics were analyzed. No high accident intersection locations were identified within the study areas and there were no fatalities at any of the study area intersections. Overall, no significant accident patterns were identified at any of the study area intersections during this time period.

No major development projects were identified in the immediate vicinity of the properties. As such, under the No Build conditions it is projected that there would be no notable changes in level of service (LOS) for any of the lane groups/approaches at the study area intersections. Even with the resumption of operations at the Union Springs gaming facility, there have been no significant new circumstances relevant to traffic concerns since the issuance of the FEIS.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation's land in the Village of Union Springs and the Town of Springport in Cayuga County and the Town of Seneca Falls in Seneca County would be taken into and held in trust by the Bureau of Indian Affairs (BIA).

The Nation would continue use of its properties for multiple purposes, involving the continuation of previous and existing uses, including convenience store and gas station operations, gaming facilities, a car wash and related activities. All of these uses were in operation on the Union Springs Property at the time of the 2016 traffic counts. On the Seneca Falls Property, the convenience store and gas station were in operation at the time of the 2018 traffic counts.

No new development is proposed. The existing condition, which includes small-scale Type II gaming operations consisting of electronic bingo machines, would be continued at the Union Springs Property and reopened at the Seneca Falls Property. The LakeSide Entertainment facility is consistent with federal regulations for a Class II gaming facility.

Since the Proposed Action would not change the existing use of the Union Springs Property, the No Build traffic volumes also represent the Build Traffic volumes at this location. The Proposed Action is not anticipated to result in any changes to the existing trip generation at the Nation's Union Springs Property. Any changes in traffic at this location would be attributable to changes in background conditions.

The resumption of gaming activities on the Seneca Falls Property would result in a minimal increase in trip generation. Based on the trip generation rates established in the 2010 FEIS, it is estimated that the 33 gaming machines would generate approximately 23 trips (12 entering, 11 exiting) during the Friday PM peak hour and 26 trips (14 entering, 12 exiting) during the Saturday Midday peak hour. The trip generation rate model used in the 2010 FEIS is consistent with the trip generation rates set forth in the latest Institute of Transportation Engineers (ITE) Trip Generation Manual. This minimal increase in traffic volume that would be attributable to the reopening of the gaming facility on the Seneca Falls Property would not significantly affect the traffic volumes or LOS at the study area intersections. Therefore, no significant adverse traffic impacts are anticipated.

ALTERNATIVE 2: NO ACTION

Under this alternative, the Nation's properties would not be taken into federal trust, and the Nation would continue use of its properties for the multiple purposes in operation at the time of the fee-to-trust application (e.g., gas stations and convenience stores, car wash, and gaming facilities). Since the same uses would be in operation under all of the Alternatives, the traffic and transportation conditions would be consistent with those described under Alternative 1: Proposed Action.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under Alternative 3 the Nation's enterprise properties in Union Springs and Seneca Falls would be placed into trust. Potential traffic impacts would be the same as those discussed under Alternative 1 above. Under this alternative, the Nation's vacant parcel in Springport would remain in its current undeveloped condition, therefore there would be no new traffic generating uses that would affect the roadway system.

CUMULATIVE IMPACTS

No cumulative traffic impacts are anticipated for the Proposed Action under any of the analyzed alternatives. As discussed above, implementation of the Nation's Proposed Action is not expected to result in any significant impacts to traffic in the affected areas. Therefore, with no traffic impacts resulting from the Proposed Action, and no other proposals impacting traffic, no cumulative impacts are anticipated.

VISUAL RESOURCES

There have been no significant changes to visual resources since the publication of the FEIS that would affect the conclusions contained therein.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation's properties would otherwise be left undisturbed or managed under their current regime and there would be no changes that would negatively impact any of the visual resources in the vicinity of the properties. Therefore, there would be no significant impacts to visual resources as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

Under this alternative, there would be no changes that would negatively impact any of the visual resources in the vicinity of the properties. Therefore, there would be no significant impacts to visual resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the properties would otherwise be left undisturbed or managed under their current regime, and there would be no changes that would negatively impact any of the visual resources in the vicinity of the properties. Therefore, there would be no significant impacts to visual resources as a result of the Enterprise Properties into Trust Alternative.

CUMULATIVE IMPACTS

Although the Nation has acquired additional land, this additional land is not part of the current fee-to-trust application subject to this NEPA analysis. Should the Nation desire to place additional land into trust, additional applications would need to be submitted, and their consideration would be subject to review. At this time, the Nation has no plans to expand its businesses or place any additional parcels of land into trust. Therefore, any consideration of these concerns would be hypothetical, and analysis is not required at this time.

G. MITIGATION

The analyses presented above examined the potential for impacts resulting from the Proposed Action and its alternatives. This section is intended to discuss the means of reducing any significant impacts previously identified within the analysis of the alternatives to a less than significant level.

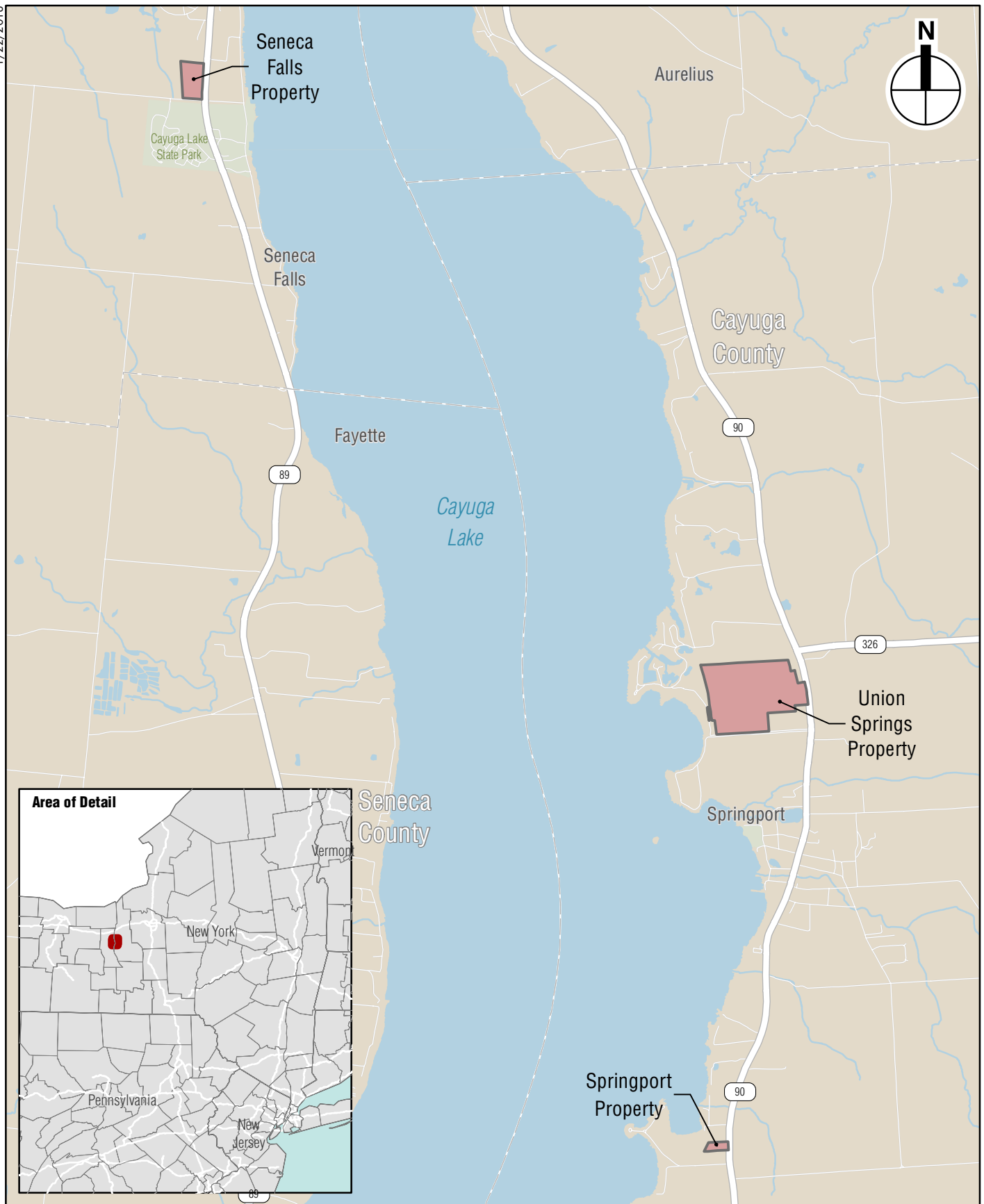
The Proposed Action and its alternatives do not involve physical changes to the properties subject to analysis, nor would they result in physical changes to surrounding properties. In addition, no significant adverse impacts were projected to occur in any other impact analysis area as a result of the Proposed Action or in Alternative 3. Therefore, there are no known adverse impacts and no mitigation is required or proposed.

The Nation does not anticipate negative socioeconomic or fiscal effects of any sort. In fact, as discussed above, the Nation anticipates that the area communities will benefit economically and socially as a result of the Nation's gaming operations. Nonetheless, while there is no clear consensus as to the relationship between Indian gaming and problem gambling, the Nation recognizes that gaming should be conducted in a responsible manner. The Nation would provide information to its patrons regarding gambling addiction counseling services available in the area.

The No Action Alternative, however, could result in significant adverse impacts to the Nation should State or local regulations infringe on the Nation's ability to operate its Enterprise Properties. The Nation's lifestyle and cultural values receive critical financial support from its gaming enterprise revenues, and this alternative could curtail this support. The Proposed Action will enable the Nation to operate these gaming facilities, and thereby secure this revenue source. *

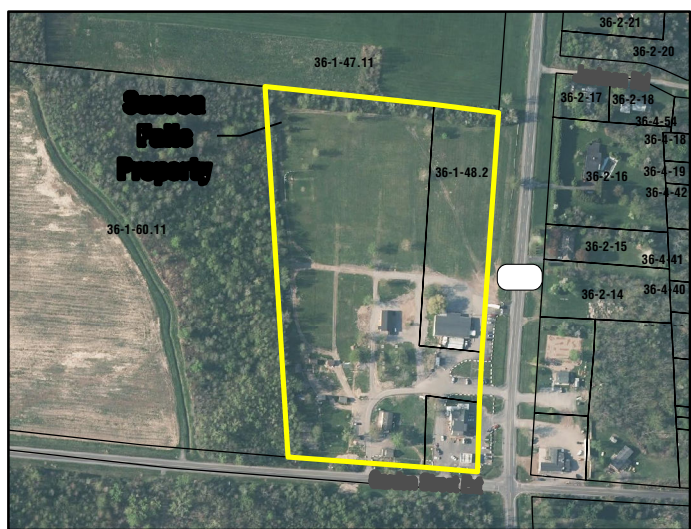
Figures

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 Project Site

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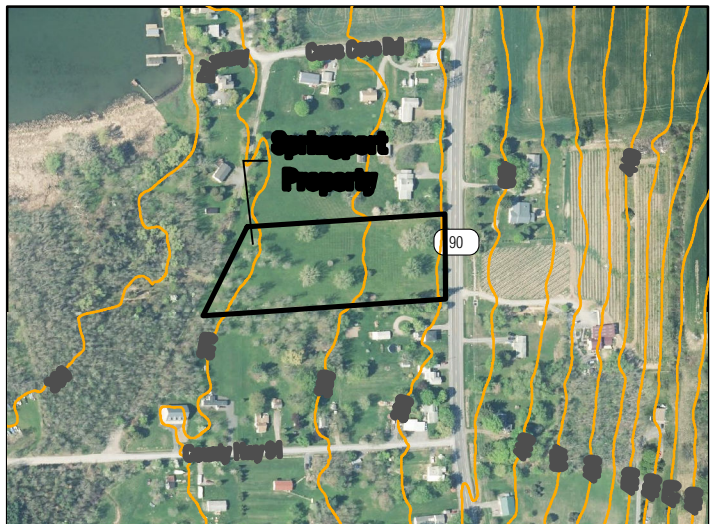
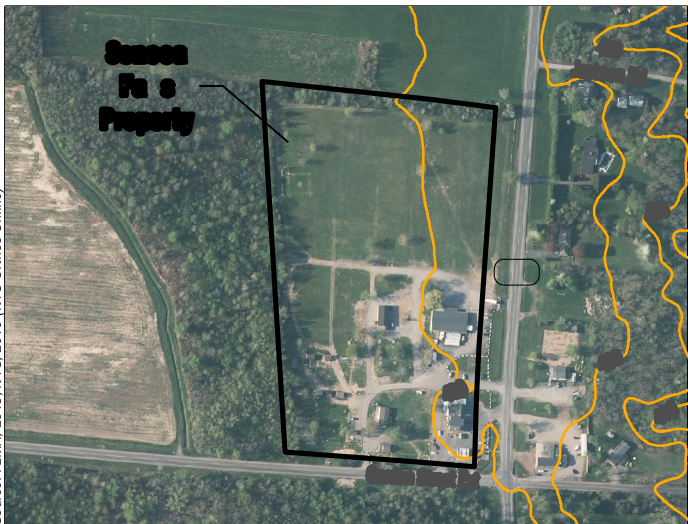


Project Site

Tax Parcel Boundary

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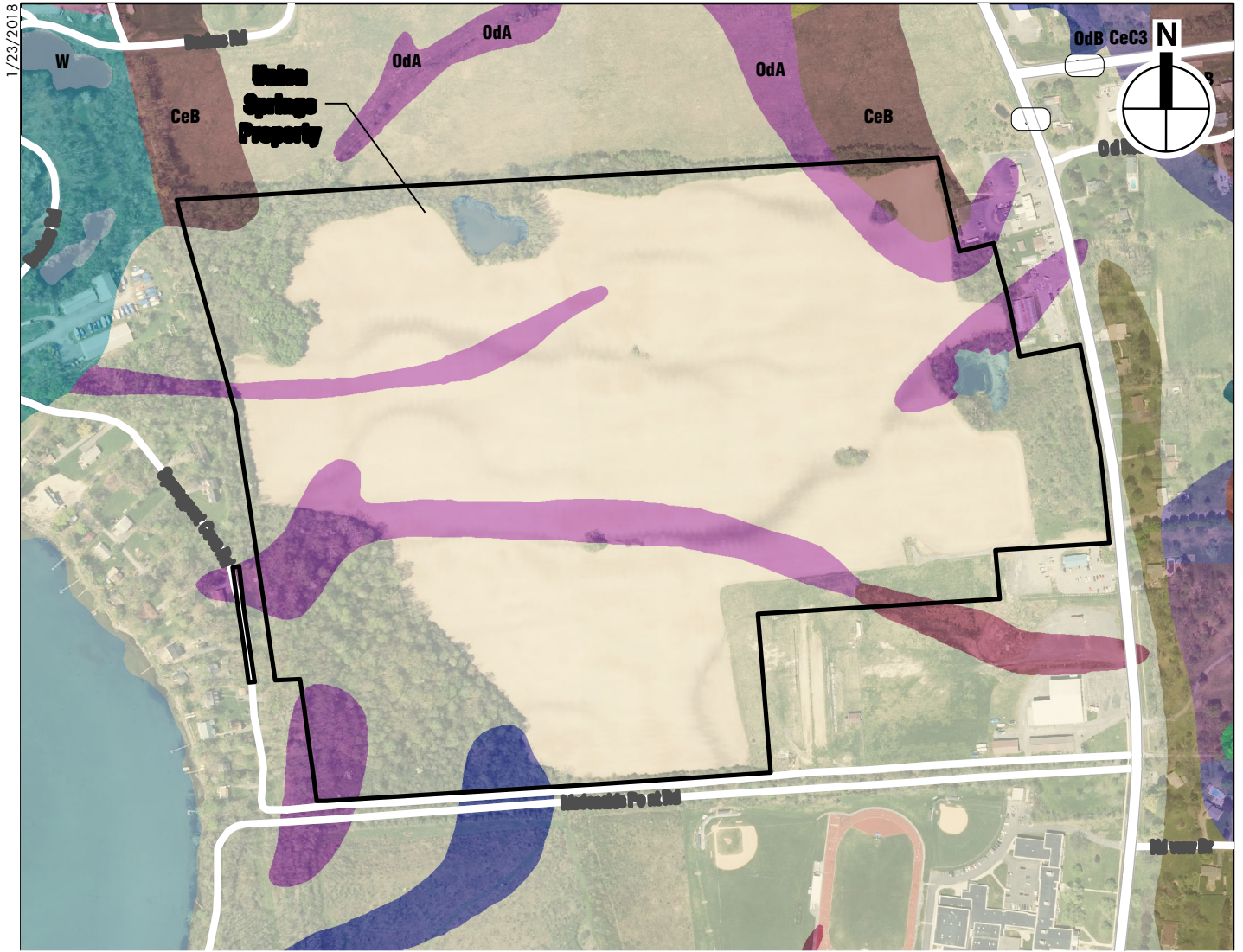
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Source: FEMA, 2013; NYS, 2016 (NYS Orthos Online)

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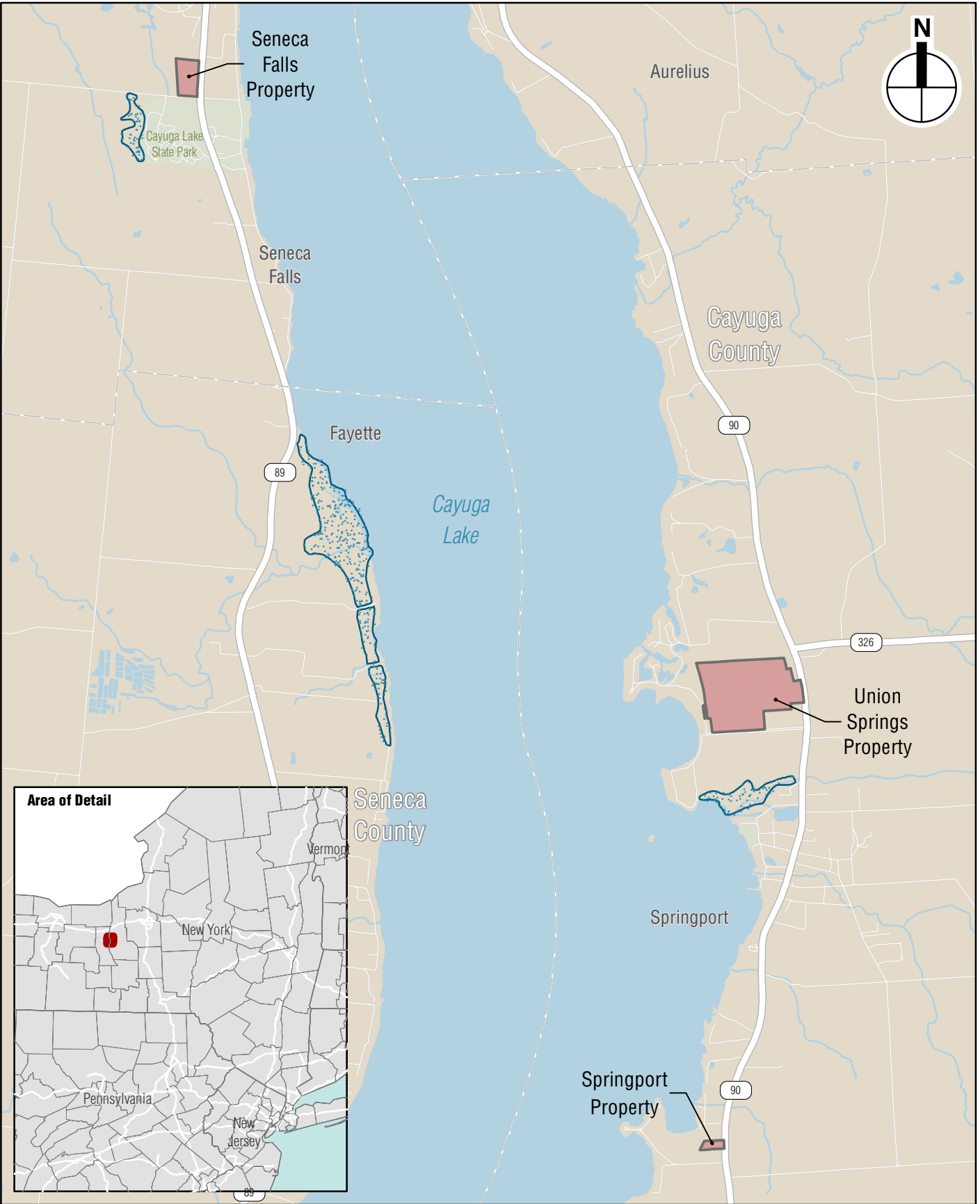



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0 400 Feet



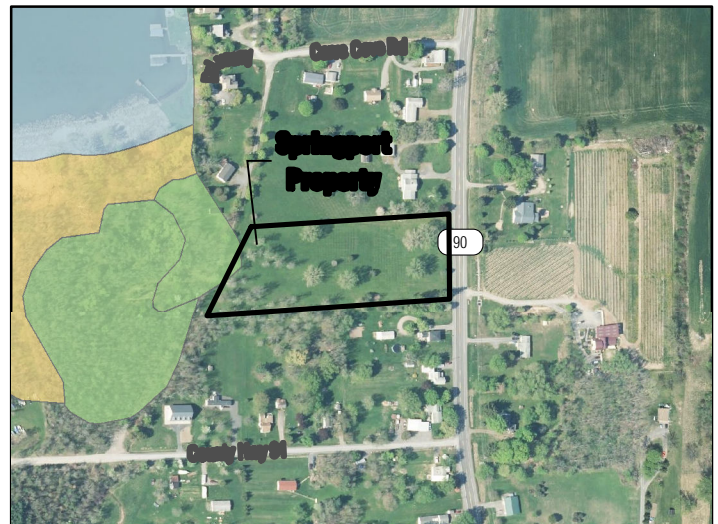
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





- Project Site
- Freshwater Wetland

0 1 Miles

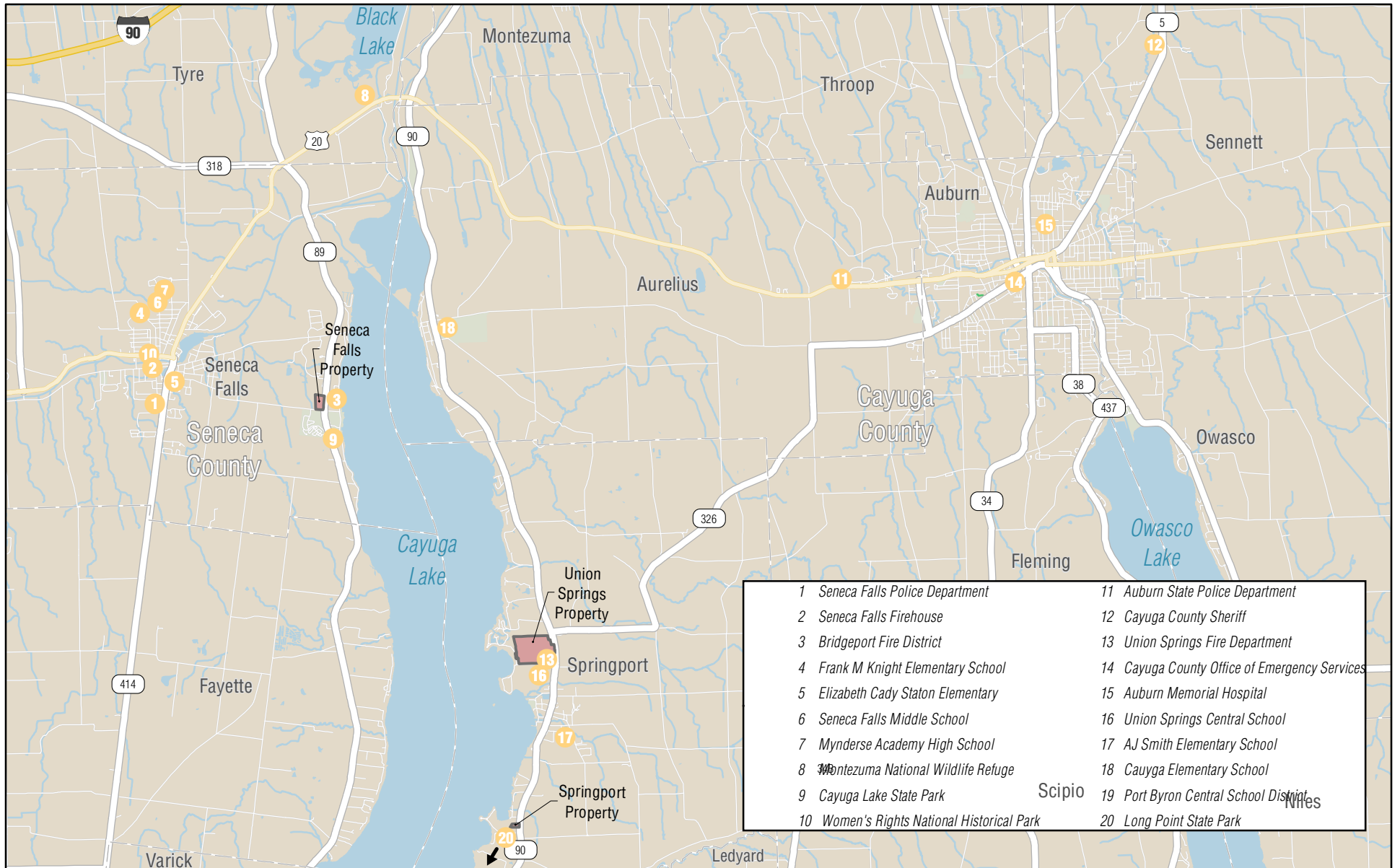
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-  Project Site
-  Freshwater Emergent Wetland
-  Freshwater Forested/Shrub Wetland
-  Freshwater Pond
-  Lake

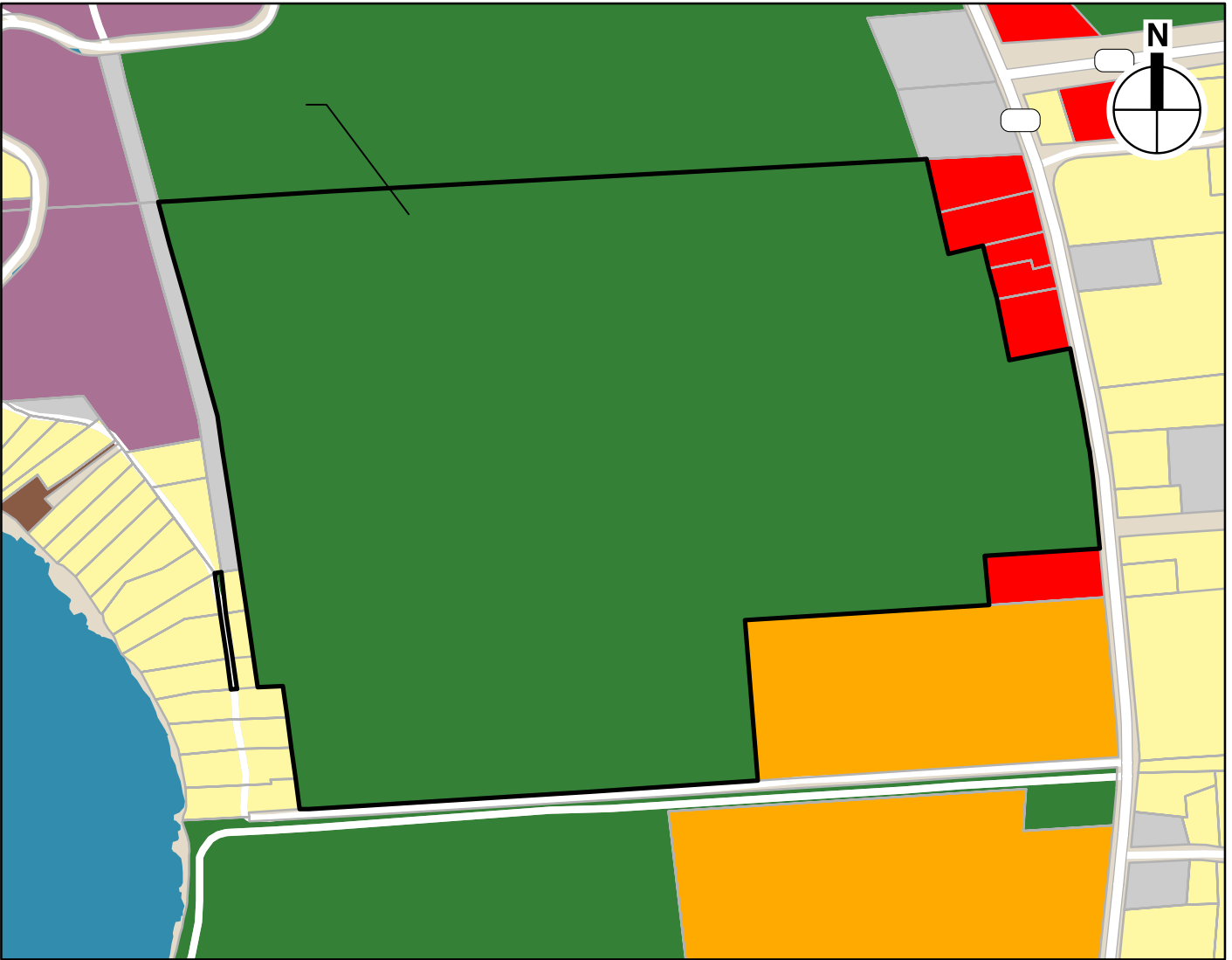
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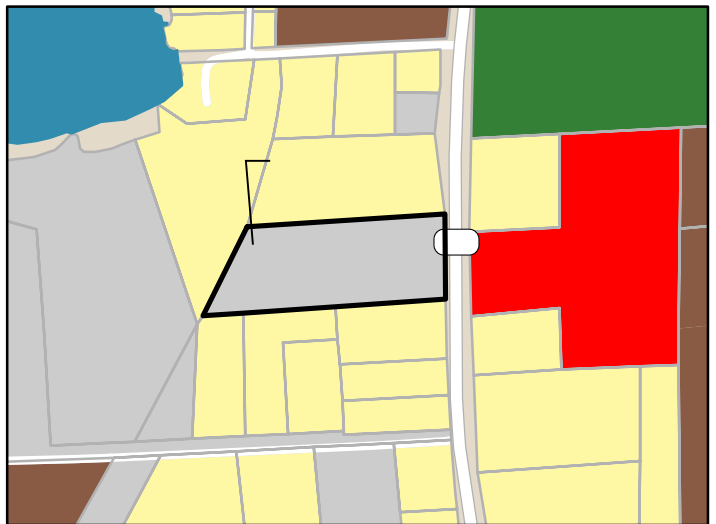
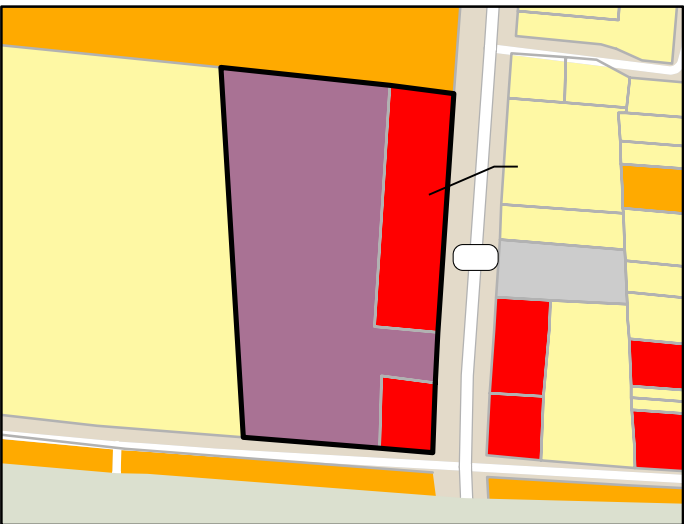


0 2 Miles

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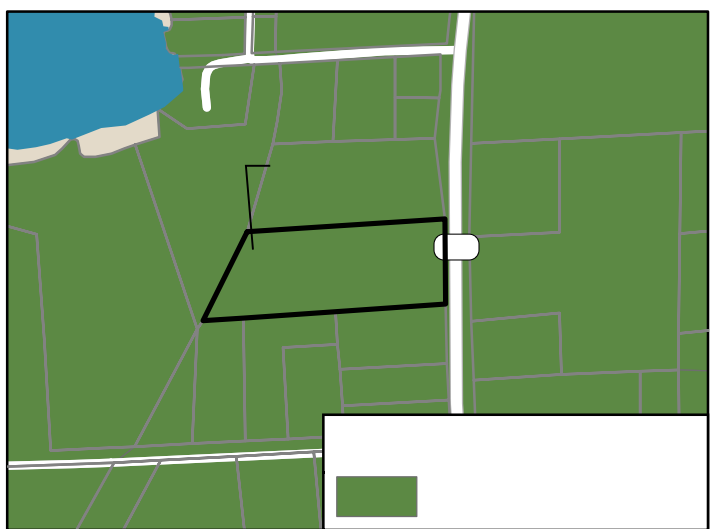
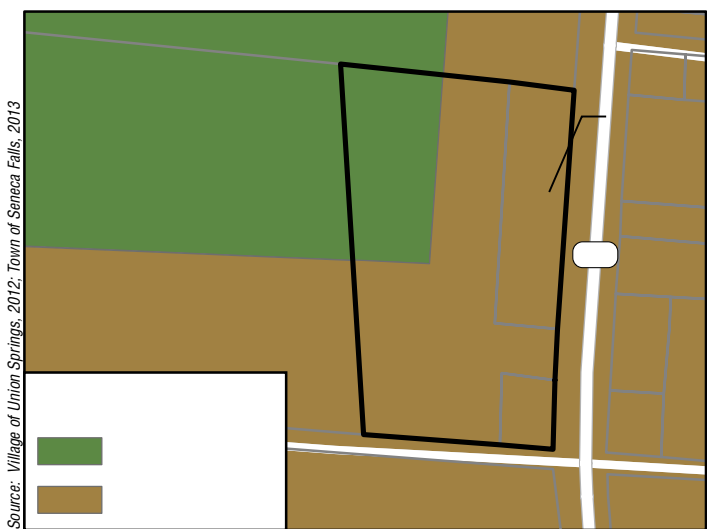
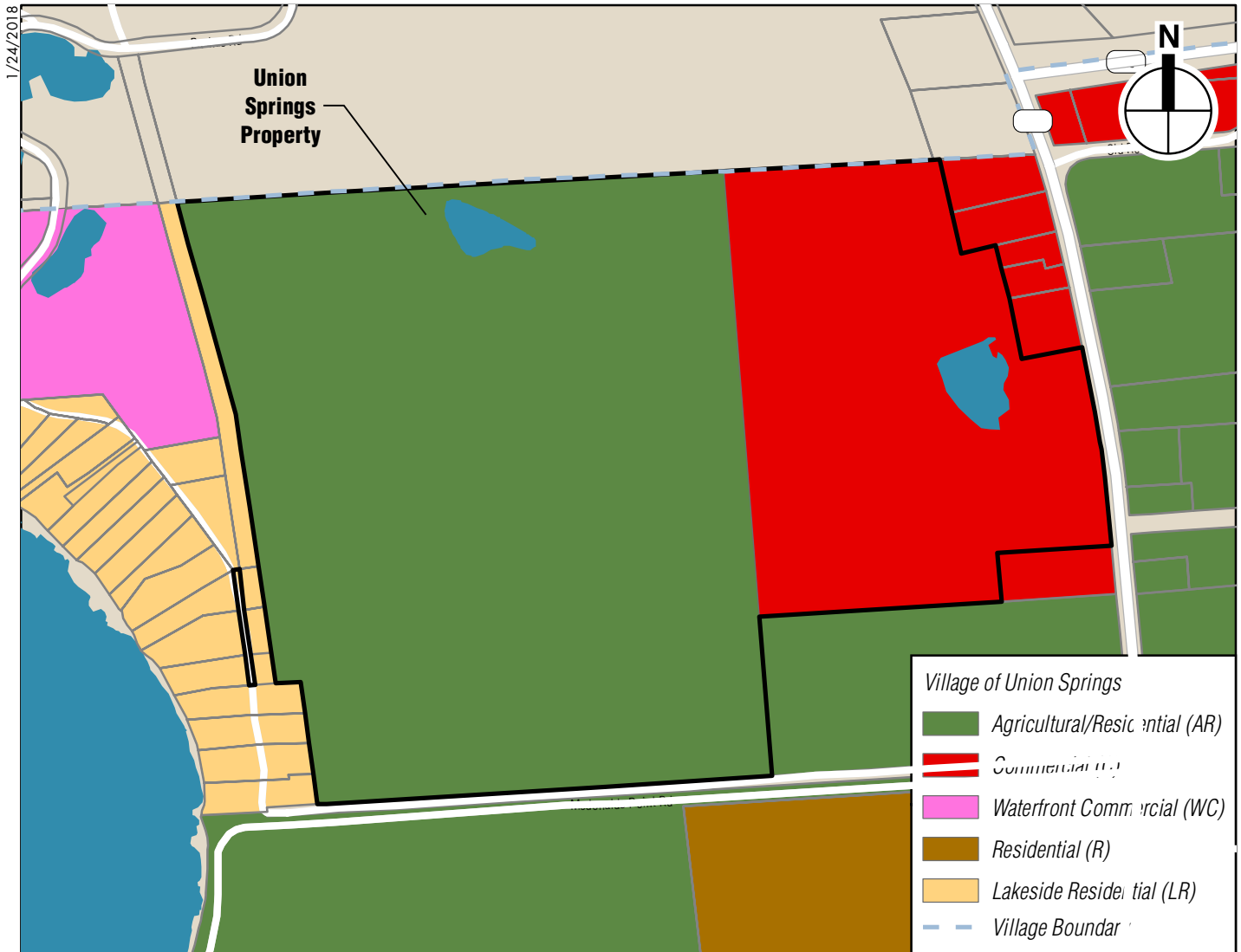


Source: NYS Tax Parcels, NYS Statewide Parcel Map Program, GIS Program Office, 2015



- Project Site
- Agricultural
- Commercial
- Residential
- Recreation
- Public Services
- Vacant Land
- Community Services
- Unknown

0 400 Feet



Project Site

Tax Parcel Boundary

0 400 Feet

ROD ATTACHMENT V
FINAL CAYUGA ENVIRONMENTAL ASSESSMENT

Final Environmental Assessment

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1. INTRODUCTION

1.1 INTRODUCTION

In 2005 the Cayuga Nation of New York (the “Nation”) applied to the Bureau of Indian Affairs (BIA) of the U.S. Department of Interior (DOI) for a fee-to-trust transfer of 129± acres¹ of land owned by the Nation (the “Previous Application”). The BIA is the federal agency charged with reviewing and approving Tribal applications pursuant to 25 Code of Federal Regulations (CFR) Part 151 to take land into federal trust status. The statutory authority for acquiring land in trust status for Indian tribes is provided in the Indian Reorganization Act of 1934 (IRA), with regulations under 25 CFR Part 151 and codified at 25 U.S.C. § 5108. Transfer of lands into trust is a real estate transaction which would convey title to the subject properties to the United States, and the subject properties would be held in trust by the United States for the use and benefit of the Nation to ensure the cultural preservation, expression and identity, self-determination, self-sufficiency, and economic independence of the Nation as a federally recognized Tribe.

The fee-to-trust applications were individually dated April 14 and May 25, 2005 (hereinafter the inclusive application date is cited as May 25, 2005). The property proposed for fee-to-trust transfer had been comprised of seven separate parcels (nine tax map ID numbers) located in the Village of Union Springs and the Towns of Springport and Montezuma, in Cayuga County and the Town of Seneca Falls in Seneca County.

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. § 4321 et seq.), a Draft Environmental Impact Statement (DEIS) was prepared by BIA for the Previous Application and issued for public review on May 22, 2009. A public hearing for the DEIS was held at the New York Chiropractic College in Seneca Falls, New York, on Wednesday, June 17, 2009; public comments on the DEIS were accepted by BIA until July 6, 2009. A Notice of Availability (NOA) for the Final EIS (FEIS) was published on October 12, 2010. The NOA indicated that a Record of Decision (ROD) would be issued on or after November 22, 2010; however, a ROD was never issued. In 2018, a Technical Memorandum analyzing the proposed fee-to-trust application and relevant changes in background conditions was submitted to the BIA. However, no action was taken on that Technical Memorandum.

The Nation now seeks to re-submit its application for a fee-to-trust transfer of land for four parcels located in Cayuga County totaling 115± acres (the “Proposed Action”) and to continue the use of each property as described in **Table 1** (see **Figures 1** and **2**). The properties in the Town of Seneca Falls and the property in the Town of Montezuma that were part of the Previous Application are not included in the Proposed Action. In addition, the Nation is constructing an approximately 4,928 square foot gaming facility building within the existing gravel parking lot on the 271 Cayuga Street parcel, 7 handicap parking spaces between the existing and proposed buildings, and a 77-space gravel parking area on the North Cayuga Street parcel (see **Figure 3**). The gaming addition received a letter of No Effect from the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) on September 7, 2021. The gaming addition also received New York State Department of Environmental Conservation (NYSDEC) Acknowledgment of Notice of Intent for

¹The notice of intent published in the Federal Register on February 13, 2006 (71 FR 7568) cited the conveyance into federal trust of seven parcels comprising 125± acres of land. The records of the affected municipalities report the actual acreage of the seven parcels included in the Nation’s Land Trust Application to be 129.16 acres

Coverage Under SPDES General Permit for Storm Water Discharges from Construction Activity – General Permit No. GP-0-20-001 on April 15, 2022.

Table 1
Tax Parcels Comprising the Proposed Action

County	Municipality	Parcel Address	Parcel Deed Reference	Tax Lot Designations of Parcel	Approx. Acreage	Use
Cayuga	Village of Union Springs	North Cayuga Street	Book 1208 at page 236	134.17-1-1.51	108.0	Vacant lot / agriculture, and gravel parking lot (planned improvement)
Cayuga	Village of Union Springs	299 and 303 Cayuga Street	Book 1129 at page 222	134.17-1-1.21 134.17-1-1.121	1.98	Gas station, former car wash,* convenience store
Cayuga	Village of Union Springs	271 Cayuga Street	Book 1129 at page 225	141.05-1-3	1.48	Gaming facility
Cayuga	Town of Springport	Route 90	Book 1215 at page 291	150.00-1-29.1	3.70	Vacant lot

Note: *The car wash permanently closed in 2019.

Source: Tax assessment data.

This Environmental Assessment (EA) has been prepared to support an application from the Nation for land to be placed into federal trust (Proposed Action). As noted above, the BIA is the federal agency that is charged with the review and approval of tribal applications to take land into federal trust status. For this EA, the BIA serves as the Lead Agency for compliance with NEPA. The potential impacts of the planned gaming expansion are considered in this EA. The DEIS and FEIS are incorporated into this EA by reference.

This document has been prepared in accordance with the requirements of NEPA (42 United States Code [USC] § 4321 et seq.), the Council on Environmental Quality (CEQ) Guidelines for Implementing NEPA (40 CFR §§ 1500-1508), the BIA’s NEPA Guidebook (59 Indian Affairs Manual 3-H), Deputy Secretary for the Department of the Interior’s Order 3355 to improve the environmental review process under NEPA, and Section 508. Consistent with the requirements of NEPA, the BIA will review and analyze the environmental consequences associated with the Proposed Action and Project Alternatives, and either determine that a Finding of No Significant Impact (FONSI) is appropriate, request additional analysis, or request that an Environmental Impact Statement be prepared.

Given that the Nation expects a minor change in land use through the eventual addition of its new 4,928 square foot gaming facility and associated parking, BIA considered what NEPA analysis, if any, was necessary to inform its decision on the fee-to-trust application. After analysis, and as described in this EA, while the change in land use does represent new circumstances or information relevant to environmental concerns, it is not significant.² Therefore, it does not require

² Moreover, while the change in land use is not significant in our NEPA analysis, we also note that BIA’s decision whether or not to take the land into trust has no bearing on the Nation’s expanded gaming facility

the preparation of a supplemental EIS. Rather, pursuant to the Council on Environmental Quality's NEPA implementing regulations at 40 CFR § 1502.9, BIA is permitted to document this finding informally, or the BIA may do so "in a finding of no significant impact supported by an environmental assessment." BIA has chosen to document its findings in this EA. The agency decided that, given the passage of time since the EIS was completed and the agency's desire for transparency in its review and decision making process, this analysis and its findings will be documented through an EA.

A Notice of Availability for the Draft EA was circulated on September 19, 2022; the Draft EA was open for a 30-day public comment period. Responses to the comments received are provided in **Appendix H**.

1.2 LOCATION AND SETTING

The Proposed Action is the fee-to-trust transfer of approximately 115± acres of land comprising four separate parcels (five tax map numbers) in the Village of Union Springs and the Town of Springport in Cayuga County, New York.

The properties are variously referred to in this EA individually, by their individual tax lot identification numbers, or as contiguous properties comprising one or more tax lots. As used herein, and as further described below, the "Union Springs Property" consists of four contiguous tax lots comprising approximately 111 acres and the "Springport Property" consists of a single 3.7-acre tax lot. The Union Springs Property also comprises the Nation's "Enterprise Properties" discussed herein and further described in Alternative 3, "Enterprise Properties into Trust." **Table 1** above provides an overview of the Nation's properties.

UNION SPRINGS PROPERTY

The Union Springs Property comprises four contiguous tax parcels totaling approximately 111 acres. The property consists of vacant land, 82 acres of which are in agricultural use (field crops); LakeSide Trading, which consists of a convenience store, gas station, and former car wash (permanently closed in 2019); and the gaming operation, LakeSide Entertainment 1, which occupies an approximately 2,300-square-foot building formerly occupied by a NAPA auto parts store. The gaming facility, comprising 86 electronic bingo machines, was in operation at the time of the fee-to-trust application (May 25, 2005). The gaming operation was temporarily suspended during preparation of the EIS but resumed operation in 2013. The surrounding area consists of agricultural, residential, and recreational uses.

The property is bordered by undeveloped land to the north, NYS Route 90 followed by retail properties to the east; a fire department, high school, and residential properties to the south; and residential properties to the west. Cayuga Lake is located approximately 500 feet west of the parcel. The bulk of this property is the approximately 108-acre tax lot 134.17-1-1.51, which consists of vacant land, 82 acres of which are currently in agricultural production.

The Nation's LakeSide Trading gas station\convenience store businesses are located on two separate tax parcels totaling approximately two acres (134.17-1-1.21 & 134.17-1-1.121). The

construction. The fee-to-trust acquisition does not permit or otherwise grant authority for the Nation to expand its operation. The land is already gaming-eligible and thus authority to game exists regardless of the BIA's acquisition of the land in trust. *See Cayuga Nation v. Tanner*, 448 F.Supp.3d 217, 245 (N.D.N.Y. Mar. 24, 2020), *aff'd*, *Cayuga Nation v. Tanner*, 6 F.4th 361 (2d Cir. July 27, 2021).

immediate area is bordered by undeveloped land to the north, NYS Route 90 followed by residential properties to the east, local retail shops to the south, and vacant agricultural land to the west. There are several other commercial and professional office operations to the south and west of the subject parcels.

The LakeSide Entertainment gaming facility is located at 271 Cayuga Street, on an approximately 1.48-acre parcel (tax lot 141.05-1-3). This parcel is bordered by agricultural land to the north, NYS Route 90 followed by residential properties to the east, Union Springs Fire Department to the south, and vacant agricultural land to the west. The LakeSide Entertainment facility is comprised of a 2,304-square-foot, one-story building.

SPRINGPORT PROPERTY

The Springport Property consists of one tax parcel (150.00-1-29.1) of approximately 3.70 acres. This parcel is rectangular and bordered on the north and south by residential properties, on the east by NYS Route 90, and to the west by a former railroad bed followed by a wooded area.

1.3 PURPOSE AND NEED

The federal Proposed Action consists of the fee-to-trust transfer of the Nation's approximately 115± acres of land, including the parcels of land on which its existing and planned business operations are located (the "Enterprise Properties"). The transfer is pursuant to the authority of the Secretary of the DOI under the Indian Reorganization Act, 25 USC §5108.

To generate revenues to fund tribal programs and services, the Nation acquired several properties on the Nation's ancestral lands in Cayuga County. Included among its acquisitions were the convenience store/gas station business and agricultural land in Union Springs. The Nation operates this business for tribal revenue generation purposes. The Nation has generated additional revenue at its properties through the operation of a Class II gaming facility. These business operations are the sole source of tribal revenues.

In addition to the continuation of the existing gaming operation, the Nation is planning an approximately 4,928 square foot new gaming facility building, 7 handicap parking spaces, and 77-space gravel parking area in Union Springs. The Nation wishes to continue use of the proposed fee-to-trust properties for multiple purposes, involving the continuation of previous and existing uses. Existing and previous uses of the Enterprise Properties include convenience store and gas station operations, gaming facilities, and related activities; the non-enterprise properties are vacant, open land.

The Proposed Action will help facilitate tribal self-sufficiency and self-determination, thus satisfying the Department's land acquisition policy as articulated in the Department's trust land regulations (25 CFR § 151). The need for the Department to act on the Nation's application is established by the Department's regulations at 25 CFR §§ 151.10(h) and 151.12.

2. PROJECT ALTERNATIVES

2.1 ALTERNATIVE 1 – THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

This alternative is the Preferred Alternative. Under this alternative, all of the land located in Cayuga County, and included in the Nation’s fee-to-trust application, would be taken and held in trust by the United States (see **Table 1**). These parcels are located in the Village of Union Springs and the Town of Springport, New York.

The Nation would continue use of its properties for multiple purposes, involving the continuation of previous and existing uses, including convenience store and gas station operations, gaming facilities, and related activities. Since gaming activities resumed at LakeSide Entertainment in Union Springs in July 2013, current use of that property is essentially the same as at the time of the initial fee-to-trust application.

The Nation would continue the existing operations of the Village of Union Springs Property where the existing businesses are located. In addition, the Nation plans to construct a new approximately 4,928 square foot gaming facility building within an existing gravel parking lot located west of the existing gaming facility, 7 handicap parking spaces between the existing and proposed buildings, and a new 77-space gravel parking lot within a portion of the vacant parcel to the north of the existing gaming facility. The Nation plans to continue the agricultural use (field crops) of the 82 tillable acres of the 108-acre vacant parcel in Union Springs. The Nation has owned this parcel since 2005 and has continued its agricultural use for field crop cultivation. The Nation plans to use the field crop as an additional source of revenue.

2.2 ALTERNATIVE 2 – NO ACTION ALTERNATIVE

Under this alternative, the Nation’s properties would not be placed into trust, and the Nation would continue to own the properties in fee. The Nation would continue use of its properties for the multiple purposes currently in operation, as well as in operation at the time of the original fee-to-trust application (e.g., gas station, convenience store, and gaming). In addition, the planned gaming facility and parking area would be constructed. Under this alternative BIA would assume that the Nation would continue to pay property taxes; however, the Nation will consider all options available to it under the law with respect to payment of real property taxes on these parcels.

2.3 ALTERNATIVE 3 – ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the four tax lots included in the Nation’s fee-to-trust application in the Village of Union Springs would be taken into trust by the United States. The Nation’s LakeSide Trading commercial enterprises and LakeSide Entertainment Class II gaming facility in Cayuga County would continue to operate, and the proposed new Class II gaming facility would begin operation once constructed. The Nation’s non-Enterprise property in the Town of Springport, in Cayuga County, would not be taken into federal trust.

2.4 COMPARISON OF PROJECT ALTERNATIVES

Alternative 1 meets the Nation’s purpose and need for the Proposed Action. Alternative 2 would not provide the economic or environmental justice benefits that would occur with Alternative 1. Under Alternative 2, the long-term viability of the properties would be less secure, as they would

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not have the benefit of being held in federal trust. Alternative 2 would not help the Nation to establish economic self-sufficiency or to maintain a strong tribal government. Alternative 3 would have similar effects as the Proposed Action since the economic benefits of the Nation's business enterprises are primarily realized through the Union Springs property as opposed to the Springport property. See **Table 2** for a comparison of the alternatives.

Table 2			
Summary of Alternatives Analyzed			
Analysis Area	Alternative 1 – The Proposed Action – The Preferred Alternative	Alternative 2 – No Action Alternative	Alternative 3 – Enterprise Properties into Trust
Land Resources	No significant impacts to land resources	Same as Proposed Action	Same as Proposed Action
Water Resources	No significant impacts to water resources	Same as Proposed Action	Same as Proposed Action
Air Quality	No significant adverse air quality impacts	Same as Proposed Action	Same as Proposed Action
Biological Resources	No significant impacts to biological resources	Same as Proposed Action	Same as Proposed Action
Cultural Resources	No adverse impacts to cultural resources	Same as Proposed Action	Same as Proposed Action
Socioeconomic Conditions/ Environmental Justice	Economic benefits to region (jobs, local spending) by ensuring long-term viability of Nation’s enterprises. Fiscal benefit to Nation from continuation and security of its commercial enterprises. Minimal reduction in tax revenue (0.05% for Cayuga County, 0.15% for Town of Springport, 3.15% for Village of Union Springs). Remedy past injustices to the Nation.	Long-term viability of Nation’s enterprises and the resulting economic benefits to region less secure. No significant adverse fiscal impacts. No remedy to past injustices to the Nation.	Economic benefits to region (jobs, local spending) by ensuring long-term viability of Nation’s enterprises. Fiscal benefit to Nation from continuation and security of its commercial enterprises. Minimal reduction in tax revenue (0.05% for Cayuga County, 3.15% for Village of Union Springs). Remedy past injustices to the Nation.
Traffic and Transportation	No significant adverse traffic impacts	Same as Proposed Action	Same as Proposed Action

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Land Use and Agriculture	Land use regulation for both properties conferred on the Nation. No change from existing land use or agriculture.	No change from existing land use or agriculture.	Land use regulation for Union Springs Property conferred on the Nation. No change from existing land use or agriculture.
Public Services	No significant impacts to community infrastructure. No adverse impacts to community service providers. Nation would assume full range of jurisdiction over both properties.	No significant impacts to community infrastructure. No adverse impacts to community service providers.	No significant impacts to community infrastructure. No adverse impacts to community service providers. Nation would assume full range of jurisdiction over the Union Springs Property.
Noise	No significant adverse noise impacts	Same as Proposed Action	Same as Proposed Action
Hazardous Materials	No significant adverse impacts related to hazardous materials	Same as Proposed Action	Same as Proposed Action
Visual Resources	No significant impacts to visual resources	Same as Proposed Action	Same as Proposed Action
Cumulative Impacts	No significant cumulative fiscal impacts. No significant cumulative jurisdictional impacts.	No effect on cumulative impacts	Same as Proposed Action
Indirect and Growth-Inducing Impacts	No significant adverse indirect effects. No significant growth-inducing effects.	Same as Proposed Action	Same as Proposed Action.

3. AFFECTED ENVIRONMENT AND IMPACTS OF THE ALTERNATIVES CONSIDERED

3.1 LAND RESOURCES

There have been no significant new circumstances or information relevant to concerns related to land resources since the publication of the FEIS. The topography and soils on the Nation's properties are shown in **Figures 4 and 5**. The only proposed change to the properties is the new gaming facility and parking areas. The Proposed Action does not result in farmland being converted to non-agricultural uses. The Nation plans to continue their agricultural use (field crops) of the 82 tillable acres of the 108-acre vacant tax lot in Union Springs.

The topography of the Nation's property in Union Springs slopes to the west toward Cayuga Lake with a depression around the two ponds on the property. The highest point is at the eastern border of the property adjacent to Route 90 with an elevation of approximately 456 feet above sea level. The lowest point is at the western border of the property with an elevation of 400 feet above sea level.

The topography of the Nation's property in Springport slopes gradually to the west toward Cayuga Lake. The highest elevation is between 420 and 424 feet closest to Route 90 and the lowest is between 396 and 400 feet above sea level.

Neither of the Nation's properties is located within the 100-year or 500-year floodplains. Therefore, there would be no foreseeable effects of climate change on any of the alternatives under consideration.

All of the Nation's properties are located within the Cayuga Lake Watershed, an area known to have fertile soils. The abundance of lime in the soils helps to maintain pH neutrality which allows for microorganism activity and the transfer of nutrients within the soil. Another factor that makes the soils fertile is their porosity. All of the soils on the Nation's properties are loams, which have medium porosity allowing space for providing oxygen to plant root cells and storing water for roots to absorb without being waterlogged.

Prime farmland, as defined by the USDA, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent.

The Nation's properties in both Unions Springs and Springport each contain two soils considered by the USDA to be prime farmland soils: Cazenovia silt loam and Schoharie silt loam. These soils are characterized as well drained and moderately well drained, respectively. In addition, Odessa silt loam soils exist on the Union Springs property. Odessa silt loam is characterized as somewhat poorly drained and is only considered prime farmland if draining practices are implemented. Since

drainage practices have not been implemented on the Union Springs property, this Odessa silt loam soil occurrence does not meet prime farmland criteria.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be “farmland of statewide importance” for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate state agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law. In some areas that are not identified as having national or statewide importance, land is considered to be “farmland of local importance” for the production of food, feed, fiber, forage, and oilseed crops. This farmland is identified by the appropriate local agencies. Farmland of local importance may include tracts of land that have been designated for agriculture by local ordinance.

The Nation’s properties in Springport and Union Springs contain Lakemont silty clay loam which the USDA classifies as farmland of statewide importance.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the properties would continue with their present and planned uses and managed under their current maintenance regime. As with the No Action Alternative, the Nation would expand its gaming facility on the 271 Cayuga Street parcel, add handicap parking spaces between the existing and proposed buildings, and install a gravel parking lot at the North Cayuga Street parcel in the Village of Union Springs. Any land management activities, such as mowing, clearing, and agricultural uses, as well as the proposed site modifications, would continue to be subject to all applicable federal environmental regulations. There would be no changes to onsite geology, topography, or soils beyond the proposed new gaming facility and parking areas.

The new parking lot would convert approximately 29,000 square feet of existing vacant (grass and formerly forested) areas to gravel, comprising 77 parking spaces. In addition, 7 handicap parking spaces would be constructed between the existing and proposed buildings. The proposed site work would be conducted pursuant to the requirements of a New York State Department of Environmental Conservation (NYSDEC) State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001), which requires development of a Stormwater Pollution Prevention Plan (SWPPP) with an Erosion and Sediment Control Plan. A SWPPP has been prepared for the proposed site work and is included as **Appendix F**. Therefore, there would be no significant impacts to land resources as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

This alternative would result in the same changes to land resources as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. Like the Proposed Action, there would be no significant impacts to land resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would result in the same changes to land resources as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. Like the Proposed Action, there would be no significant impacts to land resources as a result of the Enterprise Properties into Trust Alternative.

3.2 WATER RESOURCES

There have been no significant new circumstances or information relevant to concerns related to water resources since the publication of the FEIS. Maps of New York State Department of Environmental Conservation (NYSDEC) and National Wetlands Inventory (NWI) wetlands are provided in **Figures 6** and **7**. As shown in **Figure 6**, there are no NYSDEC-mapped streams, wetlands, or waterbodies on the Nation's properties in Union Springs or Springport.

As shown in **Figure 7**, there are two open water pond features within the Union Springs Property, one on the north side of the property and one on the eastern side of the property. Both are mapped by NWI as PUBHx-palustrine, unconsolidated bottom, permanently flooded, excavated wetlands. The more northerly NWI-mapped wetland pond is located adjacent to an unmapped wooded wetland stream. In addition, the westernmost portions of the Union Springs Property contain areas dominated by facultative wetland trees and shrubs. These two regions exhibiting wetland vegetation are not mapped by NWI but may contain federally regulated wetland pursuant to Section 404 of the Clean Water Act. Nevertheless, the vast majority of the Union Springs Property, including the open field conditions that predominate throughout, consists of upland habitat. The Nation continues to farm the property as it has in the past.

West of the Springport Property, primarily across from the dirt access road marking the site's western boundary, mapped wetlands occur. NWI has mapped these wetlands, only a small portion of which extends to the project site, as Palustrine Forested (PFO1E)/Palustrine Scrub-Shrub (PSS1E) seasonally flooded, saturated wetlands (see **Figure 7**). However, this area is currently cleared of vegetation, has been maintained as lawn for some time, and is separated from the bulk of the wetland to the west by the dirt access roadway defining the property's western boundary. As such, it is unlikely to constitute a federally regulated wetland pursuant to Section 404 of the Clean Water Act. Northwest of the Springport Property, Palustrine Emergent (PEM1E) seasonally flooded, saturated wetlands also occur (see **Figure 7**).

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

In 2008, the U.S. Army Corps of Engineers (ACOE) Buffalo District (Snead, October 29, 2008 and Snead, December 17, 2008) confirmed that no approvals or authorizations would be required at that time pursuant to Clean Water Act Section 404 because no development was planned for the properties subject to the fee-to-trust application.³

Under the Proposed Action the properties would otherwise be left undisturbed or managed under their current maintenance regime, with the exception of the proposed new gaming facility and parking areas. Any land management activities, such as mowing, clearing, and agricultural uses, as well as the proposed site modifications, would continue to be subject to all federal wetland

³ See Appendix C of the DEIS for correspondence with United States Army Corps of Engineers dated October 29, 2008 and December 17, 2008.

regulations applicable to the properties at present. The proposed site work would be conducted pursuant to the requirements of a NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001), which requires development of a SWPPP. A SWPPP is included as **Appendix F**. Stormwater from the proposed new gravel parking lot would be conveyed to a dry swale with a level spreader. Stormwater from the area around the proposed new gaming facility and the handicap parking area would be conveyed to two vegetated swales. Work would not be conducted in the vicinity of the NWI mapped wetland; there would be no indirect or direct discharges to the wetland area. At such time as any further development is contemplated in the future, a formal wetland delineation would be required on each of the affected subject properties to confirm the presence/absence of wetlands and to establish the extent (e.g., the boundaries) of wetlands subject to ACOE jurisdiction. Any future development of the Nation's lands would comply with all applicable federal laws; therefore, there would be no significant impacts to water resources as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

This alternative would result in the same changes to water resources as the Proposed Action. As with the Proposed Action, stormwater from the planned gaming facility would be managed in accordance the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001). Therefore, there would be no significant impacts to water resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would result in the same changes to water resources as the Proposed Action. As with the Proposed Action, stormwater from the planned gaming facility would be managed in accordance the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001). Therefore, there would be no significant impacts to water resources as a result of the Enterprise Properties into Trust Alternative.

3.3 AIR QUALITY

There have been no significant new circumstances or information relevant to concerns related to air quality since the publication of the FEIS. The Air Quality Index (AQI) is a uniform system developed by U.S. EPA to enable the public to determine whether air quality levels in a particular location are good, moderate, unhealthy, or worse. The AQI measures five criteria air pollutants (particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, and ozone), and converts the measured pollutant concentrations in a community's air to a number on a scale of 0 to 500. The intervals on the AQI scale relate to the potential health effects of the daily concentrations of each of these five pollutants. The most important number on this scale is 100, since this number corresponds to the National Ambient Air Quality Standard established under the Clean Air Act. An AQI level in excess of 100 means that a pollutant is in the unhealthy range on a given day; an AQI level at or below 100 means that a pollutant reading is in the satisfactory range.

The AQI reported at the air quality monitoring stations closest to the Nation's properties indicate median annual readings of less than 50, meaning that the air quality is good, and that the general population would be expected to experience no general health effects as a result of air pollutants.⁴

⁴ <https://www.epa.gov/outdoor-air-quality-data/air-quality-index-report> (accessed July 6, 2022)

Section 3: Affected Environment and Impacts of the Alternatives Considered

Changes in traffic volumes and levels of service (LOS) can affect air quality conditions. In order to identify any potential impacts, a screening level analysis was performed at locations where the Proposed Action would have the potential to increase traffic volumes and therefore affect air quality (**Figure 8**). The analysis evaluated key intersections likely to be affected by property-generated trips. The area roadway intersections were reviewed based on the New York State Department of Transportation's (NYSDOT) The Environmental Manual (TEM)⁵ criteria for determining locations that may warrant a carbon monoxide microscale air quality analysis. Based on the Level of Service (LOS) screening, if the LOS of an intersection is A, B, or C, then carbon monoxide microscale air quality analysis would not be warranted. As discussed below under Section 3.7, "Traffic and Transportation," all lane groups and approaches at the study area intersections would continue to operate acceptably at LOS A or B under all alternatives under consideration. Therefore, the air quality screening analysis determined that none of the project-affected intersections in the Village of Union Springs have a LOS that would indicate the need for detailed microscale air quality analyses, and that no affected intersection results in significant adverse air quality impacts to the immediate area.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation would continue use of its properties for multiple purposes, involving the continuation of previous and existing uses, including convenience store and gas station operations, gaming facilities, and related activities. In addition, the Nation proposes construction of a new approximately 4,928 square foot gaming facility with 150 new gaming machines within an existing gravel parking lot located west of the existing gaming facility.

As further discussed in "Traffic and Transportation," below, the Proposed Action, inclusive of the planned expansion of the gaming facility, would not result in any significant changes to existing traffic conditions in the vicinity of the Nation's properties. Therefore, no significant adverse air quality impacts are anticipated to result from the Proposed Action.

ALTERNATIVE 2: NO ACTION

This alternative would result in the same potential traffic and transportation conditions as the Proposed Action. Therefore, there would be no significant adverse air quality impacts resulting from changes in traffic or transportation conditions as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would result in the same potential traffic and transportation conditions as the Proposed Action. Therefore, there would be no significant adverse air quality impacts resulting from changes in traffic or transportation conditions as a result of the Enterprise Properties into Alternative.

3.4 BIOLOGICAL RESOURCES

The following section describes the existing vegetation and wildlife resources on the Nation's properties. This information is based on site inspections and published sources and databases of species occurrence, including the NYS Breeding Bird Atlas Project, the NYSDEC Herp Atlas

⁵ Available at <https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm?msclkid=c7f93e8dc19b11eca447a9338cf0ecba>.

Project, the NYSDEC Environmental Resource Mapper, the NYS Natural Heritage Program database, and the U.S. Fish and Wildlife Service (FWS) IPaC records (see **Appendix A**).

Each of the properties was visited in preparation of the DEIS on June 1, 2006 to inspect general habitat conditions, the presence of water features and wetlands, and to inventory the primary species of vegetation and habitat cover types. At that time it was established that the subject properties have relatively low vegetation and wildlife values due to their current condition as mowed lawn—particularly the Springport Property. The Union Springs Property has a larger parcel of open agricultural land and forested hedgerow habitat that is more botanically diverse. Nevertheless, it is primarily open agricultural land—a vegetative cover type that is very common in the region. In sum, none of the subject properties comprised unique habitats rare in Cayuga County. The properties were visited in 2022 in connection with the preparation of this EA and no substantial changes in land use that would affect biological resources on the Nation’s properties or the character of the habitat were observed. The only physical change is the planned construction of a new gaming facility at the 271 Cayuga Street parcel, 7 handicap parking spaces between the existing and proposed buildings, and a gravel parking lot at the North Cayuga Street parcel in the Village of Union Springs. The new building and handicap parking area would be constructed on an existing gravel lot and the new gravel parking area would be constructed on an approximately 29,000 square foot existing vacant (grass and formerly forested) area.

THREATENED AND ENDANGERED SPECIES

The NHP and the FWS were contacted for information on past records of occurrence of any state- or federally listed plant and animal species in the vicinity of the subject properties. In 2007, FWS indicated that there is potential for the federally and state-listed endangered Indiana bat (*Myotis sodalist*) to occur within the vicinity of the Nation’s properties, which are approximately four to ten miles from known roosts and approximately 33 to 36 miles from known hibernacula in Onondaga County. However, recent review of the FWS’ IPaC report (discussed below) showed no potential occurrence of Indiana bat. Likewise, a response from NHP on June 20, 2022 also did not identify Indiana bat as present within the vicinity of the Nation’s properties (see **Appendix A**).

NYSDEC Environmental Resource Mapper

The NYSDEC Environmental Resource Mapper, which draws from the NHP database, indicates the Union Springs Property is within the vicinity of lake sturgeon, which is listed as threatened.⁶ However, as the site is not adjacent to Cayuga Lake, no impacts are anticipated. The Environmental Resource Mapper did not identify any significant natural communities within the vicinity of the Union Springs Property. Therefore, the proposed site modifications on the Union Springs property are not anticipated to have an effect on lake sturgeon or significant natural communities.

The Environmental Resource Mapper does indicate that the Springport Property is within 1/2 mile of a known significant natural community and within a rare plants and animals check zone. However, this parcel is currently vacant land and no development is contemplated at this time for this parcel.

⁶ <http://www.dec.ny.gov/gis/erm/> (accessed April 2022)

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NHP Project Screening

A project screening request was submitted to NHP on May 5, 2022. The response received on June 20, 2022 identified two endangered, threatened, or special concern species within the vicinity of the Nation's properties: lake sturgeon and bald eagle. As noted above, the sites are not adjacent to Cayuga Lake; therefore, no impacts are anticipated to lake sturgeon. The NHP response indicated that bald eagle has been documented nesting at the Union Springs property and at two locations within ¾ mile of the Springport property.

The bald eagle is listed as threatened in New York State and is federally protected under the Bald and Golden Eagle Protection Act. The bald eagle was removed from the U.S. Endangered Species List in 2007 because of a significant recovery from population declines that had occurred throughout the prior century. The bald eagle population in New York State has grown dramatically in recent decades, from approximately 50 breeding pairs in 2000 to more than 400 in 2017.^{7,8} Numbers of wintering eagles in the state have also sharply risen.⁹ As a result, the state status of the bald eagle has been proposed by NYSDEC to be down-listed from threatened to special concern. The recovery of bald eagles throughout their range is in part attributable to decades of generational, increasing habituation to human activity and land-use change.¹⁰ They prefer to nest in forested areas near large bodies of water and can be found in open uplands with access to open water for fishing.¹¹ Given the limited amount of grassy area and formerly forested area disturbance required for the proposed parking area, the construction of the new gaming facility on an existing gravel parking lot, and that the subject property's habitat types are common in the region, the site modifications are not anticipated to have a significant adverse impact on bald eagle.

FWS IPaC

FWS, in correspondence dated November 15, 2007, acknowledges the determination of no effect, and states that no further coordination under the Endangered Species Act is required. This correspondence from FWS is provided in **Appendix E**. As a follow-up to this consultation, the current FWS records were reviewed through the FWS IPaC website (see **Appendix A**).

FWS' IPaC report revealed the northern long-eared bat (*Myotis septentrionalis*) (Threatened), as having the potential to occur on site; however, no critical habitats were listed. The northern long-eared bat's decline is greatly due to the white-nose syndrome. Preferred roosting sites are in caves or in cavities or crevices of both live and dead trees. The northern long-eared bat was listed as threatened under the Endangered Species Act on April 2, 2015. Since no additional disturbance

⁷ New York Natural Heritage Program (NYNHP). 2021. Bald eagle guide. Available from: <https://guides.nynhp.org/bald-eagle/>

⁸ Nye, P.E. 2010. New York State Bald Eagle Report 2010. Albany, NY: New York State Department of Environmental Conservation. Available from: https://www.dec.ny.gov/docs/wildlife_pdf/baea2010.pdf?msclkid=5ae40364c66911ec89959d56825f64c9.

⁹ Ibid.

¹⁰ Guinn, J.E. 2013. Generational habituation and current bald eagle populations. *Human-Wildlife Interactions* 7:69-76.

¹¹ The Cornell Lab of Ornithology. 2019. Bird guide for Bald Eagle. Available from: https://www.allaboutbirds.org/guide/Bald_Eagle/lifehistory

outside of gravel parking areas or vacant cleared land is proposed, no impacts to northern long eared bat are anticipated.

It is also of note that the current IPaC report showed no potential occurrence of Indiana bat, which had been identified in the FEIS.

The FWS IPaC report also identified the monarch butterfly (*Danaus plexippus*) (Candidate species), as having the potential to occur on both the Union Springs and Springport properties; however, no critical habitats were listed. The preferred habitat includes milkweed species located in livestock pastures, agricultural margins, roadsides, wetland areas, and gardens. They migrate from eastern and central North America to winter in montane forests in Mexico and then return north in spring to breed. The monarch butterfly was listed as a Candidate species under the Endangered Species Act on December 15, 2020. Although some site disturbance is currently proposed within the Union Springs property, the majority of the disturbance would be within an existing gravel parking lot and currently grassy or vacant areas. Monarch butterflies are not intolerant of or displaced by high levels of human activity, and as such, would not be impacted by operation of the project adjacent to areas in which monarch butterflies could occur. Overall, construction and operation of the gaming facility would not be likely to adversely affect monarch butterfly populations. In addition, the Nation will implement a post-construction planting plan including milkweeds for larval development and native wildflowers for foraging.

The FWS IPaC report identified four birds of concern for the two Project Sites: bald eagle (*Haliaeetus leucocephalus*) (NYS Threatened), bobolink (*Dolichonyx oryzivorus*), golden eagle (*Aquila chrysaetos*) (NYS Endangered), and wood thrush (*Hylocichla mustelina*). As noted above, although some site disturbance is currently proposed within the Union Springs property, the majority is to previously disturbed gravel and grassy areas.

As discussed above, the site modifications are not anticipated to have a significant adverse impact on bald eagle.

Bobolink is a Bird of Conservation Concern throughout its range in the continental US. Its habitat includes large fields with a mixture of grasses and broad-leaved plants, hayfields, meadows, and freshwater marshes.¹² Given that the proposed site work on the Union Springs property would not impact the field areas, no significant adverse impacts to bobolinks are anticipated.

Golden eagle is listed as endangered in New York State and is federally protected under the Bald and Golden Eagle Protection Act. Its habitat includes open and semi-open country with native vegetation; they avoid developed areas and uninterrupted forests. Their preferred nesting location is on cliffs and steep escarpments, although they sometimes nest in trees, on the ground, or in human-made structures.¹³ Given the limited amount of grassy/vacant area disturbance required for the proposed parking area, the construction of the new gaming facility on an existing gravel parking lot, and that the subject property's habitat types are common in the region, the site modifications are not anticipated to have a significant adverse impact on golden eagle.

Wood thrush is a Bird of Conservation Concern throughout its range in the continental US. Its habitat includes mature deciduous and mixed forests and forest edges, and ideally in trees over 50

¹² The Cornell Lab of Ornithology. 2019. Bird guide for Bobolink. Available from: <https://www.allaboutbirds.org/guide/Bobolink/lifehistory>

¹³ The Cornell Lab of Ornithology. 2019. Bird guide for Golden Eagle. Available from: https://www.allaboutbirds.org/guide/Golden_Eagle/lifehistory

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feet tall with a moderate understory, open floor, and nearby water.¹⁴ Given the construction of the new gaming facility on an existing gravel parking lot and that the subject property's habitat types are common in the region, the site modifications are not anticipated to have a significant adverse impact on wood thrush.

NYSDEC Breeding Bird Atlas

The NYSDEC Breeding Bird Atlas was also consulted (see **Appendix A** for a complete list of species). Eighty-five (85) species were listed as being likely to occur on the Union Springs Property. The Red-headed woodpecker (*Melanerpes erythrocephalus*) (NYS Special Concern), the Grasshopper Sparrow (*Ammodramus savannarum*) (NYS Special Concern), and Northern Harrier (*Circus cyaneus*) (NYS Threatened) all have the potential to occur on the Union Springs site.

Red-headed woodpeckers are species of special concern in New York State. Their habitat includes deciduous oak or beech forests, groves of dead or dying trees, recent clearings, farmland, grasslands with scattered trees, forest edges, and roadsides.¹⁵ The red-headed woodpecker nests in the cavities of dead, barkless trees and limbs and in utility poles 5-80 feet above the ground.^{16,17} The breeding habitat for red-headed woodpeckers is characterized by the presence of dead trees for nest sites, snags for roosting, and open ground for foraging; they prefer to nest near river bottoms, wooded swamps, and open grasslands with scattered trees.¹⁸ Given the construction of the new gaming facility on an existing gravel parking lot and that the subject property's habitat types are common in the region, the site modifications are not anticipated to have a significant adverse impact on red-headed woodpeckers.

Grasshopper sparrow is a species of special concern in New York State. Their habitat includes grasslands, hayfields, and open pastures with little to no scrub cover. They place their nests on the ground within areas of tall grass or sedges.¹⁹ Given the limited amount of grassy area disturbance for the proposed parking area, the construction of the new gaming facility on an existing gravel parking lot, the lack of changes to any existing hayfields, and that the subject property's habitat types are common in the region, the site modifications are not anticipated to have a significant adverse impact on grasshopper sparrow.

The northern harrier is a state-listed threatened species of bird. Northern harriers breed in a variety of marshes, grasslands, meadows, and cultivated fields, and use similar habitats during migration

¹⁴ The Cornell Lab of Ornithology. 2019. Bird guide for Wood Thrush. Available from: https://www.allaboutbirds.org/guide/Wood_Thrush/lifehistory

¹⁵ The Cornell Lab of Ornithology. 2019. Bird guide for Red-headed Woodpecker. Available from: https://www.allaboutbirds.org/guide/Red-headed_Woodpecker/lifehistory

¹⁶ Ibid.

¹⁷ New York State Department of Environmental Conservation (NYSDEC). 2022. Red-headed Woodpecker Fact Sheet. Available from: <http://www.dec.ny.gov/animals/59575.html>. Accessed April 27, 2022.

¹⁸ Ibid.

¹⁹ The Cornell Lab of Ornithology. 2019. Bird guide for Grasshopper Sparrow. Available from: https://www.allaboutbirds.org/guide/Grasshopper_Sparrow/lifehistory

and wintering periods.^{20,21} They place their nests on the ground in dense cover.²² Given that the proposed site work on the Union Springs property would not impact the field areas, no significant adverse impacts to northern harriers are anticipated.

The NYSDEC Breeding Bird Atlas listed 52 species as being likely to occur on the Springport Property (see **Appendix A**). Cooper's Hawk (NYS Special Concern) and Vesper Sparrow (NYS Special Concern) both have the potential to occur on the Springport property. The open farmland/woodland buffer nature of the property could potentially provide suitable habitat for these species; however, due to the lack of new construction on the Springport property they would be unlikely to be impacted by the Proposed Action.

NYSDEC Herp Atlas

The NYSDEC Herp Atlas was also consulted. NYSDEC listed seventeen (17) amphibians and eight (8) reptiles as having the potential to occur on project sites, but none of these species are listed with special protection (see **Appendix A** for a complete list of species).

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation's properties would otherwise be left undisturbed or managed under their current regime, with the exception of the proposed new gaming facility and parking areas. The only change to onsite vegetation or wildlife resources would be the proposed site alterations that would convert approximately 29,000 square feet of existing vacant (grass and formerly forested) areas to a gravel parking lot at the North Cayuga Street parcel in the Village of Union Springs. The proposed gaming facility would be constructed in an existing gravel parking lot. As discussed above, the proposed site alterations are not anticipated to have a significant adverse impact on any threatened, endangered, special concern, or candidate species. Therefore, there would be no significant impacts to biological resources as a result of the Proposed Action. Furthermore, any future development of the Nation's lands would comply with all applicable federal laws. Therefore, there would be no significant impacts to threatened or endangered species as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

This alternative would result in the same changes to biological resources as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. Like the Proposed Action, there would be no significant impacts to biological resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would result in the same changes to biological resources as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. Like

²⁰ MacWhirter, R.B. and K.L. Bildstein. 1996. Northern Harrier (*Circus cyaneus*). Species account #210 in: *The Birds of North America* (A. Poole and F. Gill, Eds.). The Academy of Natural Sciences, Philadelphia, PA, and The American Ornithologists' Union, Washington, D.C.

²¹ New York Natural Heritage Program. 2020. Online Conservation Guide for *Circus cyaneus*. Available from: <http://acris.nynhp.org/guide.php?id=6812>.

²² Ibid.

the Proposed Action, there would be no significant impacts to biological resources as a result of the Enterprise Properties into Alternative.

3.5 CULTURAL RESOURCES

Potential impacts to cultural resources in the vicinity of the Nation's properties were analyzed. Cultural resources include both archaeological and architectural resources. Adverse effects can occur when an action may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the State/National Register of Historic Places. Actions that could potentially affect archaeological resources include those that involve ground disturbance, or below-grade construction and excavation. Actions that could affect historic architectural resources include physical destruction or damage of all or part of an architectural resource; removal of the architectural resource from its historic location; changes to the historic features of the architectural resource or its setting that contribute to its historic significance; and the introduction of visual, atmospheric, or audible elements that diminish the integrity of the architectural resource's significant historic features. The assessment of potential impacts to archaeological and architectural resources with the Proposed Actions is presented below.

ARCHAEOLOGICAL RESOURCES

In a letter dated September 7, 2021, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) determined that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places would be impacted by this project.²³

ARCHITECTURAL RESOURCES

Known architectural resources are defined as properties listed on or determined eligible for listing on the State and National Registers of Historic Places [S/NR], and National Historic Landmarks [NHL]. There are no known architectural resources on the Nation's Union Springs Property or the Springport Property. There are three known architectural resources located in the vicinity of the Union Springs Property, and none in the vicinity of the Springport Property (see **Figure 9** for the locations of known architectural resources). The Howland Mill Complex (S/NR-eligible), located approximately ½ mile south of the Union Springs Property, was determined eligible by the New York State Historic Preservation Office in December 2020 as an example of a nineteenth-century mill building and due to its associations with early industry along the shore of Cayuga Lake (See Resource No. 1 on **Figure 9**).²⁴ Located at the southwest corner of Howland and Cayuga Streets, the complex includes the 1836 mill building, the remains of a canal, and a mill pond. Due to the intervening distance, existing vegetation, flat topography, and the curve of Cayuga Street, the Howland Mill Complex does not have visibility to any of the Nation's properties.

The Union Springs Academy Historic District (S/NR-eligible), approximately ½ mile southeast of the Union Springs Property, was determined eligible in May 2021, as an example of a twentieth-century educational institution affiliated with the Seventh Day Adventist religion, and for its collection of mid-twentieth century brick institutional architecture (see Resource No. 2 on **Figure**

²³ OPRHP Project Review number 21PR05074.

²⁴ USN 01148.000172

9).²⁵ Located at 40 Spring Street, the historic district comprises a group of institutional buildings built 1921 to 1960. Due to the intervening distance and intervening vegetation and buildings, the Union Springs Academy Historic District does not have visibility to any of the Nation’s properties.

The Schenck Farm (S/NR-eligible) is located approximately 0.9 miles east of the Union Springs Property (see Resource No. 3 on **Figure 9**).²⁶ The known resource was determined S/NR-eligible in October 2000 for its distinctive Federal style farmhouse and early twentieth century barn. The house was constructed in 1820. Due to the distance, existing vegetation, and topography, the Schenck Farm does not have visibility to any of the Nation’s properties.

In a letter dated September 7, 2021, OPRHP determined that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places would be impacted by this project (see **Appendix D**).²⁷

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under the Proposed Action, the Nation would advance its planned new gaming facility at the 271 Cayuga Street parcel, which includes handicap parking spaces between the existing and proposed buildings, and a proposed gravel parking lot at the North Cayuga Street parcel in the Village of Union Springs. The proposed building and handicap parking area would be located in an existing gravel parking lot. The proposed parking lot would convert approximately 29,000 square feet of existing vacant (grass and formerly forested) areas to a gravel parking lot.

As stated above, in a letter dated September 7, 2021, OPRHP determined that the Proposed Action would not adversely impact archaeological and architectural resources (see **Appendix D**). Therefore, no significant impacts to existing historical or cultural resources on or in the vicinity of any of the properties are expected.

ALTERNATIVE 2: NO ACTION

This alternative would have the same potential effect on historic and cultural resources as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. Like the Proposed Action, there would be no significant impacts to historic and cultural resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would have the same potential effect on historic and cultural resources as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. Like the Proposed Action, there would be no significant impacts to historic and cultural resources as a result of the Enterprise Properties into Trust Alternative.

3.6 SOCIOECONOMIC CONDITIONS / ENVIRONMENTAL JUSTICE

The following section describes the socioeconomic and environmental justice conditions in the vicinity of the Nation’s properties. As previously discussed, the Nation has resumed operation of

²⁵ USN 01148.000173

²⁶ USN 0228.000029

²⁷ OPRHP Project Review number 21PR05074.

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its LakeSide Entertainment facility in Union Springs and intends to expand the operations by 4,928 square feet through the development of a new gaming facility at 271 Cayuga (tax lot 141.05-1-3). For the reasons identified below, no significant adverse socioeconomic conditions are expected to result from the Proposed Action.

FISCAL CONDITIONS

The Cayuga County Properties are located within the taxing jurisdictions of Cayuga County, the Town of Springport, the Springport Town Fire District, Sewer District 1, Water District 1, and the Union Springs Central School and Library Districts. In addition, the Nation’s Enterprise Property is located within the Village of Union Springs taxing jurisdiction. **Table 3** summarizes the current property taxes based on the 2021 County, Town, and Village assessment rolls.²⁸

In 2021, the Nation’s Springport properties were assessed a total of \$63,984 in property taxes. This total includes \$19,744 to Cayuga County, \$863 to the Town of Springport, \$140 to the College Charge Back, \$2,013 to the Springport Town Fire District, \$311 to Sewer District 1, \$237 to Water District 1, \$31,991 to the Union Springs Central School District, and \$354 to the Union Springs Library District. In addition, the Union Springs Property was assessed \$8,330 in property taxes by the Village of Union Springs.

**Table 3
Existing Property Taxes, 2021**

Taxing Jurisdiction	Nation’s Union Springs Property 134.17-1- 1.121	Nation’s Union Springs Property 134.17-1- 1.21	Nation’s Union Springs Property 134.17-1- 1.51	Nation’s Union Springs Property 141.05-1-3	Nation’s Springport Property 150.00-1-29.1	Total
Cayuga County	\$12,490	\$1,952	\$3,532	\$1,561	\$209	\$19,744
Town of Springport	\$546	\$85	\$154	\$68	\$9	\$863
College Chargeback	\$89	\$14	\$25	\$11	\$1	\$140
Springport Town Fire District	\$1,273	\$199	\$360	\$159	\$21	\$2,013
Sewer District 1					\$311	\$311
Water District 1					\$237	\$237
Village of Union Springs	\$5,227	\$859	\$1,742	\$502		\$8,330
Union Springs School District	\$20,237	\$3,162	\$5,723	\$2,530	\$339	\$31,991
Union Springs Library District	\$224	\$35	\$63	\$28	\$4	\$354
Total	\$40,086	\$6,306	\$11,601	\$4,860	\$1,132	\$63,984

Source: <https://www.cayugacounty.us/525/Assessment-Rolls>
<http://www.taxlookup.net/search.aspx?jurisdiction=springport&year=2022>

²⁸ <https://www.cayugacounty.us/525/Assessment-Rolls>

According to the 2021 Assessment Roll Total Parcel Count, there are 1,378 tax lots in Springport (including the Village of Union Springs) with a total taxable assessed value of \$243,970,496. The total assessed value of the Nation’s Springport and Union Springs Properties is \$2,529,300, which represents 1.04% of the total taxable assessed value of the Town of Springport.

Table 4 summarizes the property taxes as a percentage of each taxing jurisdiction. The total property tax revenue from the Nation’s properties represents approximately 0.05% of the Cayuga County total revenue from property taxes.

Table 4
The Nation’s Property Tax Payments as Percentage of Total County/Municipal Property Tax Collections

		Town of Springport Property	Village of Union Springs Property
County¹	Total Property Taxes Collected	\$42,314,897	\$42,314,897
County¹	The Nation’s Property Tax	\$209	\$19,535
County¹	<i>Nation’s Percent of Total</i>	0.00%	0.05%
Town/Village^{2,3}	Total Property Taxes Collected	\$585,868	\$264,413
Town/Village^{2,3}	The Nation’s Property Tax	\$863	\$8,330
Town/Village^{2,3}	<i>Nation’s Percent of Total</i>	0.15%	3.15%
School (including library)⁴	Total Property Taxes Collected	\$7,678,225	\$7,678,225
School (including library)⁴	Total Nation Property Tax	\$343	\$32,003
School (including library)⁴	<i>Nation’s Percent of Total</i>	0.01%	0.41%

Notes: The property taxes and budgets are from Fiscal Year 2021. The proposed 4,928 sf gaming facility is not included in the Nation’s existing property tax estimates.

Sources:

1. <https://www.cayugacounty.us/ArchiveCenter/ViewFile/Item/1119>
2. <http://orps1.orpts.ny.gov/cfapps/MuniPro/osc/Muni/TaxRateandLevy.cfm>
3. https://unionspringsny.com/wp/wp-content/uploads/pdf/Adopted_Budget_20-2021.pdf
4. <https://www.unionspringscsd.org/tfiles/folder423/2022%20Budget%20Newsletter%204-22-22.pdf>

Alternative 1: The Proposed Action – The Preferred Alternative

The Proposed Action would place five tax lot parcels in Cayuga County into trust. As a result, these tax lots would not be subject to state or local taxation. The Proposed Action would result in a net loss of \$19,744 in property tax revenue for Cayuga County, or approximately 0.05% of the Cayuga County total revenue from property taxes.

The tax revenue generated by the Nation’s properties is minimal when considered in the context of the total tax base of the Village of Union Springs, the Town of Springport, and Cayuga County. The proposed additional gaming facility space would not significantly change the tax revenue generated by the Nation as a share of the local county and municipal totals. Therefore, the Proposed Action would not have a significant adverse impact on local taxing jurisdictions.

This alternative would result in positive fiscal benefits to the Nation as a result of continuation and security of its commercial enterprises. These revenues would enable the Nation to further its goals of cultural preservation, expression and identity, self-determination, self-sufficiency and economic independence as a federally recognized Tribe.

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Alternative 2: No Action

Under this alternative, the Nation will consider all options available to it under the law with respect to payment of real property taxes on these parcels. Therefore, no significant adverse fiscal conditions are anticipated.

Alternative 3: Enterprise Properties into Trust

Under this alternative, only the Nation's Enterprise Property would be taken into trust. The vacant property in the Town of Springport would remain under the taxing jurisdiction of the relevant authorities and the Nation will consider all options available to it under the law with respect to payment of real property taxes on this parcel. The overall effect of removing the Enterprise Property from local real property taxation would be the same as those for the affected properties as enumerated above, under the Preferred Alternative.

As with the Proposed Action, this alternative would result in positive fiscal benefits to the Nation as a result of continuation and security of its commercial enterprises. These revenues would enable the Nation to further its goals of cultural preservation, expression and identity, self-determination, self-sufficiency and economic independence as a federally recognized Tribe.

ECONOMIC EFFECTS

The Nation's LakeSide Trading and LakeSide Entertainment operations at its Union Springs Property generates economic activities that benefit the Town of Springport, the Village of Union Springs, Cayuga County, and New York State as a whole. The Nation has created jobs that employ local workers, and its business ventures generate operating expenditures that provide wide-ranging effects. This section discusses the estimated economic effects that result from the Nation's current business operations at its Union Springs location, as well as incremental future benefits associated with the proposed new gaming facility within the Village of Union Springs. The analysis considers benefits to Cayuga County and to the wider New York State economy.

The principal model used to analyze the estimated economic effects of the existing operations was IMPLAN (Impact analysis for PLANning), an input-output modeling system. IMPLAN was originally developed by the U.S. Department of Agriculture Forest Service in 1979 and was subsequently privatized by the Minnesota IMPLAN Group (MIG). The model uses the most recent economic data from sources such as the U.S. Bureau of Economic Analysis, the U.S. Bureau of Labor, and the U.S. Census Bureau to predict estimated effects on the local economy from direct changes in employment or spending. The model contains data on more than 500 economic sectors, showing how each sector affects every other sector as a result of a change in the quantity of its product or service.

Economic benefits were projected based on actual wages and employment provided by the Nation at its business locations in operation in Fiscal Year 2021.^{29, 30} Using IMPLAN terminology, estimated economic effects are broken into three components: direct, indirect, and induced. These terms are described below.

²⁹ The economic analysis does not include wages or employment related to the former car wash which ceased operation in 2019.

³⁰ Pursuant to Exemption 4, 383 DM 15, § 5.6; 5 U.S.C. §552(b), further information related to the business plan of the Cayuga Nation is withheld as confidential business information.

Direct effects represent the benefits to the economy of the Nation's actual spending on employment, goods, or services.

Indirect effects represent the benefits that are generated by the Nation or its employees making purchases or spending money that benefit other businesses or industries as a result of their spending. This would include, for example, indirect employment. Indirect employment is the creation or support of jobs in other (e.g., non-Nation) businesses that result from the Nation's expenditures. These would, for instance, include jobs in businesses or industries that provide goods and services to the Nation. These non-Nation businesses in turn purchase goods and services from other businesses, causing a ripple effect through the economy. The ripple effect continues until leakages from the region (caused, for example, by imported goods) stop the cycle. The sum of these iterative inter-industry purchases is called the *indirect effect*.

Induced effects represent the impacts caused by increased income in a region. In this analysis, the Nation's employment or workers result in both direct and indirect effects that generate more worker income by increasing employment and/or salaries throughout the region in certain industries. Households of the Nation's employees and households of workers whose jobs are supported by the indirect effects of the Nation's employment and business spending in turn spend some of their additional income on local goods and services, such as food and drink, recreation, and medical services. Again, these expenditures cause a ripple effect through the entire economy. Benefits generated by these household expenditures are quantified as *induced effects*.

Existing Investment in the Cayuga County Economy

The Nation's Union Springs Property is the location of a LakeSide Trading operation, which consists of a convenience store and gas station. In addition, the Nation's LakeSide Entertainment 1 gaming facility is located in a nearby 2,304-square-foot one-story building which houses a gaming room, which includes 86 electronic bingo machines and a cashier's booth. The Proposed Action includes the continued operation of the existing gaming facility, as well as development of a new, approximately 5,000-square-foot gaming facility. An incremental analysis of the impact on the Cayuga County and New York State economies was conducted for the new proposed facility. The Springport site is currently vacant; therefore, no economic analysis was done for this property.

The Nation currently maintains a workforce consisting of 22 employees in Cayuga County at the existing facilities. This includes eight administrative employees, as well as eight retail associates at the Nation's convenience store and six employees working the floor of the gaming operations. These jobs and the wages and salaries paid to these employees also represent a direct investment in the local economy by the Nation.

In addition to paying wages and salaries to employees, the Nation's Union Springs gas station and convenience store make expenditures in the order of \$173,729 in Cayuga County per year to purchase goods and services, therefore supporting local businesses. The major categories of recurring purchases made on an annual basis to support the Nation's Union Springs operations are shown in **Table 5**.

In addition to the payment of wages and salaries and the expenditures made to purchase goods and services, the Nation's other annual operating expenses for its Union Springs operations include utility fees that total \$61,656 per year. These include water and sewer fees of approximately \$8,418 per year, gas and electric fees of approximately \$44,586 per year, and trash removal fees of approximately \$8,652 per year.

Section 3: Affected Environment and Impacts of the Alternatives Considered

Modeling Assumptions for Cayuga County

The economic effect of the annual operations of the Nation’s Lakeside Enterprise in Union Springs has been estimated for Cayuga County and New York State using the IMPLAN model and operating data provided by the Cayuga Nation in 2021. Two IMPLAN sectors were used in the model: Sector 402-Gasoline station with convenience store, and Sector 495-Bingo Parlor. Administrative payroll expenses were divided between the two sectors based on the Nation’s employment ratios by employee class.

**Table 5
LakeSide Enterprise Purchases in Cayuga County**

Category of Expenditure	Annual Amount Spent
Non-cigarette/Gas Items for Resale	\$88,822
Print Advertising	\$13,201
Office Supplies	\$2,190
Other Professional Services	\$1,380
Repair & Maintenance	\$6,480
Other Operating Expenses (Utilities)	\$61,656
Total	\$173,729

Notes: This table reflects amounts expended for normal business operations based upon an analysis of actual expenditures during Fiscal Year 2021.

Sources: Expenditures provided to AKRF by Cayuga Nation.

Direct, Indirect, and Induced Economic Impacts

Employment. The Nation’s existing operations in Cayuga County directly provide 22 permanent full- and part-time jobs. Total employment includes these direct jobs, as well as jobs in business establishments providing goods and services to the Nation’s employees (indirect jobs), and jobs resulting from new household spending (induced jobs). Based on the IMPLAN model’s economic multipliers for Cayuga County, the total number of direct, indirect, and induced jobs from the annual operation of the Nation, including its Union Springs LakeSide Trading operations, is 27 jobs (see **Table 6**).

In the larger New York State economy, the IMPLAN model estimates that the Nation’s business operations generate two jobs each of indirect and induced employment, bringing the total number of direct, indirect, and induced jobs in New York State to 26. For both Cayuga County and the State, the direct, indirect, and induced employment estimates represent jobs that would either be new to or retained in Cayuga County and New York State.

Employee Compensation. The Nation’s direct employee compensation in Cayuga County is approximately \$718,207 (**Table 6**). Total direct, indirect, and induced employee compensation resulting in Cayuga County from the Nation’s annual operations is estimated at \$961,997. In the broader New York State economy, total employee compensation from annual operation is estimated at \$1,466,740.

Total Annual Effect on the Local Economy. The direct effect on the local economy from the Nation’s activities in Cayuga County, measured as economic output or demand, is estimated at approximately \$3,421,326 annually. Based on the IMPLAN models for Cayuga County and New York State, the total annual economic activity that results from the Nation’s existing operations is

estimated at \$5.64 million in New York State. Of that, \$4.25 million would occur in Cayuga County (**Table 6**).

Table 6
Existing Economic Benefits from Operation of the Nation’s
Cayuga County LakeSide Enterprise

	Employment Under the Proposed Action¹	Cayuga County	New York State
Employment (Permanent Jobs)	Direct (on-site)	22	22
Employment (Permanent Jobs)	Indirect (jobs in support industries)	3	2
Employment (Permanent Jobs)	Induced (jobs from household spending)	2	2
Employment (Permanent Jobs)	Total	27	26
Employee Compensation (in 2022 dollars)	Direct (on-site)	\$718,207	\$718,207
Employee Compensation (in 2022 dollars)	Indirect (earnings in support industries)	\$159,227	\$486,333
Employee Compensation (in 2022 dollars)	Induced (earnings from household spending)	\$84,563	\$262,200
Employee Compensation (in 2022 dollars)	Total	\$961,997	\$1,466,740
Output (in 2022 dollars) ²	Direct (on-site)	\$3,421,326	\$3,421,326
Output (in 2022 dollars) ²	Indirect (output in support industries)	\$536,382	\$1,433,390
Output (in 2022 dollars) ²	Induced (output from household spending)	\$297,267	\$781,791
Output (in 2022 dollars) ²	Total	\$4,254,975	\$5,636,507

Notes:

- ¹ Data reflects the existing condition in 2022 dollars with the gaming in operation.
- ² The total economic output (or demand) is the effect on the local economy, including the sum of the cost of goods and services used to produce a product and the associated payments to workers, taxes, and profits.

Sources: 2019 IMPLAN model, AKRF, Inc.; Employment and wages provided to AKRF by Cayuga Nation.

Incremental Analysis of Proposed Action

In addition to the resumed operation of the LakeSide Entertainment facility in Union Springs, the Nation intends to expand the operations by approximately 4,928 square feet. An analysis of the economic impact of the existing conditions with the new proposed facility on Cayuga County and New York State is presented in **Table 7**.

Employment. With the added gaming facility, the Nation’s operations in Cayuga County would directly provide 37 permanent full- and part-time jobs (**Table 7**). The proposed new facility would increase the direct employment by 15 workers, with 7 new employees in the gasoline station and convenience store, and eight new employees in the gaming facility. The proposed operations would support 13 indirect jobs in New York State, with 7 being in Cayuga County. Overall, the Proposed Action would support 57 permanent jobs in New York State. Of the 57 permanent jobs, 47 would be supported within the Cayuga County economy.

Section 3: Affected Environment and Impacts of the Alternatives Considered

Table 7
Incremental Economic Benefits from Operation of the Nation’s
Cayuga County LakeSide Enterprise

	Employment Under the Proposed Action¹	With the Proposed Gaming Facility — Cayuga County	With the Proposed Gaming Facility — New York State	Increment — Cayuga County	Increment — New York State
Employment (Permanent Jobs)	Direct (on-site)	37	37	15	15
Employment (Permanent Jobs)	Indirect (jobs in support industries)	7	13	4	11
Employment (Permanent Jobs)	Induced (jobs from household spending)	3	7	2	6
Employment (Permanent Jobs)	Total	47	57	20	31
Employee Compensation (2022 dollars)	Direct (on-site)	\$1,141,041	\$1,141,041	\$422,834	\$422,834
Employee Compensation (2022 dollars)	Indirect (earnings in support industries)	\$254,112	\$775,998	\$94,885	\$289,665
Employee Compensation (2022 dollars)	Induced (earnings from household spending)	\$134,496	\$417,946	\$49,933	\$155,746
Employee Compensation (2022 dollars)	Total	\$1,529,649	\$2,334,986	\$567,652	\$868,246
Output (2022 dollars) ²	Direct (on-site)	\$5,472,273	\$5,472,273	\$2,050,947	\$2,050,947
Output (2022 dollars) ²	Indirect (output in support industries)	\$853,578	\$2,280,509	\$317,196	\$847,119
Output (2022 dollars) ²	Induced (output from household spending)	\$472,801	\$1,245,926	\$175,534	\$464,135
Output (2022 dollars) ²	Total	\$6,798,652	\$8,998,708	\$2,543,677	\$3,362,202

Notes:

¹ Data reflects the existing condition in 2022 dollars with the gaming in operation.

² The total economic output (or demand) is the effect on the local economy, including the sum of the cost of goods and services used to produce a product and the associated payments to workers, taxes, and profits.

Sources: 2019 IMPLAN model, AKRF, Inc.; Employment and wages provided to AKRF by Cayuga Nations.

Employee Compensation. The Nation's direct employee compensation in Cayuga County as a result of the Proposed Action is approximately \$1,141,041 (**Table 7**). Total direct, indirect, and induced employee compensation resulting in Cayuga County from the Nation's annual operations is estimated at \$1,529,649. In the broader New York State economy, total employee compensation from annual operation under the Proposed Action is estimated at \$2,334,986. The incremental growth in total employee compensation when including the newly proposed gaming facility totals \$567,652 in Cayuga County, and \$868,246 in the broader New York State economy.

Total Annual Effect on the Local Economy. The direct effect on the local economy from the Nation's proposed activities in Cayuga County, measured as economic output or demand, is estimated at approximately \$5.5 million annually. The new proposed gaming facility adds approximately \$2.1 million in direct economic output in Cayuga County. Based on the IMPLAN models for Cayuga County and New York State, the total annual economic activity that results from the Nation's proposed operations is estimated at \$9.0 million in New York State. Of that, \$6.8 million would occur in Cayuga County (**Table 7**).

Alternative 1: The Proposed Action – The Preferred Alternative

Under the Proposed Action, the Nation's LakeSide Enterprises at its Union Springs Property would continue with the current gas station and convenience store. The Nation would also continue its gaming operation on the Union Springs Property. In addition, the Nation proposes construction of a new approximately 4,928 square foot gaming facility building within an existing gravel parking lot located west of the existing gaming facility, 7 handicap parking spaces between the existing and proposed buildings, and a new 77-space gravel parking lot within a portion of the vacant parcel to the north of the existing gaming facility. Although the Nation's gaming facilities are significantly smaller in scale than the other Upstate gaming operations, there is considerable research showing that Native American casinos in rural and poorer markets have a net positive economic impact on the surrounding non-native American communities.³¹ In fact, research indicates that gross incomes rise, public assistance payments and unemployment rates decline, and certain crime rates fall when Native American casinos are introduced near non-native American communities.³²

As discussed above, the operation of the Nation's business enterprises generates positive economic benefits in the form of jobs and local spending. The Proposed Action would ensure the long-term viability of the Nation's enterprises, and positive economic benefits to the region.

In addition, the Nation's lifestyle and cultural values receive critical financial support from its gaming revenues. The revenues from its LakeSide Enterprises are critical to the Nation's plan to establish economic self-sufficiency, as well as its desire to maintain a strong tribal government.

³¹ Numerous studies and analyses are evaluated and presented in Taylor, Jonathan B., Matthew B. Krepps, and Patrick Wang, *The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities*, Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University, April 2000.

³² See National Opinion Research Center at the University of Chicago, Report to the National Gambling Impact Study Commission – Chapter 5: Impacts of casino proximity on social and economic outcomes: 1980-1997, April 1999; and National Research Council, *Pathological Gambling: A Critical Review*, April 1999.

Section 3: Affected Environment and Impacts of the Alternatives Considered

The continuance of gaming facilities as a revenue source is critical to the Nation's fiscal and cultural well-being.

Alternative 2: No Action

Under this alternative, the Nation would continue to operate its current businesses and would consider all options available to it under the law with respect to payment of real property taxes on these parcels. While the Nation's business enterprises would continue to benefit the local and regional economy, the long-term viability of the properties would be less secure, as they would not have the benefit of being held in federal trust.

Alternative 3: Enterprise Properties into Trust

Under this alternative, only the Nation's enterprise properties would be taken into trust. Since the economic benefits of the Nation's business enterprises are primarily realized through the Union Springs Property, this Alternative would have the same effect as the Proposed Action.

ENVIRONMENTAL JUSTICE

The Nation's properties are not located within or in the vicinity of a potential environmental justice area; the nearest potential environmental justice area is over six miles away.³³ Nonetheless, the EPA's Environmental Justice Screening and Mapping Tool was used for each of the properties within a half-mile buffer around each property. The resulting percentiles for the Environmental Justice Indexes for the properties ranged from 10 to 42 within the State and 6 to 52 within the U.S., the highest of which was the EJ Index for Superfund Proximity (see **Appendix G**). However, none of the alternatives under consideration would have any impact on the proximity to or potential impacts from Superfund sites. Furthermore, EPA generally suggests screening starting at the 80th percentile; all values for the properties fall under this threshold.

The BIA Eastern Regional Office considers the Cayuga Nation to be an environmental justice community. The BIA considers the Nation a historically disadvantaged minority with limited income potential due to general biases of the greater population within the region and State.

Alternative 1: The Proposed Action – The Preferred Alternative

As discussed above under "Economic Effects," the Proposed Action would result in positive fiscal benefits to the Nation as a result of continuation and security of its commercial enterprises. These revenues would enable the Nation to further its goals of cultural preservation, expression and identity, self-determination, self-sufficiency, and economic independence as a federally recognized Tribe. The Proposed Action would remedy past injustices to the Nation. There would not be any adverse impacts; therefore, there would not be any disproportionately high and adverse effects on environmental justice populations.

Alternative 2: No Action

Under this alternative, the Nation would continue to operate its current businesses. While the Nation's business enterprises would continue to benefit the local and regional economy, the long-term viability of the properties would be less secure, as they would not have the benefit of being held in federal trust. Therefore, this alternative would not help to remedy past injustices to the

³³ <https://gis.ny.gov/gisdata/inventories/details.cfm?DSID=1273> (accessed July 5, 2022)

Nation. As with the Proposed Action, there would not be any disproportionate impacts on environmental justice populations.

Alternative 3: Enterprise Properties into Trust

As with the Proposed Action, this alternative would result in positive fiscal benefits to the Nation as a result of continuation and security of its commercial enterprises. These revenues would enable the Nation to further its goals of cultural preservation, expression and identity, self-determination, self-sufficiency, and economic independence as a federally recognized Tribe and would help to remedy past injustices to the Nation. As with the Proposed Action, there would not be any disproportionate impacts on environmental justice populations.

3.7 TRAFFIC AND TRANSPORTATION

This section describes the existing traffic conditions in the immediate and affected vicinity of the Nation’s properties subject to the Proposed Action. An updated Traffic Impact Study was done in Cayuga County (2022), including updated traffic counts and accident data (see **Appendix C**). The study accounted for the operation of the Nation’s existing gaming facility on the Union Springs Property.

The existing conditions of traffic on the roadways in the vicinity of the Nation’s Union Springs and Springport Properties were assessed. Roadway and intersection characteristics were analyzed. No high accident intersection locations were identified within the study areas and there were no fatalities at any of the study area intersections. Overall, no significant accident patterns were identified at any of the study area intersections during this time period.

No major development projects were identified in the immediate vicinity of the properties. As such, under the No Build conditions it is projected that there would be no notable changes in level of service (LOS) for any of the lane groups/approaches at the study area intersections.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation’s land in the Village of Union Springs and the Town of Springport in Cayuga County would be taken into and held in trust by the United States. The Nation would continue use of its properties for multiple purposes, involving the continuation of previous and existing uses, including convenience store and gas station operations, gaming facilities, and related activities. All of the uses were in operation on the Union Springs Property at the time of the 2022 traffic counts.

In addition, the Nation proposes construction of a new approximately 4,928 square foot gaming facility with 150 new gaming machines within an existing gravel parking lot located west of the existing gaming facility. The LakeSide Entertainment facility is consistent with federal regulations for a Class II gaming facility. As detailed in the Traffic Impact Study (see **Appendix C**), it is estimated that the 150 gaming machines would generate approximately 104 trips (54 entering, 50 exiting) during the Friday PM peak hour and 117 trips (63 entering, 54 exiting) during the Saturday PM peak hour. The Proposed Action, inclusive of the planned expansion of the gaming facility, would not result in any notable changes in level of service (LOS) for any of the lane groups or approaches at the study area intersections. All lane groups and approaches at the study area intersections would continue to operate acceptably at LOS A or B.

Therefore, the Proposed Action is not anticipated to result in any significant adverse traffic impacts.

Section 3: Affected Environment and Impacts of the Alternatives Considered

ALTERNATIVE 2: NO ACTION

Under this alternative, the Nation’s properties would not be taken into federal trust, and the Nation would continue use of its properties for the multiple purposes in operation at the time of the fee-to-trust application (e.g., gas stations, convenience stores, and gaming facilities). Since the same uses would be in operation under all of the Alternatives, the traffic and transportation conditions would be consistent with those described under Alternative 1: Proposed Action.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under Alternative 3 the Nation’s enterprise properties in Union Springs would be placed into trust. Potential traffic impacts would be the same as those discussed under Alternative 1 above. Under this alternative, the Nation’s vacant parcel in Springport would remain in its current undeveloped condition, therefore there would be no new traffic generating uses that would affect the roadway system.

3.8 LAND USE AND AGRICULTURE

The following section describes the land use patterns in the vicinity of the Nation’s properties. The current zoning of each property is presented in **Table 8** below. Land use patterns in the vicinity of the Nation’s properties are shown in **Figure 10**. For the reasons discussed below, no significant adverse impacts to land use patterns are anticipated to result from the Proposed Action.

**Table 8
Existing Land Use and Zoning**

Property	Tax Number	Lot Acreage	Building Dimensions square footage (sf)	Land Use	Zoning
Village of Union Springs Property	134.17-1-1.51	108	N/A	Vacant/ Open Land/Agriculture	Highway Commercial (HC) and Agricultural/ Residential
Village of Union Springs Property	134.17-1-1.121	1.98	store = 2,480 sf. canopy & pumps = 3,336 sf. storage shed = 168 sf. former car wash = 1,800 sf	Gas station / convenience store / former car wash	Highway Commercial (HC)
Village of Union Springs Property	141.05-1-3	1.48	2,304 sf.	LakeSide Entertainment (gaming facility)	Highway Commercial (HC)
Town of Springport Property	150.00-1-29.1	3.70	N/A	Vacant/ Open Land	R1-Residential

Sources: Village of Union Springs Tax Collector, Town of Springport Tax Collector

ZONING

Union Springs Property

As of the Village of Union Springs zoning law and map adopted on November 19, 2013, the Nation’s Union Springs parcels were zoned as Commercial (C) for the 0.98-acre, 1-acre and 1.48-acre parcels. The 108-acre parcel was split-zoned, with the portion of the property abutting Route 90 zoned Commercial (C), and the western portion of the property zoned Agricultural/Residential (AR). The Village of Union Springs voted in March 2022 to establish a new Highway Commercial (HC) Zoning District. This new Highway Commercial (HC) District is described as “Lots that the

primary use is for activities involving the sale of goods and services carried out for profit which are typically found along highway corridors and that are generally a higher intensity of use than allowed in the Commercial District.” The 0.98-acre, 1-acre and 1.48-acre parcels were thus rezoned as Highway Commercial (HC). The portion of the 108-acre parcel abutting Route 90 was also rezoned Highway Commercial (HC). With the exception of the gaming facility, the uses of the Union Springs Property existed prior to the Nation’s acquisition of the Property, and all of the current uses existed prior to the amendments of the zoning ordinance. However, the current uses are consistent with the permitted uses of the amended zoning ordinance.³⁴

Springport Property

The zoning for the Town of Springport includes five different zones: Agricultural (AG), Residential (R1), Waterfront Residential (R2), Commercial (C), and Industrial (I). The three-acre Springport Property is located within the R1 district, and is surrounded by R2 to the west, AG to the east, and R1 to the north and south.³⁵ **Figure 11** shows the zoning in the vicinity of this property.³⁶ Permitted uses within the R1 Zoning District include single-family residences, farm operations, and temporary buildings. The subject property is currently a vacant lot and is therefore consistent with the R1 zoning district.

PUBLIC POLICY

Village of Union Springs Local Waterfront Revitalization Program

The Village of Union Springs Local Waterfront Revitalization Program (LWRP) was adopted by the Village on September 16, 2020, and approved by the Secretary of State on June 9, 2021. The Waterfront Revitalization Area includes all land within the Village of Union Springs west of the centerline of Cayuga Street (NYS Route 90). The LWRP is “a locally designed, comprehensive land and water use plan which seeks to coordinate environmental, recreational, and economic prospects and concerns into a cohesive framework...” The goals of the LWRP include encouraging younger families to move to the area, expanding local tourism, and revitalizing downtown and public areas.

Town of Springport Vision Plan

The Town of Springport prepared the Town of Springport Vision Plan, which was adopted on December 12, 2011. The Vision Plan provided a foundation for the Town to develop a new Comprehensive Plan for the future of the community that would reflect the community’s values and hopes for what the Town will be in twenty years. The plan also included the implementation of a new Local Waterfront Revitalization Plan.

³⁴ Village of Union Springs zoning code available at <http://unionspringsny.com/government/zoning-law/>

³⁵ Town of Springport zoning code available at the Town Office, 859 State Route 326, Cayuga, NY 13034 and <https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbmxczHJpbmdwb3J0bn18Z3g6MTAyYmEwNDBjZWY1OGJkOA> (accessed 7/3/22).

³⁶ <https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbmxczHJpbmdwb3J0bn18Z3g6NWQ2YzQ3NDhiZjZkMWZlMw> (accessed 7/3/22)

Section 3: Affected Environment and Impacts of the Alternatives Considered

The Vision envisions its future as “continuing to be a rural community, focusing on...Cayuga Lake, a strong agricultural community, a rural village center, an abundance of open space, and valuable natural resources.” To do so, the plan sets five different goals: preserve the rural character of the Town; develop the waterfront with compatible uses consistent with the rural character of the Town; support the current economy and promote the establishment of new enterprises; ensure the viability of farming and agricultural lands; and preserve and enhance open space and the environment.

Town of Springport Draft Comprehensive Plan

In May 2013, the Town of Springport prepared the Town of Springport Draft Comprehensive Plan. The purpose of the new Comprehensive Plan was to provide a framework for leaders and residents of the Town to guide the future growth and development of their community to the year 2033 and beyond; and was based on the Town of Springport Vision Plan adopted in 2011. The vision for the future of the Town set by the Comprehensive Plan is relatively similar to the 2011 Vision Plan: “The Town of Springport envisions itself in the future as a rural community that utilizes the aspects which make it unique: Cayuga Lake, a strong agricultural sector, a rural village center, an abundance of open space and valuable natural, cultural and educational resources.” The Town values itself as a “forward-thinking community, strengthened by local governance, responsible for land use control, and community programs balances with respect for individual property rights.” According to the Draft Comprehensive Plan, the Town should focus on the following resources: waterfront revitalization, agriculture, economic development, housing, environmental resources, outdoor recreation, community resources, infrastructure, and governance.

AGRICULTURE

The subject properties are located in an area that is largely characterized by low-density residential and agricultural land uses. None of the Nation’s properties are located within Cayuga County agricultural districts.³⁷

Union Springs Property

The subject property in Union Springs is comprised of four contiguous tax parcels which are substantially developed or commercial properties supporting the Nation’s gas station, convenience store, and gaming operations. In addition, the Nation farms the 82 tillable acres of its 108-acre vacant tax lot for field crop cultivation. The farming activity consists of an annual cycle of preparing soil and planting, mid-summer spraying, fall harvesting, and planting of a winter cover crop. Adjacent properties include a mix of residential, agricultural, and retail land uses. Based upon field investigations (see Appendix L of the DEIS) and historic aerial photography, the subject property appears to have once been in agricultural use. As discussed above in Section 3.1, “Land Resources,” the subject property contains soils considered by the USDA to be prime farmland soils.

Springport Property

The subject property in Springport is approximately 3 acres and is currently vacant residential land. Adjacent properties consist mainly of residences, and several farm fields in the vicinity. Historic aerial photographs dating to 1938 indicate that this property has historically been vacant.

³⁷ <https://www.cayugacounty.us/DocumentCenter/View/17038/Cayuga-County-Ag-District-Map-PDF?bidId=> (accessed July 3, 2022)

As discussed above in Section 3.1, “Land Resources,” the property contains soils considered by the USDA to be prime farmland soils.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under the Proposed Action, the Nation would gain jurisdiction over the land and land use regulation would be conferred on the Nation. The Nation’s properties would be subject to the Cayuga Nation Land Use Ordinance and Ordinance No. CN-2003-01, adopted in 2003 (see **Appendix B**). This ordinance provides for the regulation of the type and scale of development that occurs on the Nation’s lands, including trust lands. This ordinance mandates that no existing land uses can be substantially changed or altered unless a Land Use Permit is obtained. Although the Nation proposes to construct a new gaming facility on the 271 Cayuga Street parcel, an existing gaming facility already operates on this parcel; therefore, this would not constitute a change in land use. The Proposed Action does not result in farmland being converted to non-agricultural uses. The Nation plans to continue their agricultural use (field crops) of the 82 tillable acres of the 108-acre vacant tax lot in Union Springs. No change in land use would occur; agriculture in Cayuga County would not be impacted.

The provisions of the Nation’s ordinance further require that the Nation consider compatibility of use, location of the proposed use, its congruity with the area, and the environmental effect of the use. These requirements provide a measure of protection to adjacent land uses and serve to protect the public health and safety of residents, and neighborhood character in a manner similar to the type of protection provided by local zoning, land use, and other regulations. The application of this ordinance is expected to ensure the health, safety, and welfare of the Nation and the surrounding communities.

For each affected municipality, Nation lands proposed for conveyance into trust under the Proposed Action and other alternatives comprise only a small percentage of the entire area of the community, minimizing the geographic extent of the effect. In addition, the Nation’s lands are currently consistent with existing zoning and land use regulations in the communities in which they are located.

Irrespective of whether land is placed in trust or not, the land would continue to be regulated by federal laws, including environmental laws. EPA would continue to have primacy for environmental regulations and oversight. Through its policies, the Nation has indicated its commitment to standards of environmental protection, conservation, and public health and safety. The combination of Federal and Nation regulatory oversight and the ongoing practice of consultation and coordination between the Nation and Federal, New York State, and local agencies could serve as a mechanism to mitigate effects stemming from the placement of lands in trust status. Therefore, there would be no significant impacts to the land use patterns as a result of the Proposed Action and the Nation’s land use policies would be applicable to its trust lands.

ALTERNATIVE 2: NO ACTION

As noted above, the Village of Union Springs and the Towns of Springport have recently updated their local zoning ordinances and maps. However, the Nation’s existing land uses are consistent with the existing and proposed ordinances. In addition, the planned gaming facility was subject to state and local permitting. Therefore, there would be no impacts to land use patterns.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would have the same potential effect on land use patterns as the Proposed Action. As with the Proposed Action, the Nation would expand its gaming facility and parking area. As described in Alternative 1, above, the local land use and zoning requirements that currently apply to the Nation's lands would no longer apply to the subject Enterprise Property if the land is placed into trust. Environmental baseline conditions would continue to exist on the non-Enterprise property in the Town of Springport, as discussed under Alternative 2. No change in land use would occur; agriculture in Cayuga County would not be impacted. Therefore, there would be no significant impacts to land use patterns as a result of the Enterprise Properties into Trust Alternative.

3.9 PUBLIC SERVICES

There have been no significant new circumstances or information relevant to concerns related to public services since the publication of the FEIS. Public services are shown on **Figures 12a** through **12d** and are discussed in the sections below.

WATER SUPPLY

Union Springs

The water supply for the Village of Union Springs is located along NYS Route 90. There are two drilled wells and two well houses that supply potable water. The Village of Union Springs has approximately 445 metered water customers, including the Nation. These customers, and customers from the Town of Springport, are served by seven pressure-reducing pits, two water storage tanks, and approximately eight miles of water mains.³⁸

Springport

The Nation's property in Springport is currently vacant and does not have onsite water supply infrastructure.

WASTEWATER SERVICE

Union Springs

The Village of Union Springs provides sewer, wastewater treatment, and other sewer services to all properties, including the Nation's, located within the village and all properties in the Town of Springport as defined in the Municipal Cooperation Agreement for Sewage, Wastewater, and Sewer Service. This agreement limits the sources of sewage and wastewater and requires that village, county and state standards be met for sewage and wastewater.

Springport

The Village of Union Springs provides sewer, wastewater treatment, and other sewer services to all properties located in the Town of Springport in accordance with the Municipal Cooperation Agreement for Sewage, Wastewater, and Sewer Service. This agreement limits the sources of

³⁸ <https://unionspringsny.com/wp/wp-content/uploads/pdf/waterqualityreport.pdf>

sewage and wastewater and requires that village, county and state standards be met for sewage and wastewater. However, the Nation’s property in Springport is currently undeveloped.

SOLID WASTE

Union Springs

Casella Resource Solutions provides solid waste services to the Nation’s property in Union Springs.

Springport

The Nation’s property in Springport is currently undeveloped and does not generate waste.

ENERGY

Union Springs

NYSEG provides electric and gas service to the Union Springs property.

NYSEG has several easements over the property owned by the Nation to provide electric and gas service. There are NYSEG transmission lines that cross the subject property that are a link in the infrastructure that provides electric and gas service throughout Cayuga County.

The subject property also contains a natural gas well to which Devonian Energy has access rights. These rights were transferred to the Union Springs Central School District in 1981 and a gas well was drilled. This well has been used as a source for fuel for heating the high school and district offices. The property would be taken into trust subject to the existing access rights.

Springport

NYSEG provides electric and gas service to all of Springport.

LAW ENFORCEMENT

Cayuga County Sheriff’s Office

The Cayuga County Sheriff’s Office jurisdiction comprises 700 square miles and approximately 80,000 people. The Sheriff’s Office has several divisions and employs approximately 175 people.³⁹

Union Springs

The New York State Police (“NYSP”) and Cayuga County Sheriff’s Office provide police services to the Village of Union Springs. The NYSP is divided into ten Troops based on geographic area. Troop E, known as the “Finger Lakes Troop,” provides coverage for ten counties including: Cayuga, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates, and therefore covers the Village of Union Springs. Troop E operates from 23 stations, and patrols 6,042 square miles, including 18,457 miles of rural and interstate roadways daily. Troop E personnel provide the full spectrum of State Police services to residents, commuters, and travelers in and around the region’s 7 cities, 160 towns and 79 villages.

³⁹ <https://www.cayugacounty.us/155/Sheriffs-Office> (accessed July 4, 2022)

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The Troop E Auburn station provides police services and coverage for the Village of Union Springs.

The Village of Union Springs allocated \$27,500.00 in its 2022-2023 Fiscal Budget General Fund for public safety which was adopted April 19, 2022. This includes \$12,500 in contractual fees for police and \$15,000 in contractual fees for public safety-sidewalks.⁴⁰

Springport

The NYSP Troop E and Cayuga County Sheriff's Office provide police services to the Town of Springport.

FIRE PROTECTION

Union Springs

The Village of Union Springs is located within the Union Springs Fire District. The Union Springs Fire Department is made up of 30 volunteer members.⁴¹ The Fire Department works with the Union Engine and Hose Company to provide all fire and ambulance services to the Village of Union Springs.

Springport

The Town of Springport is located within the Union Springs Fire District. As discussed above, the Union Springs Fire Department is made up of 30 volunteer members. The Fire Department works with the Union Engine and Hose Company to provide all fire and ambulance services to the Town of Springport.

EMERGENCY MEDICAL SERVICES

Cayuga County Emergency Management Office

The mission of the Cayuga County Emergency Management Office is to provide for life safety, property and environment protection from all natural and manmade hazards that may occur within Cayuga County through a comprehensive and integrated emergency management planning and execution system approach.⁴² It provides Emergency Medical, CPR, and Fire training for all county first responders. The office also coordinates preparedness, mitigation, response, and recovery of all agencies and personnel for any potential or actual disaster that threatens life, property, and/or the environment in Cayuga County. It assists individuals, municipalities, and businesses during the emergency and through the recovery operation process. These disasters include flood, drought, hurricane, tornado, winter storm, ice storm, hazardous material or radiological release, airplane crash, train derailment, dam failure, long term power failure, mass casualty incidents, or act of domestic terrorism.

The Office of Emergency Services provides resource information and interacts with Fire, Emergency Medical, Law Enforcement, the American Red Cross, the New York State Health

⁴⁰ <https://unionspringsny.com/wp/wp-content/uploads/pdf/2022-2023%20Adopted%20budget.pdf> (accessed July 4, 2022)

⁴¹ <http://unionspringsfiredepartment.com/> (accessed July 4, 2022)

⁴² <https://www.cayugacounty.us/371/Emergency-Management> (accessed July 4, 2022)

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Department, the County Health Department, the Planning Department, and the New York State Weapons of Mass Destruction Taskforce. It also coordinates between the local and state/federal government in matters related to Federal grant or loan monies.

Locally, the office works with the Cayuga County Chapter of the American Red Cross, the Salvation Army, the New York State Health Department, schools, nursing homes, residential centers (adult care and day care), county government, the County Health Department, the County Planning Department, towns, villages, the City of Auburn, and the Local Emergency Planning Committee, in planning and preparedness for potential natural or manmade disasters.

Central New York Emergency Medical Services Program

The Central New York EMS Program (CNYEMS) serves Cayuga, Cortland, Onondaga, Oswego and Tompkins Counties, and is one of 19 EMS Program Agencies in New York State.⁴³ As defined in Section 3003-a of Article 30 of the NYS Public Health Law, the role of CNYEMS is to assist the Regional EMS Council and the New York State Department of Health (NYSDOH) in the support and development of regional EMS Systems by providing professional and clerical staff to implement and support the activities of the Regional EMS Council and the Regional Medical Advisory Committee (REMAC).

Union Springs

The nearest ambulance service to the Village of Union Springs is North Seneca Ambulance, Inc (NSA). NSA operates out of Waterloo, New York (1645 North Road). The ambulance barn, training facility, office space, and living quarters are all located at this base. Crews are on duty in six-hour shifts and there is a crew always on duty.

Springport

The nearest ambulance service to the Town of Springport is North Seneca Ambulance, Inc.

SCHOOLS AND LIBRARIES

The Town of Springport and the Village of Union Springs are located in the Union Springs Central School District. The Union Springs Central School District is comprised of three schools located in three buildings. Union Springs High School, grades 9-12, and Union Springs Middle School, grades 6-8, are located in the secondary building at 239 North Cayuga Street. A.J. Smith Elementary, grades pre-K-5, is located at 26 Homer Street. There are 742 students in the Union Springs Central School District as of the 2020-2021 school year with 328 students enrolled at A.J. Smith Elementary (K-5), and 414 students enrolled at both Union Springs Middle and High Schools.⁴⁴

The Union Springs Central School District's adopted budget for the 2021-2022 school year is \$19,393,804. Of this amount, \$10,499,346 is provided through State Aid and \$7,678,225 is met through the property tax levy.⁴⁵

⁴³ <https://cnyems.org/> (accessed July 4, 2022)

⁴⁴ <https://data.nysed.gov/enrollment.php?year=2021&instid=800000054503> (accessed July 4, 2022)

⁴⁵ <https://www.unionspringscsd.org/tfiles/folder423/2022%20Budget%20Newsletter%20204-22-22.pdf> (accessed July 4, 2022)

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The Springport Free Library, located at 171 Cayuga Street, is the main library for the Town of Springport and the Village of Union Springs. It is part of the Finger Lakes Library System.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

The proposed approximately 4,928 square foot gaming facility at the 271 Cayuga Street parcel in the Village of Union Springs would require connection to the existing water and sewer service and electrical service. The proposed gaming facility would use the solid waste services already in place for the existing gaming facility. There would be no other changes to onsite or area water supply, wastewater, energy, or solid waste from the environmental baseline condition which included the operation of the gaming facilities. Under this alternative, the Nation will continue to pay for all utility services or negotiate agreements to provide them as necessary. The Nation will pay its appropriate share of expenses for any community infrastructure services and utilities they use, and use levels are expected to marginally increase from the environmental baseline conditions at the time of the fee-to-trust application to account for the 4,928 square foot expansion. However, sufficient infrastructure exists to accommodate this limited expansion and there would be no significant impacts to community infrastructure as a result of the Proposed Action.

The Proposed Action is not anticipated to result in any adverse impacts to community service providers in the affected communities. As discussed in Section 3.6, “Socioeconomic Conditions/Environmental Justice,” as trust land, the Nation’s property would not be subject to local or county taxation and would therefore not contribute to the funding of these services through the property taxation system. As discussed in Section 3.6, the Nation’s current minimal property tax contribution to local revenue budgets is not expected to affect local service providers. The Nation, however, would assume the full range of jurisdiction over the subject properties. Further, the Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements in regard to community service providers, including emergency services, to ensure that the Nation’s properties and patrons of its businesses are adequately protected.

ALTERNATIVE 2: NO ACTION

Like the Proposed Action, the Nation would advance its planned gaming facility under the No Action Alternative. Therefore, as with the Proposed Action, no significant adverse impacts to community infrastructure on or in the vicinity of the Nation’s properties are expected. Under this alternative BIA would assume that the Nation would continue to pay property taxes; however, the Nation will consider all options available to it under the law with respect to payment of real property taxes on these parcels. The Nation would continue to pay its appropriate share of expenses for any community infrastructure services and utilities they use, and the Nation’s properties would continue to be serviced by existing community services, including all Town and Village emergency service providers. Community infrastructure services and utilities use levels would be expected to marginally increase as compared to current conditions. Therefore, as with the Proposed Action, there would be no significant adverse impacts to community infrastructure or community service providers as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

The Enterprise Properties into Trust Alternative would have the same effect on community services within the Village of Union Springs as the Proposed Action. The proposed approximately 4,928 square foot gaming facility at the 271 Cayuga Street parcel in the Village of Union Springs

would require connection to the existing water and sewer service and electrical service. The proposed gaming facility would use the solid waste services already in place for the existing gaming facility. There would be no other changes to onsite or area water supply, wastewater, energy or solid waste from the environmental baseline condition, which included the operation of the gaming facilities. The Nation will continue to pay for all utilities or negotiate agreements to provide them as necessary. The Nation will pay its appropriate share of expenses for any community infrastructure services and utilities they use.

Under this alternative BIA would assume that the Nation would continue to pay property taxes to the Town of Springport; however, the Nation will consider all options available to it under the law with respect to payment of real property taxes on this parcel. The Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements with regards to community service providers, including emergency services, to ensure that the Nation's properties and patrons of its businesses are adequately protected.

Therefore, there would be no significant impacts to community infrastructure as a result of the Enterprise Properties into Trust Alternative.

3.10 NOISE

There have been no significant new circumstances or information relevant to concerns related to noise since the publication of the FEIS. Noise is typically measured in units called decibels (dB), which are ten times the logarithm of the ratio of the sound pressure squared to a standard reference pressure squared. Because loudness is important in the assessment of the effects of noise on people, the dependence of loudness on frequency must be taken into account in the noise scale used in environmental assessments. Frequency is the rate at which sound pressures fluctuate in a cycle over a given quantity of time, and is measured in Hertz (Hz), where 1 Hz equals 1 cycle per second. Frequency defines sound in terms of pitch components. In the measurement system, one of the simplified scales that accounts for the dependence of perceived loudness on frequency is the use of a weighting network—known as A-weighting—that simulates the response of the human ear. Generally, changes in noise levels less than 3 dBA are barely perceptible to most listeners, whereas 10 dBA changes are normally perceived as doublings (or halvings) of noise levels.

Because the sound pressure level unit, dBA, describes a noise level at just one moment, and very few noises are constant, other ways of describing noise over extended periods have been developed. One way of describing fluctuating sound is to describe the fluctuating noise heard over a specific time period as if it had been a steady, unchanging sound. For this condition, a descriptor called the “equivalent sound level,” L_{eq} , can be computed. L_{eq} is the constant sound level that, in a given situation and time period (e.g., 1 hour, denoted by $L_{eq(1)}$, or 24 hours, denoted as $L_{eq(24)}$), conveys the same sound-energy as the actual time-varying sound. L_{eq} is used in the prediction of future noise levels, by adding the contributions from new sources of noise (i.e., increases in traffic volumes) to the existing levels and in relating annoyance to increases in noise levels.

For purposes of impact assessment, a significant adverse impact will occur when the project results in an $L_{eq(1)}$ noise level of 65 dBA or more and produces an increase in $L_{eq(1)}$ noise levels of greater than 6.0 dBA (comparing $L_{eq(1)}$ noise levels for future conditions with the proposed project with future conditions without the proposed project). Both of these conditions would have to occur for there to be a significant adverse impact. The criteria are consistent with guidance from the NYSDEC.

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Traffic on adjacent roadways is the main source of ambient noise; changes to traffic patterns or volumes could lead to changes in the ambient noise level. As further discussed in “Traffic and Transportation” above, an updated Traffic Impact Study was conducted for the Proposed Action. Inclusive of the planned expansion of the gaming facility, the Proposed Action would not result in any significant changes to existing traffic conditions in the vicinity of the Nation’s properties. Therefore, the Proposed Action is not anticipated to noticeably increase noise levels above existing conditions, and no significant adverse noise impacts are anticipated to result from the Proposed Action.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation’s properties would otherwise be left undisturbed or managed under their current regime, with the exception of the proposed new gaming facility and parking areas. The proposed gaming facility and handicap parking area would be constructed on an existing gravel lot, just west of the existing gaming facility. The proposed parking lot would be constructed just north of the existing gaming facility.

As further discussed in “Traffic and Transportation,” above, the Proposed Action, inclusive of the planned expansion of the gaming facility, would not result in any significant changes to existing traffic conditions in the vicinity of the Nation’s properties. Therefore, no significant adverse noise impacts are anticipated to result from the Proposed Action.

ALTERNATIVE 2: NO ACTION

This alternative would result in the same potential traffic and transportation conditions as the Proposed Action. Therefore, there would be no significant adverse noise impacts resulting from changes in traffic or transportation conditions as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

This alternative would result in the same potential traffic and transportation conditions as the Proposed Action. Therefore, there would be no significant adverse noise impacts resulting from changes in traffic or transportation conditions as a result of the Enterprise Properties into Alternative.

3.11 HAZARDOUS MATERIALS

Environmental site assessments (ESA) were prepared for each of the Nation’s properties in 2009 and again in 2016, 2018, and 2022. Site conditions observed during each inspection were consistent with the observations documented during the 2009 ESAs. No solid waste, debris or evidence of illegal dumping activity were noted at any of the properties. No evidence of material releases, such as stained surfaces, oil sheen, odors, or stressed vegetation were noted at the property and no other significant observations were made. The Phase I ESAs, which included a review of database listings for on- and off-site properties, identified the Cayuga Groundwater Contamination Site as a USEPA National Priorities List (NPL) site. The USEPA NPL site was identified as the responsible party for a groundwater plume that extends 7 miles from the city of Auburn to Union Springs, and the Nation’s Cayuga Street properties are located on the western border of the mapped plume area. Extensive sampling identified that 120 homes are within the plume, 51 drinking water wells are contaminated with chlorinated volatile organic compounds (CVOCs), and 24 wells contain vinyl chloride and/or cis-1,2-dichloroethylene (DCE) above the EPA’s removal action levels (RALs). Remedies were applied to identified contamination source

areas and affected residents. The Site Investigation Report provided by USEPA indicated that the plume was mainly located within the bedrock aquifer, the plume was not detected in drinking water wells near the Nation's properties, VOCs were not detected in nearby residential drinking water wells, and the closest wells that contained the target compounds were greater than a half mile from the Nation's properties.

Using the findings of the Phase I ESAs, a Phase II investigation was conducted at Parcel 134.17-1-1.21. The Phase II investigation was intended to determine whether current or former on- or off-site activities had adversely affected environmental conditions at the site. Overall, the investigation data did not identify any areas that had been adversely affected by current or former on-site operations. Parcel 134.17-1-1.21 also includes the operation of multiple underground storage tanks (USTs). UST registration records for NYSDEC Petroleum Bulk Storage (PBS), including the corresponding inspection and testing requirements, were available from 1986 through 2007, at which time operation was changed to non-regulated use as the property was identified by NYSDEC as a sovereign nation. A December 2010 letter from the USEPA confirmed that the US operation was under Federal jurisdiction, irrespective if the parcel was placed into trust, including the inspection and testing requirements. Records were available for UST inspections and testing completed in May 2010, and on multiple events from August 2019 through October 2021. The results indicated that the petroleum tanks on the Property passed all inspections, with the exception of secondary containment equipment that was routinely repaired in 2019 and 2021. Follow-up testing indicated that all UST passed inspection. Inspection and testing was scheduled to continue, and parcel access is available for USEPA inspections. Field screening and laboratory analysis of soil samples collected in March 2009, September 2016, and May 2018 during limited subsurface (Phase II) investigations did not indicate a release of petroleum.

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, which involves placing the Nation's properties into trust, no changes to the use of the property are proposed. The Nation would advance its planned expansion of the gaming facility at the 271 Cayuga Street parcel, handicap parking spaces between the existing and proposed buildings, and gravel parking lot at the North Cayuga Street parcel in the Village of Union Springs. Due to the historic and continual use of the property as a gas station, prior to any site development, an investigation and/or soil characterization should be completed to ensure proper handling of soil and/or groundwater during any future subsurface disturbance. Construction measures are available to mitigate the potential for impacts during any future development. UST inspections at Parcel 134.17-1-1.21, consistent with NYSDEC PBS requirements, would continue as scheduled, and the parcel would continue to be available for USEPA inspections. The Proposed Action in no way diminishes, nor restricts, EPA's statutory and regulatory authority to protect public health and the environment by regulating Underground Storage Tank compliance. Therefore, with the appropriate actions completed, no significant adverse impacts related to hazardous materials would result from the placement of the Nation's parcels into trust.

ALTERNATIVE 2: NO ACTION

As with the Proposed Action, under this alternative, the properties would continue to be used as they are now, and the planned expansion of the gaming facility would be advanced. The potential impacts related to hazardous materials are the same as those related to the Proposed Action.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

As with the Proposed Action, under this alternative, the properties would continue to be used as they are now, and the planned expansion of the gaming facility would be advanced. The potential impacts related to hazardous materials are the same as those related to the Proposed Action.

3.12 VISUAL RESOURCES

This section describes the visual characteristics of the Nation's properties subject to the fee-to-trust application, and the immediate surrounding area. The visual quality of an area is a composite of different elements from the type, size, and use of buildings, to street patterns and road characteristics, the presence or absence of natural resources; and visual resources such as view corridors, vistas, and views of prominent natural resource features.

While a proposed action may be visible from many public and private vantages, mere visibility does not constitute a significant adverse impact. The significance of the visibility is dependent on several factors, including: presence of any designated historic or scenic resources within the viewshed of the proposed action, distance, general characteristics of the surrounding landscape, and the extent to which the visibility of the proposed action interferes with the public's enjoyment or appreciation of these resources. A significant adverse visual impact would only occur when the effects of design, distance, and intervening topography, and vegetation, and context do not minimize the visibility of an object, and the visibility significantly detracts from the public's enjoyment of a resource.

As discussed above in Section 3.5, "Cultural Resources," the Howland Mill Complex (S/NR-eligible) is located approximately ½ mile south of the Union Springs Property (see Resource No. 1 on **Figure 9**). Located at the southwest corner of Howland and Cayuga Streets, the complex includes the 1836 mill building, the remains of a canal, and a mill pond. Due to the intervening distance, existing vegetation, flat topography, and the curve of Cayuga Street, the Howland Mill Complex does not have visibility to any of the Nation's properties.

The Union Springs Academy Historic District (S/NR-eligible) is approximately ½ mile southeast of the Union Springs Property (see Resource No. 2 on **Figure 9**). Located at 40 Spring Street, the historic district comprises a group of institutional buildings built 1921 to 1960. Due to the intervening distance and intervening vegetation and buildings, the Union Springs Academy Historic District does not have visibility to any of the Nation's properties.

The Schenck Farm (S/NR-eligible) is located approximately 0.9 miles east of the Union Springs Property (see Resource No. 3 on **Figure 9**). Due to the distance, existing vegetation, and topography, the Schenck Farm does not have visibility to any of the Nation's properties.

The Peter Yawger House is approximately 2.5 miles north of the Nation's Union Springs property. The William Richardson House is approximately 1.75 miles north of the Union Springs property. Due to distance, existing vegetation, and topography, these historic homes are not visible from the Nation's Union Springs property.

The Almeron Durkee House is located approximately one mile north of the Nation's vacant Springport Property. Due to distance, existing vegetation, and topography this historic home is not visible from the Springport property.

As discussed in Section 3.5 above, in a letter dated September 7, 2021, OPRHP determined that no properties listed in or eligible for the New York State and National Registers of Historic Places would be impacted by this project.

There are no State Parks in the vicinity of the Nation's Union Springs or Springport properties.

The 8,090-acre Northern Montezuma Wildlife Management Area is part of the 50,000-acre Montezuma Wetlands Complex, which includes the federally-owned Montezuma National Wildlife Refuge, the former Howlands Island WMA, land owned by conservation groups, and private property.⁴⁶ Although this wildlife management area is located within the larger study area of the Proposed Action, the Northern Montezuma Wildlife Management Area is not visible from any of the Nation's properties.

The Cayuga Lake Scenic Byway, designated by the New York State Scenic Byways Program, is located within the overall study area.⁴⁷ The Cayuga Lake Scenic Byway within the vicinity of the Proposed Action follows NYS Routes 90, 34B, and 34 around the east side of Cayuga Lake. The Nation's Unions Springs and Springport properties are located on and part of the existing landscape of the Cayuga Lake Scenic Byway.

The Nation's Union Springs property is located on the west side of NYS Route 90, and therefore is between the Cayuga Lake Scenic Byway and Cayuga Lake. At the Nation's Union Springs property, the Cayuga Lake Scenic Byway is approximately 3,600 feet from Cayuga Lake. The LakeSide Trading gas station, convenience store, and former car wash located on the property is in an architectural style typical to the region for that type of use. The Nation's LakeSide Entertainment gaming operation is located in a former NAPA auto parts store, although the building is painted in a bright color, the architectural style of the building is similar to the neighboring Union Springs Fire Station, and is not atypical to the region or other buildings along the Cayuga Lake Scenic Byway. The remainder of the parcel is undeveloped and uncultivated farmland, also typical to the region and the byway.

The Springport property is located between the Cayuga Lake Scenic Byway and Cayuga Lake. The Nation's Springport property is comprised of undeveloped, vacant land and contributes to the natural beauty of the area.

Scenic NYS Route 90, designated by the New York State Scenic Byways Program,⁴⁸ is located within the study area. Scenic NYS Route 90 runs from Homer, New York to Montezuma, New York. It traverses west from Homer to Cayuga Lake, where it turns north and travels along the east side of Cayuga Lake. Scenic NYS Route 90 overlaps the Cayuga Lake Scenic Byway from where it turns north and travels along Cayuga Lake until its termination in Montezuma. Therefore, the Nation's Unions Springs and Springport properties are located on Scenic NYS Route 90 and the relationship between these properties and Scenic NYS Route 90 are the same as they are to the Cayuga Lake Scenic Byway.

The following resources and resource categories are recognized by NYSDEC as areas where visual impacts could potentially occur. However, none of these resources or resource categories are located within the vicinity of the Nation's properties.

- State Forest Preserve
- Scenic Areas of Statewide Significance

⁴⁶ https://www.dec.ny.gov/docs/wildlife_pdf/yfinmontezumahmp.pdf (accessed July 5, 2022)

⁴⁷ <https://www.dot.ny.gov/display/programs/scenic-byways/cayuga-lake-scenic-byway> (accessed July 5, 2022)

⁴⁸ <https://www.dot.ny.gov/display/programs/scenic-byways/route-90> (accessed July 5, 2022)

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- Rivers Designated as National or State Wild, Scenic or Recreational
- State or Federally designated trail
- Adirondack Park Scenic Vistas
- State Nature and Historic Preserve Areas
- Palisades Park
- Bond Act Properties purchased under the Exceptional Scenic Beauty or Open Space category

ALTERNATIVE 1: THE PROPOSED ACTION – THE PREFERRED ALTERNATIVE

Under this alternative, the Nation’s properties would otherwise be left undisturbed or managed under their current regime, with the exception of the proposed new gaming facility and parking areas. The proposed gaming facility and handicap parking area would be constructed on an existing gravel lot, just west of the existing gaming facility. The proposed parking lot would be constructed just north of the existing gaming facility. As such, there would not be a substantial change to the visual character of the site. Overall, there would be no significant changes that would negatively impact any of the visual resources in the vicinity of the properties. Therefore, there would be no significant impacts to visual resources as a result of the Proposed Action.

ALTERNATIVE 2: NO ACTION

Like the Proposed Action, the Nation would advance its planned gaming facility under the No Action Alternative. Therefore, as with the Proposed Action, there would be no significant impacts to visual resources as a result of the No Action Alternative.

ALTERNATIVE 3: ENTERPRISE PROPERTIES INTO TRUST

Under this alternative, the properties would otherwise be left undisturbed or managed under their current regime, with the exception of the proposed new gaming facility and parking areas as discussed above under Alternative 1. There would be no significant changes that would negatively impact any of the visual resources in the vicinity of the properties. Therefore, there would be no significant impacts to visual resources as a result of the Enterprise Properties into Trust Alternative.

3.13 CUMULATIVE IMPACTS

Potential cumulative impacts for each environmental issue area under Alternatives 1 through 3 are discussed below. Cumulative impacts are defined in 40 CFR § 1508.7 as the impacts:

... on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

No major development projects were identified in the immediate vicinity of the properties.

LAND RESOURCES

No cumulative impacts on land resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on land resources resulting from the Proposed Action, no cumulative impacts are anticipated.

WATER RESOURCES

No cumulative impacts on water resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on water resources resulting from the proposal, no cumulative impacts are anticipated.

AIR QUALITY

No cumulative impacts on air quality are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on air quality resulting from the proposal, no cumulative impacts are anticipated.

BIOLOGICAL RESOURCES

No cumulative impacts on biological resources are anticipated for the Proposed Action under any of the analyzed alternatives. With no impacts on biological resources resulting from the proposal, no cumulative impacts are anticipated.

CULTURAL RESOURCES

No cumulative impacts on cultural resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on cultural resources resulting from the proposal, no cumulative impacts are anticipated.

SOCIOECONOMIC CONDITIONS / ENVIRONMENTAL JUSTICE

No cumulative fiscal impacts are anticipated to result from the Proposed Action, or any of the analyzed alternatives. The Nation's properties represent a small fraction of the total taxable land base within Cayuga County, the Town of Springport, and the Village of Union Springs. Even when considered with other non-taxable entities (e.g., religious institutions and not-for-profit organizations), the cumulative fiscal impacts are not considered to be significant.

TRAFFIC AND TRANSPORTATION

No cumulative traffic impacts are anticipated for the Proposed Action under any of the analyzed alternatives. As discussed above, implementation of the Nation's Proposed Action is not expected to result in any significant impacts to traffic in the affected areas. Therefore, with no traffic impacts resulting from the Proposed Action, and no other proposals impacting traffic, no cumulative impacts are anticipated.

LAND USE AND AGRICULTURE

At this time, the Nation is not proposing any future fee-to-trust applications. Should future fee-to-trust applications occur and if those lands were brought into trust, the local governments would no longer have jurisdiction over land use plans and zoning for the applicable Cayuga Nation properties. The Congressional support for providing tribes a suitable land base is documented

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within the 25 USC 5108 provisions which necessitate jurisdictional changes to comply with the law. Jurisdictional impacts for fee-to-trust applications are subject to review under the 25 CFR 151 process implementing 25 USC 5108 for such applications. Should future fee-to-trust applications occur, jurisdictional impacts will be considered according to these procedures. Jurisdictional impacts of each proposed action are considered in the review process required by this regulation. Therefore, cumulative jurisdictional impacts under the Nation's proposed alternative and the Enterprise Properties into Trust Alternative are not considered significant. No cumulative jurisdictional impacts are anticipated from the No Action Alternative.

PUBLIC SERVICES

No cumulative impacts on community infrastructure are anticipated for the Proposed Action under any of the analyzed alternatives. No other currently active proposals are similar to the proposal in the county. Implementation of the Nation's proposal would continue the baseline environmental condition of the properties with regards to utility and infrastructure use until the proposed gaming facility is constructed and operating, at which time there would be an increased use level due to the new 4,928 square foot building.

No impacts to the schools due to increases in traffic are anticipated. As discussed above under Section 3.7 "Traffic and Transportation," and in Appendix C, "Traffic Impact Study," the Proposed Action, inclusive of the planned expansion of the gaming facility, would not result in any notable changes in level of service (LOS) for any of the lane groups or approaches at the study area intersections. This evaluation included the intersection of NYS Route 90 with the High School driveway.

The Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements in regard to community service providers, including emergency services, to ensure that the Nation's properties and patrons of its businesses are adequately protected.

With no significant impacts on community infrastructure resulting from the proposal, no cumulative impacts are anticipated.

Although the Nation has acquired additional land, this additional land is not part of the current fee-to-trust application subject to this NEPA analysis. Should the Nation desire to place additional land into trust, additional applications would need to be submitted, and their consideration would be subject to review. At this time, the Nation has no plans to place any additional parcels of land into trust. Therefore, any consideration of these concerns would be hypothetical, and analysis is not required at this time.

NOISE

No cumulative impacts on noise are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on noise resulting from the proposal, no cumulative impacts are anticipated.

HAZARDOUS MATERIALS

No cumulative impacts on hazardous materials are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on hazardous materials resulting from the proposal, and no other proposals impacting the same resources, no cumulative impacts are anticipated.

VISUAL RESOURCES

No cumulative impacts on visual resources are anticipated for the proposed action under any of the analyzed alternatives. With no impacts on visual resources resulting from the proposal, and no other proposals impacting the same resources, no cumulative impacts are anticipated.

3.14 INDIRECT AND GROWTH-INDUCING EFFECTS

Under NEPA, indirect and growth-inducing effects of a proposed project must be analyzed [40 CFR § 1508.8(b)]. The Council on Environmental Quality (CEQ) regulations define indirect effects as effects that are caused by the action and are later in time or further removed in distance but are still reasonably foreseeable. Growth-Inducing effects are defined as effects that foster economic or population growth, either directly or indirectly.

Growth inducement may constitute an adverse impact if the increased growth is not consistent with or accommodated by the land use and growth management plans and policies for the area affected. As discussed above under Section 3.8, “Land Use and Agriculture,” goals of local land use plans include supporting the current economy and promoting the establishment of new enterprises, encouraging younger families to move to the area, and expanding local tourism.

The adequacy of local resources, including infrastructure, public services, and road networks, are analyzed in Section 3 above. Utility infrastructure does not need to be improved or expanded to provide the necessary services required for any of the Alternatives. No indirect off-site expansion of utilities would be required for any of the Alternatives. No roadway improvements would be required. Other indirect effects are analyzed in previous sections by issue area.

As discussed above in Section 3.6, “Socioeconomic Conditions/Environmental Justice,” the operation of the Nation’s business enterprises generates positive economic benefits in the form of jobs and local spending. The Nation’s operations in Cayuga County would directly provide 37 permanent full- and part-time jobs, 15 of which would be associated with the proposed gaming expansion. However, it is not anticipated that members of the Cayuga Nation would relocate to the Project Area in sufficient numbers to significantly alter the demographic composition or employment base of Cayuga County. It is not expected that the Proposed Action would increase or decrease the seasonal population of the area. There would be no change in on-site or off-site land use and no change in population density in the vicinity of the Project Site. No new housing, schools or other facilities would be constructed as a result of any of the Alternatives.

No significant adverse indirect effects, including growth-inducing effects, relevant to any environmental issue area would occur under any of the Alternatives.

4. MITIGATION MEASURES

Mitigation is described under 40 CFR § 1508.20 as:

avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating or restoring the affected environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, compensating for the impact by replacing or providing substitute resources or environments.

The analyses presented in Sections 3.1 through 3.14 examined the potential for impacts resulting from the Proposed Action and its alternatives. This section, Section 4, “Mitigation Measures,” is intended to discuss the means of reducing any significant impacts previously identified within the analysis of the alternatives to a less than significant level.

The Proposed Action and its alternatives do not involve physical changes to the properties subject to analysis, with the exception of the proposed new gaming facility and parking areas. Similarly, the Proposed Action and its alternatives do not result in physical changes to surrounding properties. In addition, no significant adverse impacts were projected to occur in any impact analysis area as a result of the Proposed Action or its alternatives. Therefore, there are no known adverse impacts and no mitigation is required or proposed.

4.1 LAND RESOURCES

Impacts to land resources would be less than significant; therefore, mitigation is not warranted.

4.2 WATER RESOURCES

Impacts to water resources would be less than significant; therefore, mitigation is not warranted.

4.3 AIR QUALITY

Impacts to air quality would be less than significant; therefore, mitigation is not warranted.

4.4 BIOLOGICAL RESOURCES

Impacts to biological would be less than significant; therefore, mitigation is not warranted. However, although construction and operation of the Proposed Action and its alternatives would not be likely to adversely affect monarch butterfly populations, the Nation will implement a post-construction planting plan including milkweeds for larval development and native wildflowers for foraging.

4.5 CULTURAL RESOURCES

Impacts to cultural resources would be less than significant; therefore, mitigation is not warranted.

4.6 SOCIOECONOMIC CONDITIONS/ ENVIRONMENTAL JUSTICE

The Nation does not anticipate negative socioeconomic or fiscal effects of any sort. In fact, as discussed in Section 3.6, the Nation anticipates that the area communities will benefit economically and socially as a result of the Nation's gaming operations. Nonetheless, while there is no clear consensus as to the relationship between Indian gaming and problem gambling, the Nation recognizes that gaming should be conducted in a responsible manner. The Nation would provide information to its patrons regarding gambling addiction counseling services available in the area.

The Proposed Action and, to a lesser extent, Alternative 3 would mitigate past injustices to the Nation.

4.7 TRAFFIC AND TRANSPORTATION

Impacts to traffic would be less than significant; therefore, mitigation is not warranted.

4.8 LAND USE AND AGRICULTURE

Impacts to land use and agriculture would be less than significant; therefore, mitigation is not warranted.

4.9 PUBLIC SERVICES

Impacts to public services would be less than significant, cumulative impacts to public services, including schools and libraries, are not anticipated; therefore, mitigation is not warranted. The Nation will continue to pay for necessary community services it uses, and the Nation will explore cooperative agreements in regard to community service providers, including emergency services, to ensure that the Nation's properties and patrons of its businesses are adequately protected.

4.10 NOISE

Impacts to noise would be less than significant; therefore, mitigation is not warranted.

4.11 HAZARDOUS MATERIALS

As discussed above in Section 3.11, prior to any site development, an investigation and/or soil characterization should be completed to ensure proper handling of soil and/or groundwater during any future subsurface disturbance. Construction measures are available to mitigate the potential for impacts during any future development. Therefore, with the appropriate actions completed, no significant adverse impacts related to hazardous materials would result from the placement of the Nation's parcels into trust.

4.12 VISUAL RESOURCES

Impacts to visual resources would be less than significant; therefore, mitigation is not warranted.

5. CONSULTATION, COORDINATION, AND LIST OF PREPARERS

Where indicated, the consultation was initiated as part of the FEIS.

5.1 FEDERAL AGENCIES

LEAD AGENCY

U.S. Department of the Interior, Bureau of Indian Affairs
Mr. Leonard D. Rawlings, P.G., Regional Hydrologist
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

Regional Director
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

U.S. Department of the Interior (**FEIS**)
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

U.S. Fish and Wildlife Service (**FEIS**)
3817 Luker Road
Cortland, New York 13045

U.S. Fish and Wildlife Service – Information for Planning and Consulting

U.S. Environmental Protection Agency (**FEIS**)
Region 2
290 Broadway
New York, New York 10007-1866

U.S. Army Corps of Engineers (**FEIS**)
Buffalo District
1776 Niagara Street
Buffalo, New York 14207

5.2 STATE AND LOCAL AGENCIES

STATE

New York State Department of Environmental Conservation (**FEIS**)
625 Broadway
Albany, New York 12233

New York State Office of Parks, Recreation and Historic Preservation (**FEIS**)
State Historic Preservation Office (SHPO)
Agency Building #1, Empire State Plaza
Albany, New York 12238

New York State Office of Parks, Recreation and Historic Preservation
Division for Historic Preservation
Pebbles Island
PO Box 189
Waterford, New York 12188-0189

New York Natural Heritage Program – Project Screening Request

Department of Environmental Conservation (**FEIS**)
Region 7 Office
615 Erie St. West
Avon, New York 14414-9519

New York State Department of Transportation (**FEIS**)
Records Access Office
1220 Washington Avenue, Room B-1
Albany, New York 12232

LOCAL

Cayuga County (**FEIS**)
Cayuga County Office Building
160 Genesee Street, 5th Floor
Auburn, New York 13021

Town of Springport (**FEIS**)
859 State Route 326
Cayuga, New York 13034

Village of Union Springs (**FEIS**)
P.O. Box 99
Union Springs, New York 13160

5.3 PREPARERS OF ENVIRONMENTAL ASSESSMENT

AKRF, Inc.

Project Principal: Ashley Ley, AICP

Project Manager: Gwen Sivorichi

Technical Staff: Alex Auld

Claudia Cooney

Lorianne DeFalco, AICP, LEED Green Associate

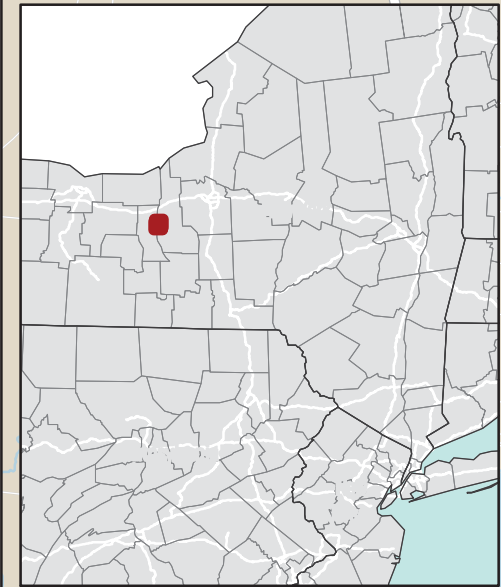
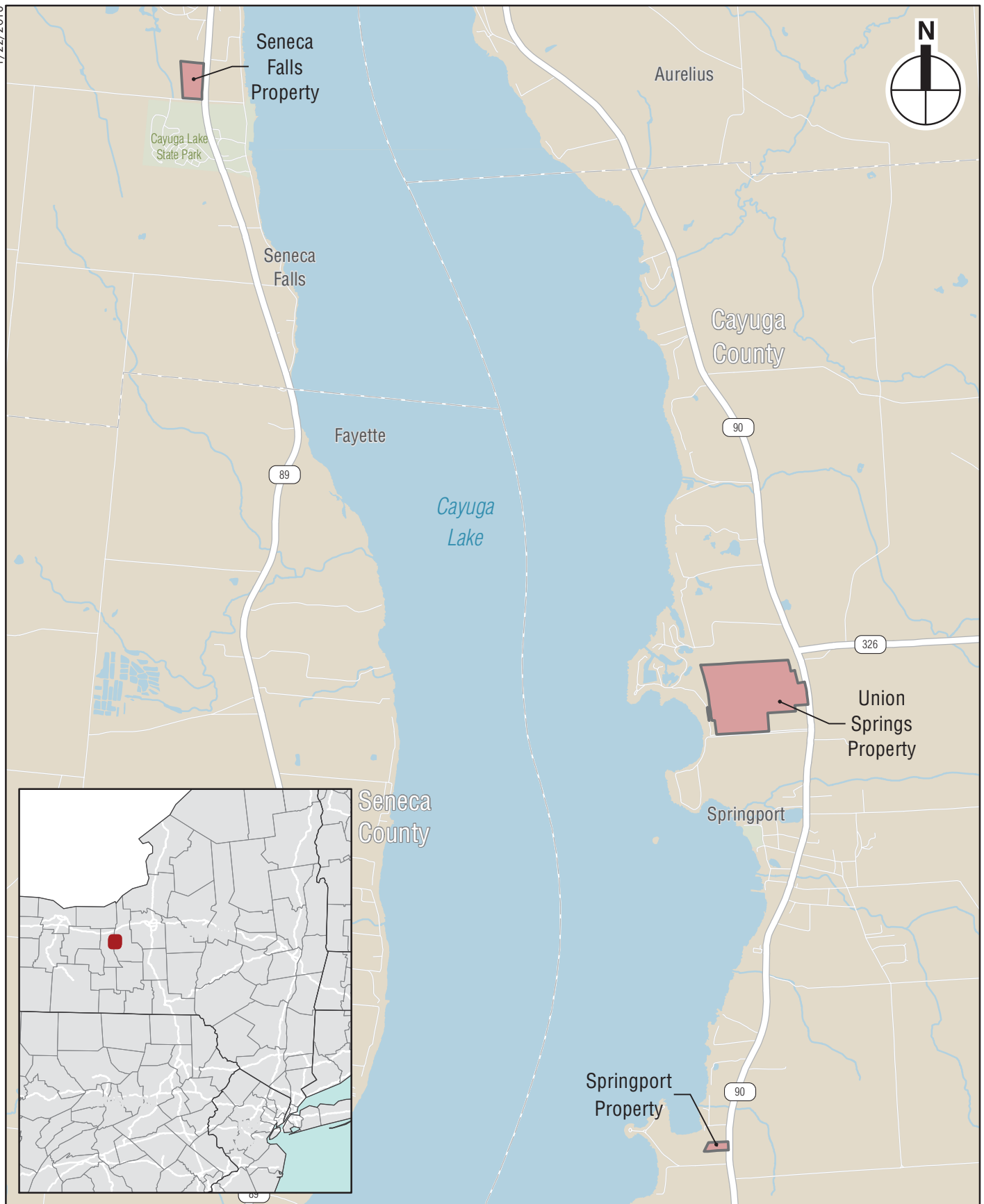
Jessica Hanlon

Madeleine Helmer, AICP

Bryan Zieroff, CPG, LEP

ROD ATTACHMENT VI
3 CAYUGA MAPS

1/22/2018



 Project Site

0 1 Miles

A MAP

of the Late

CAYUGA RESERVATION

Surveyed into Lots Agreeable to an Act of the Legislature passed on the 9th Day of April 1795, by the direction of Simeon De Witt Esquire, Surveyor General on the year 1795.

Done according to Law
Simeon De Witt
Surveyor Genl.

Scale of chains 40 to an Inch

Early Roads Prior to 1795

I HEREBY CERTIFY THAT THE MAP ON THIS SHEET IS A TRUE COPY OF THE ORIGINAL CAYUGA RESERVATION MAP, AND OF THE WHOLE THEREOF, AS ON FILE IN THE OFFICE OF THE CLERK OF SENeca COUNTY N. Y. FADED AND ILLEGIBLE PARTS OF THE ORIGINAL HAVE BEEN RE-PLOTTED FROM THE FIELD NOTES MADE BY JOSEPH AMMUN AND J. C. CANTINE AS CERTIFIED BY THEM TO SIMeON DE WITT SURV. GENERAL WHICH NOTES ARE ON FILE IN THE OFFICE OF THE CLERK OF CAYUGA COUNTY AREAS OF LOTS OF THE MAXIMUM SIZE (250 ACRES) AS PROVIDED BY THE LAW, ARE NOT SHOWN ON THE ORIGINAL.

C. Louis Pulever
LAND SURV. 11563

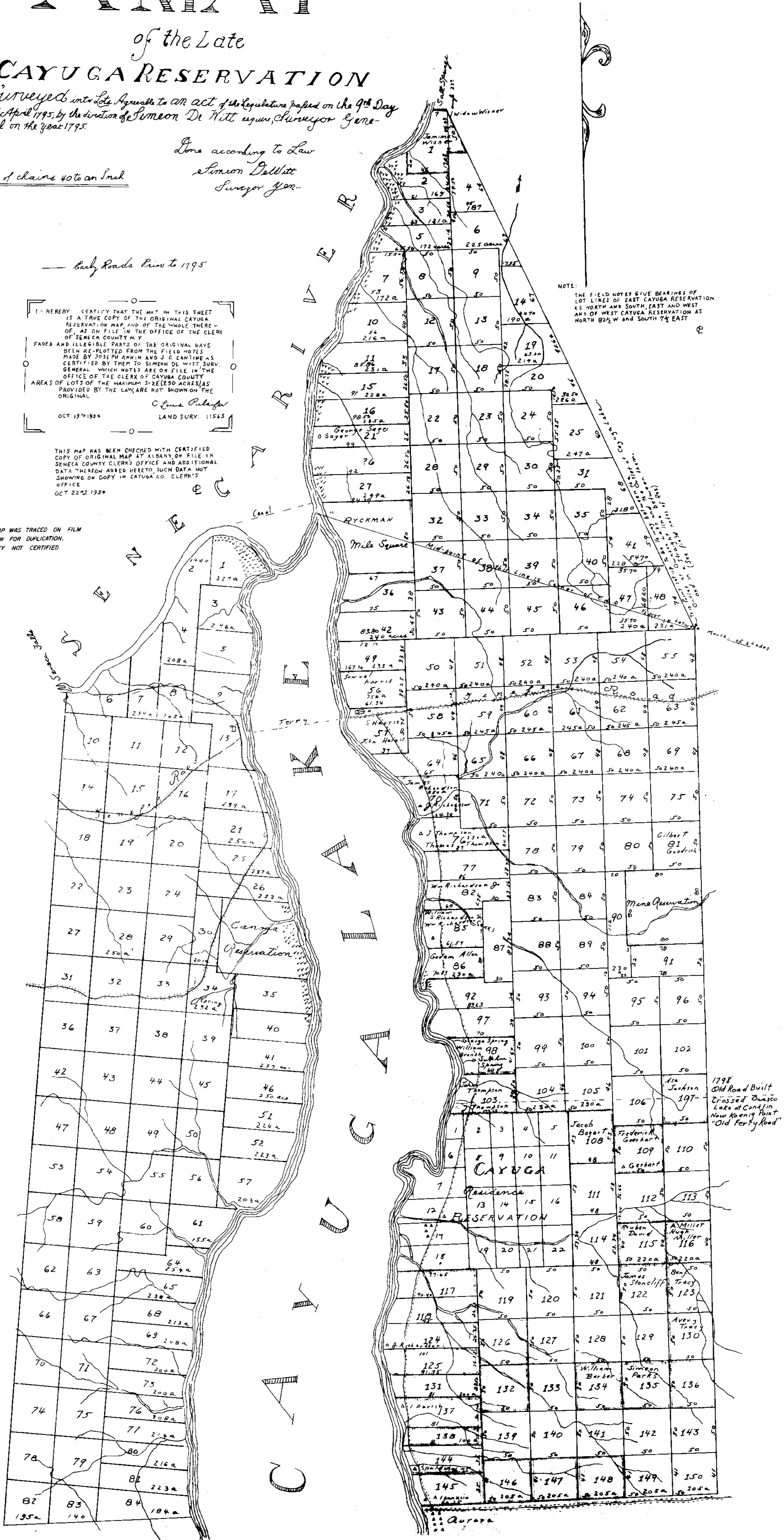
OCT 19 1934

THIS MAP HAS BEEN CHECKED WITH CERTIFIED COPY OF ORIGINAL MAP AT ALBANY, ON FILE IN SENeca COUNTY CLERK'S OFFICE AND ADDITIONAL DATA THEREON ADDED HERETO, SUCH DATA NOT SHOWN ON COPY IN CAYUGA CO. CLERK'S OFFICE

OCT 22 1934

THIS MAP WAS TRACED ON FILM TO ALLOW FOR DUPLICATION. ACCURACY NOT CERTIFIED.

NOTE: THE FIELD NOTES GIVE BEARINGS OF LOT LINES OF EAST CAYUGA RESERVATION AS NORTH AND SOUTH, EAST AND WEST AND OF WEST CAYUGA RESERVATION AS NORTH 82 1/2 W and SOUTH 7 1/2 EAST



1798 Old Road Built Crossed Onasco Lake at Conklin New Koenig Point "Old Ferry Road"

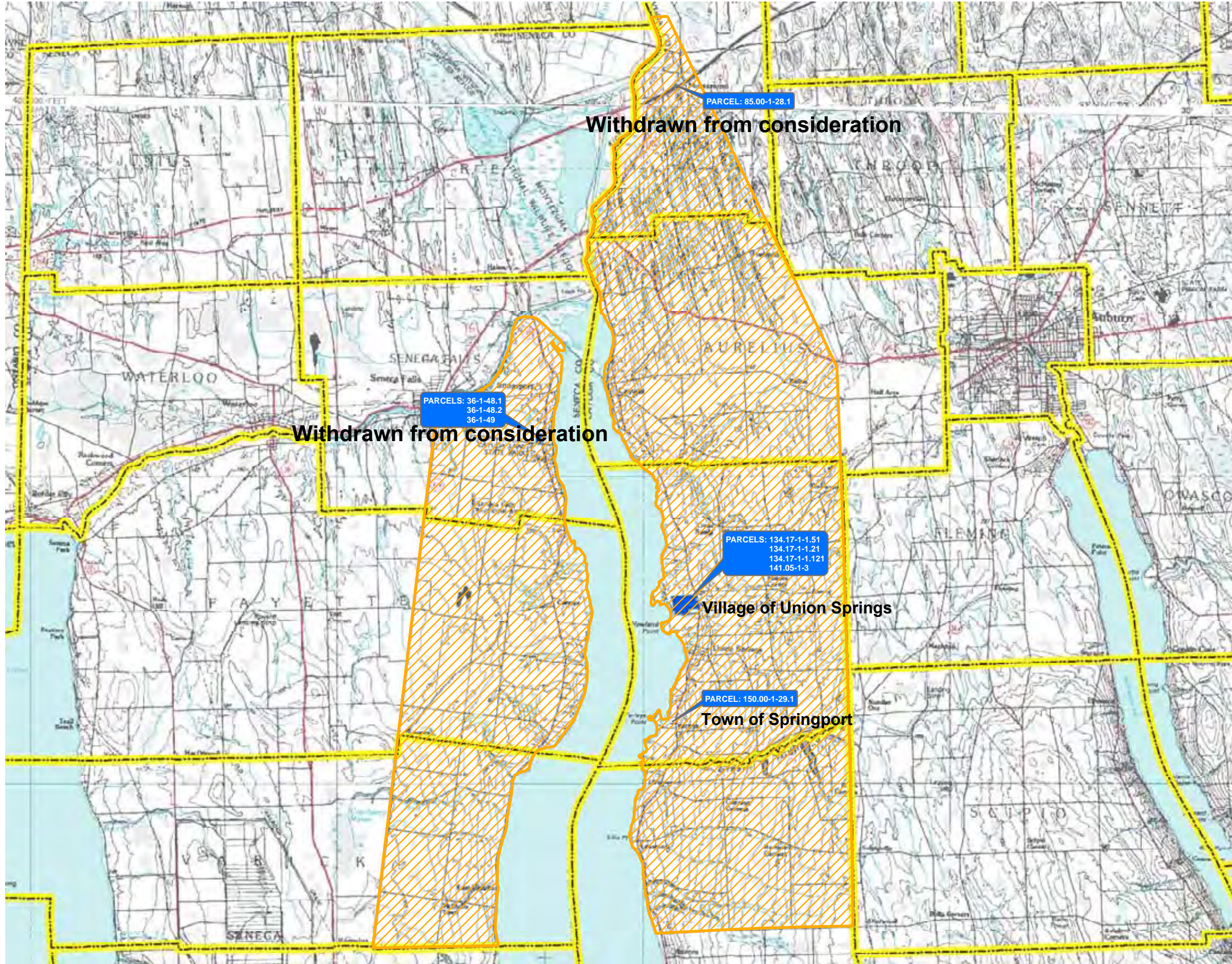


FIGURE 2



LEGEND

- CAYUGA INDIAN NATION LAND TRUST PARCELS
- TOWNSHIP BOUNDARY
- LAND CLAIM BOUNDARY



CAYUGA INDIAN NATION
LAND TRUST APPLICATION

**LAND CLAIM
BOUNDARY**



FEBRUARY 2006
2069.38238

