

United States Senate Committee on Indian Affairs

OVERSIGHT HEARING

Fulfilling the Federal Trust Responsibility: The Foundation of the Government-to-Government Relationship

May 17, 2012

TESTIMONY OF RAY HALBRITTER, NATION REPRESENTATIVE
ONEIDA INDIAN NATION

Shekoli, greetings.

Chairman Akaka, Vice Chairman Barrasso and members of the Committee, my name is Ray Halbritter. I am the Nation Representative of the Oneida Indian Nation and a member of the Wolf Clan.

The Oneida Nation is a federally-recognized Indian Tribe located in Oneida and Madison Counties of Central New York State where our people have lived since time immemorial. The Oneida Nation is also a member of the United South and Eastern Tribes, Inc., an inter-Tribal organization representing 26 federally-recognized Tribes from Texas to Florida and from Florida to Maine. Thank you for this opportunity to testify regarding the state of the trust responsibility of the United States toward federally-recognized Indian nations.

I commend this Committee for holding this hearing as the topic is both complex and fundamental to the unique relationship of the governments. As you will undoubtedly conclude from the testimony today, there is serious concern in Indian Country regarding the state of this unique trust relationship.

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The consequences of flawed implementation of the trust responsibility are many, but the resulting impact on Tribal sovereignty is a central concern to Tribal governments across the United States. Although this Congress and the current and some past Administrations have been generally supportive of Tribal sovereignty and have aspired to honor the trust relationship, states and local governments are often not inclined to acknowledge the uniquely federal relationship, instead often exploiting opportunities affirmatively to undermine it.

Further, recent United States Supreme Court decisions have had the effect of redefining Tribal sovereignty and the trust relationship. Some of those decisions have turned the trust relationship on its head, emphasizing its value as a shield from federal liability instead of construing it in a manner that would benefit the very people who were the intended beneficiaries of it. The trust relationship, intended as a protection against aggressive action by states and local governments, has eroded over time, making this hearing and the consideration of the trust relationship timely and very important.

However, nothing that is said today should cause any question regarding whether Indian governments honor the rule of law. Indian nations and the United States, however, disagree as to what that law is, or what it should be. We look to the United States Congress to help avoid tensions that can result from those disagreements. Whether it is in the form of efforts in this Congress to reverse some of the United States Supreme Court's holdings, such as the legislation to address the Court's decision in *Carciere*, or otherwise, we note with concern a reluctance of some in Congress to act on important initiatives relating to Tribal rights.¹² The need for

¹ *Carciere v. Salazar*, 129 S. Ct. 1058 (2009).

Congressional action is magnified where the United States Supreme Court issues opinions that are contrary to Indian laws and settled expectations. Such judicial decisions create unnecessary tension in the federal-tribal relationship that the trust process is designed to prevent.

I am hopeful that this hearing marks the beginning of a full review of the Federal trust responsibility, as well as its impact on Tribal sovereignty. In 2012 we may be entering a new era that requires a more nuanced analysis, taking account of a changing commercial world within which some Tribal nations flourish, and others do not. Out of this review, many Tribal leaders, including me, would hope to see the establishment of a new long-lasting framework for Tribal-Federal relations that respects the unique relationship between Indian nations and the United States, instead of a relationship in which the Federal government feels it has sole authority to define and defend our relationship at its discretion.

I respectfully suggest today that we all are ready for the hard work of exploring how to arrive at a regime that furthers the spirit of the trust responsibility, while being responsive to the diverse needs of all Indian nations who struggle with the pressures of varied local circumstances. If people of good will can address foreign conflicts and all manner of complex social issues in non-tribal communities, we can succeed in this endeavor.

In light of the issues discussed by the other witnesses we heard from today, part one of my testimony discusses some of the practical challenges faced by Indian nations, including the Oneida Nation, in gaining the benefits of the trust relationship. Part two discusses the need for

² Legislation to address the implications of the *Carcieri* decision may not be an impediment to have land accepted into trust under the Indian Reorganization Act for all Indian nations, but that is hardly reason to delay passage appropriate and timely legislation that restores the *status quo ante*. Nor should it be necessary to do so at the peril of other important legislation.

the United States to develop a process for protecting tribal interests that looks beyond traditional consultation. Part three explores the need to strengthen relevant and useful government-to-government consultation in light of the increasing sophistication of Tribal governments and the increasingly complex issues that confront them. And, part four addresses some ideas for constructing a new framework for the trust responsibility that could endure for the next century

The Foundation of the Trust Relationship and Practical Challenges
Indian Nations Face in Local Communities

For many Indian nations, the federal government's trust responsibility is grounded in the United States' fulfillment of its treaty obligations, implemented based upon historic and the inherently governmental agreements between each separate Indian nation and the United States. How the relationship works in practice, however, is complicated by the actions of non-federal parties who regularly insert themselves into matters that should be primarily between the United States and Indian nations.

The nature of the federal relationship with Indian nations is a vital part of the history of the United States, some of which is worth considering here.

From the earliest days of the United States, the Founders recognized the importance of America's relationship with Native nations and Native peoples. They included important references to those relationships in the Constitution.³ The 100th Congress recognized the influence that Native peoples had in the development of the Constitution in a concurrent resolution that specifically acknowledged the "historical debt" the United States owes to Indian Tribes.

³ See, e.g., Art. I, Section 8, Cl. 3 (Indian Commerce Clause); Article II, Section 2, Cl. 2 (Treaty Clause).

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[O]n the occasion of the 200th Anniversary of the signing of the United States Constitution, acknowledges the historical debt which this Republic of the United States of America owes to the Iroquois Confederacy and other Indian Nations for their demonstration of enlightened, democratic principles of government and their example of a free association of independent Indian nations; . . .⁴

The Indian provisions in the Constitution were given immediate life in treaties into which the United States entered with Indian nations beginning with the Treaty with the Delaware in 1778 and continuing through another 373 treaties. Additionally, in the first decades of the United States, numerous laws were enacted addressing the details of the Federal-Tribal relationship,⁵ even as the Federal courts defined the Federal government's trust obligation to Indian nations.⁶

Because of this history, the trust obligation of the Federal government to Native peoples is fundamentally different from any other relationship the United States has with any other distinct group of people and carries elevated obligations. As the American Indian Policy Review Commission Report stated:

The purpose behind the trust is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government, and also includes those economic and social programs that are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.⁷

The United States trust relationship with the Oneida Nation derives from the Treaty of Canandaigua, which was signed in 1794 between the Grand Council of Haudenosaunee and a representative of President George Washington. The Treaty of Canandaigua, which is among the

⁴ S. Con. Res. 76, 100th Congress.

⁵ See , e.g., Trade and Intercourse Acts of 1790, 1793, 1796, 1799, 1802, and 1834.

⁶ See , e.g., *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831)..

⁷ American Indian Policy Review Commission, Final Report 130 (1977).

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oldest of all treaties signed between the United States and Indian tribes, recognizes rights held by the Six Nations, that extend beyond federally recognized rights that are typically considered within the parameters of the trust responsibility that was initially defined by the Supreme Court in *Johnson v. M'Intosh*, 21 U.S. (8 Wheat) 543 (1823), and the Marshall Trilogy.⁸

President Washington was authorized to enter into the Treaty of Canandaigua by Article II Section 2 of the Constitution of the United States, which permits the President to negotiate and sign treaties, and grants the Senate authority to ratify them. The Supremacy Clause of the Constitution, Article VI Clause 2, provides that treaties and the Federal laws executing and implementing those treaties are the supreme law of the land. As such, the Treaty of Canandaigua and the rights afforded to the Oneida Nation under the treaty should provide safeguards from adverse actions by non-federal governments.

It says two things that are most relevant for today's hearing. First, the treaty states that the United States acknowledges the lands reserved to the Oneida, and called our reservation, to be our property; and the United States will never claim our lands, nor disturb us in the free use and enjoyment of our lands; and that our reservation shall remain ours until we choose to sell it to the people of the United States. And, with respect to protecting our lands from outside intruders, such as states and local communities, the United States and the Oneida Nation agreed to the following key provision in our treaty:

⁸ The Marshall Trilogy, a series of Supreme Court opinions penned by Chief Justice John Marshall between 1823 and 1832, is considered the legal foundation for the federal trust relationship in American jurisprudence. The Marshall Trilogy consists of *Johnson v. M'Intosh*, 21 U.S. (8 Wheat) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); and *Worcester v. Georgia*, 31 U.S. 515 (1832).

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Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and Six Nations agree, that for injuries done by individuals on either side . . . complaint shall be made by the party injured to the other . . . and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken

Significantly, the Treaty of Canandaigua provide safeguards to both parties – the Oneida Nation and the United States -- which preempt hostile actions against the other by third-parties, including non-federal governments. Both the Oneida Nation and the United States are duty-bound to fulfill their obligations to each other under that treaty. The United States enforces its obligations through its trust relationship with the Oneida Nation, and with the other Nations who also are signatories to the treaty.

Notwithstanding the Supremacy of federal treaties, third parties regularly test the United States' relationship with the Oneida Nation, and often in ways that are intended to interfere with that relationship.

The trend of non-federal parties challenging the federal trust relationship with Tribal nations is obvious in New York, where challenges are designed to undermine the Oneida Nation's sovereignty. For example, when the United States Supreme Court directed in 2005 that the Oneida Nation it should use the Federal government's administrative process to have its homelands accepted into trust on its behalf, local taxing authorities created new, special arrangements to impose hefty taxes upon the Nation's homelands, and immediately started foreclosure proceedings calculated to prevent the United States from fulfilling the Supreme

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court's directive that lands be taken into trust.⁹ This, notwithstanding the Oneida Nation's staggering economic contribution to the tax base in the local community; we are the largest employer¹⁰ in our region, with the vast majority of our approximately 4,500 employees residing in the local community, paying sales tax, income tax and property taxes amounting to approximately \$140,000,000.

When non-federal parties overreach, such as in the case of the New York's use of its tax codes to block transfer of the lands into trust, the duty of addressing those issues falls on the United States pursuant to its treaty obligations. Although the United States sometimes fulfills its obligations, oftentimes it does not – and, when it does, it frequently comes too late. This shifts the burden of preventing unlawful intrusions upon the shoulders of Indian tribes. The burden tribes often face in this circumstance includes vilification and political attacks on themselves, their leaders and even their members.

⁹ Further, after the Oneida Nation filed its trust application, the State of New York enacted special legislation targeting certain Nation lands. That legislation required, among other unique rules, that tax rates be set in one county as if the Oneida Nation's lands in that county were tax-exempt. Accordingly, the taxing jurisdiction and the county calculated taxes on Nation lands at a tax rate that assumes the Oneida Nation will not pay the taxes, resulting in an artificially inflated tax rate. It effectively triples the taxes that would be due under the taxing system used elsewhere in New York. It also produces the illogical circumstance shown in tax bills that, for example, declare the taxing jurisdiction's budget for fire protection to be \$142,844 and the Oneida Nation's share of that budget item to be \$539,359.

¹⁰ Central New York has suffered dramatic economic setbacks over the last 15 years. Reports have detailed the loss of approximately 4,500 jobs due to the closure of Griffiss Air Force Base, the loss of 1,000 Lockheed-Martin jobs in Utica and the loss of thousands of jobs at Oneida Limited (a non-Indian business that has no relation to the Nation). In the wake of the loss of approximately 18,000 jobs in the region, the Nation's role in stabilizing the regional employment picture cannot be understated. According to the Bureau of Labor Statistics, employment grew by 1.69 percent between 1990 and 2003 in the Madison and Oneida County region. In part due to the closing of Griffiss Air Force Base and the Lockheed Martin Plant in the mid-1990s, employment in Oneida County decreased at an annual average rate of 0.02 percent. The losses in Oneida County, however, were offset by an average annual employment growth of 0.85 percent in Madison County. Thus, the two counties together, combined for a reported total employment growth of 2,700 jobs. During this period, the Nation added 4,000 jobs, which fully accounts for any employment growth reported for the two county region and was a critical offset against the structural economic losses being registered in other industries.

We have a vivid example of that vilification at the Oneida Nation. In response to my insistence, as the Oneida Nation representative, that local counties follow the law with respect to the Nation's sovereignty, the Chairman of the Madison County Board of Supervisors used his official state of the county address to attempt to galvanize the local community against me, referring to me as a "[third world dictator]".¹¹ This same county, while claiming financial strain from the Oneida Nation not paying taxes which the courts rule were not owed, paid Park Strategies more than \$350,000 per year to lobby you and the executive branch to remove our sovereignty, rather than invest the same resources for the betterment . This county claims that the Oneida Nation's non-payment of taxes somehow was hurting the county, even though our Nation currently holds roughly 1% of the lands within the county yet roughly 50% of the county's lands are wholly or partially exempt from the same taxes.

Tribal sovereignty and the trust responsibility obviously are not understood by some local and state elected officials. It is a signal to all of us that we must join together as we consider how to improve the United States' trust responsibility and do more to ensure better understanding within our communities.¹²

Although no Tribal nation ever should rely upon the United States to guarantee a positive working relationship with state and local governments, a revitalized trust relationship is vital protection against the very overreaching that it was intended to address.

¹¹ See Attachment A.

¹² Notwithstanding these challenges, the Nation has found ways to cooperate with some of its neighboring governments on regulatory matters – as demonstrated by cooperative agreements on taxes and regulation between the Nation and the Cities of Oneida and Sherrill.

The United States Must Reconsider How to Promote its Trust Responsibility

Under such Federal policies as Self-Determination and Self-Governance, many Tribes have re-asserted increasing control of their own destinies, often with spectacular results. However, many other Tribes still struggle to guarantee basic public safety and healthcare to their citizenry, much less economic opportunity. Where there has been Tribal economic success, there has also been a growing backlash from other elements in the mainstream society that feel threatened by the restoration of Tribal rights and by Tribal prosperity, one explanation for some of what I described above.

The federal trust relationship has been reaffirmed by nearly every modern President, a very positive and significant political gesture. In the name of Federal government's trust responsibilities towards Tribal nations, President Obama issued a Presidential Memorandum on November 5, 2009 that called upon all executive agencies to develop consultation and coordination efforts with Tribal governments. The Memorandum confirmed the unique political status of Tribal nations, as established through treaty, legislation, and judicial decisions, and called for a rededication to President Clinton's Executive Order 13175. Executive Order 13175 calls for consistent and substantive consultation with Tribal nations on the development and implementation of all policies that have Tribal implications. The Executive Order was legally grounded in the federal trust responsibilities and called for agencies to respect Tribal self-government, sovereignty, and self-determination. The genesis of that respect is rooted in the early treaty era when Tribes were regarded as powers to be treated with respect rather than quelled and subjugated.

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The lifeblood of the unique trust relationship between the United States and Indian tribes is consultation, and the pathway to a robust trust relationship is likely through consultation that is redesigned to better meet the needs of both parties to the relationship. Although most modern Presidents have recognized the need for meaningful government-to-government consultation, consultation continues to be regarded by agencies as burdensome and an impediment to Federal action rather than a mechanism to protect Tribal treaty rights and appropriate Federal decision-making. Matters are further complicated when the Federal government blurs the important distinction between Tribal consultation and all other communication with non-federal interests, even where consultation with non-tribal parties may be required by law.

A case in point is consultation among parties under Section 106 of the National Historic Preservation Act, which compels federal agencies to consider the effects of their actions on historic or cultural properties. In certain circumstances, a local governmental project sponsor and an affected Tribe may be consulting with a Federal agency. In our recent experience at the Oneida Nation, a project sponsor, which sought Federal funding took steps to evade consultation with the Nation, notwithstanding the Nation's right to be consulted pursuant to the Federal agency's consultation obligation under its trust relationship.

The steps taken by the local project sponsor to keep the Nation from consultation to protect culturally significant artifacts that may have been buried within the path of the project were astounding to behold, especially given that this occurred as recently as 2011. The project sponsor, also seeking state funding, made untrue representations within the state environmental clearance process under state law to cause the state to make certain determinations regarding the potentially negative effects of the project that had to be reconsidered by the state once the

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relevant state officials became aware of the project sponsor's actions. Ultimately, the Oneida Nation and the Federal agency that was funding the project negotiated a programmatic agreement. At the end of the day, the project will be built, but it took the Oneida Nation's vigilance to ensure that the law was followed, and in this instance its role in consulting with the United States proved to be meaningful. Still, a stronger timely response by the Federal government would have set the project sponsor on a correct course much sooner. And, happily, once there was intervention by appropriate Tribal liaisons within the Secretary's office, that course correction did occur and a programmatic agreement was executed, although ironically the project sponsor refused to sign it because the project sponsor disagreed with a definition of "tribal lands" that was set forth in federal law, supported by the Department of Justice and upheld by multiple courts.

We acknowledge that Federal agencies are under significant pressure to fulfill their program mandates to provide funding for needy projects with all deliberate speed, but it is important to be certain that the our trust relationship is always at the forefront of the process, lest it becomes a sticking point when Indian nations become aware of the undertaking and assert their right to consult or to object to the project. And, in the most blatant cases, the failure to engage in consultation will only strain government-to-government relationships and impede future potential cooperative efforts between governments.

Not only is the trust relationship and consultation between the Federal government and Indian nations constantly under attack from local governments, but certain local officials in the State of New York have gone so far as to urge New York State Governor Cuomo to repeal the State's Tribal consultation policy that was adopted in 2009 to protect important Tribal interests.

While I am confident that Governor Cuomo will not repeal a policy that shows the State's leadership and progressive thinking on that score, it is the kind of direct attack against legitimate tribal interests that is worth noting. We are hard pressed to be able to explain such actions by certain local officials, but it serves as a chilling example of how the Federal government must work with Indian nations to restore respect for Tribal treaty rights and its federal trust responsibility towards Indian nations.¹³

In light of the harsh realities faced by Indian nations within their local communities, this may be an opportune time for the United States to work with Indian nations to develop a new framework to ensure the Federal government's fulfillment of its trust obligation, taking into account the unique and disparate needs of Indian governments.

**The Trust Responsibility, Self-Determination & Strengthening
Government-to-Government Consultation**

Depending on a specific Tribal nation's political relationship with the United States and the context of particular issues, there will be differences of opinion about what the trust responsibility means, but at a minimum it should make clear the extent of the Federal government's obligation to ensure that Tribal lands are habitable by today's standards, ensuring that Indian communities are permitted to create or maintain decent schools, hospitals, public safety and infrastructure. It may be that the primary vehicle to ensure the fulfillment of those obligations is to empower Tribal governments to create an environment hospitable to economic development. In addition, the Federal government should strengthen the government-to-

¹³ See Attachment B.

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government relationship by integrating the Indian voice more directly into the highest levels of the Federal legal and policymaking structure.

Many of these goals may be difficult to achieve in the current environment. As Tribes seek recognition of their sovereign rights, others resist, deeming Tribal sovereignty a threat to their own power or sovereignty. Therefore, it is important to demonstrate that stronger and more effective Tribal governments are not only good for Tribes, but also good for surrounding communities, the states within which the Tribes reside, and the United States, as a whole. There is already substantial evidence that empowering Tribal governments leads to economic success, providing many benefits to surrounding communities. In some cases, especially where Tribes have assumed an important governmental or social function (e.g., creating jobs, providing fire, police and emergency services, etc.); this has been recognized by the impacted non-Indian communities.

The Oneida Nation's story is a prime example of how strengthening Tribal sovereignty and Tribal economic success benefits surrounding communities. Since 1993, when we opened the first legal casino in the State of New York, the Oneida Nation has invested more than \$1 billion in infrastructure in Central New York. We have spent \$2 billion on goods and services with non-tribal vendors, with much of that money going to businesses in New York State. We are a major source of employment in a community where many large employers are downsizing. We have generated more than \$140 million in income and property taxes for the state and local governments. The result is that the Oneida Nation has used the revenues from gaming operations to improve the lives of its own people, with relatively little financial assistance from the United

States. We have invested in housing, health care and education programs for our members, so that we break the cycle of poverty and dependence.¹⁴

Moreover, our economic success has driven our level of sophistication in business enterprises and diversification, including our acquisition and publication of the Indian Country Today Media Network and Four Direction Productions, an animation and film production company. Commercial strength and diversification has also reinforced our ability to determine our own destiny and to limit our interaction with the United States to matters that are central to the protection of our interests in cultural preservation and the restoration of land within our Reservation boundaries. And, while many Indian nations are similarly situated, many are not, requiring a more profound level of interaction with the United States within the context of their trust relationship.

I do not suggest that self-sufficiency and commercial and governmental sophistication should end the need for the trust relationship. Rather, as self-determination yields self-sufficiency in Indian Country, the trust relationship will come to reflect that, and government-to-government relationships and consultation with Tribes will change as a result.

Indeed, the HEARTH Act¹⁵, under consideration by this Congress, is an express recognition of the need to empower Tribes to diminish their exclusive reliance on Federal

¹⁴ The Nation's economic base does more than provide jobs for the local residents. It is the basis of tribal self-government and self-sufficiency because it funds essential government operations, services and programs. These services and programs include member health care, education, legal services, day care and youth programs, family services and housing. The Nation pays nearly \$17 million annually for these programs and services. The fact is that state and local governments save a lot of money because the Nation government is able to and does provide so many programs and services to its members – meals for the aged, health insurance for the healthy and the infirm, care for the very young, education for everyone, and on and on. State and local money that would go to providing many of these programs and services to Nation members can be devoted instead to persons who are not Nation members.

government by being more actively involved in economic development on their lands. They are reflections of a modern view of what the trust responsibility is – empowering Tribes to solve their own problems and carve their own destiny but also protecting Tribes from external forces that undermine Tribal sovereignty. In addition, the Oneida Nation and other Tribes are aware that Congress can clarify the law in other important areas of significance in Indian Country like strengthening the ability of Tribes to have land taken into trust so they can achieve self-determination and self-sufficiency.

Advancing a New Framework for the Trust Responsibility in the 21st Century

The Oneida Nation's experiences and the testimony that we have heard today leads me to conclude that we may have a meaningful opportunity to consider how to create a new framework for the trust relationship. Such a new framework would consider the complexities of the issue, the unique relationships that Indian nations have with the federal government, the impact that existing laws have upon the implementation of the trust relationship, and, challenges to the relationship posed by other governments.

The need for a rational vision of the trust responsibility that is fully respectful of the rights and views of Indian nations is clear. I respectfully submit that this Committee ensures that our discussion today leads to the development of a new and constructive paradigm to guide Indian nations and the United States for the next century by creating a new bi-partisan American Indian Policy Review Commission. That Commission would be charged with the responsibility

¹⁵ The HEARTH Act is pending in the House of Representatives and Senate as H.R. 205 and S. 703, respectively.

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of examining these issues and reporting to Congress within two years from its inception with recommendations regarding a new framework for the trust relationship for the next century.

The recommendations of the Commission could address how the trust relationship would work to ensure an acceptable level of habitability on the poorest reservations, including the adequacy of education, health care, public safety and infrastructure. It could also address how the trust relationship could work to empower Indian nations that are on the cusp of economic self-sufficiency to redefine their trust relationship to fit their needs. The charge to the Commission should not be finalized without additional consideration, but it could also include recommendations regarding the following: an appropriate mechanism to ensure that the funding of critical Indian programs are not subject to arbitrary reductions; potential legislation to create a strong presumption in favor of land being accepted into trust at the request of a Tribe; the appropriate role of state and local governmental involvement in trust acquisitions and other actions that permit public input into certain federal actions; and, the potential establishment of additional high-level positions within the Administration to represent Indian country. The recommendations of the Commission would also be intended to demonstrate that strong and effective Tribal governments are mutually beneficial not only for Tribes, but also good for surrounding communities, and the states within which the Tribes are located.

This Committee has already played a central role in advancing this discussion through this hearing, and for that I thank you.

EXHIBIT A



MADISON COUNTY BOARD OF SUPERVISORS

John M. Becker, Chairman
Mark Scimone, Administrative Assistant
Cindy L. Urtz, Clerk

138 N. Court St., PO Box 635
Wampsville, NY 13163
Phone: 315/366-2201
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January 20, 2011

STATE OF THE COUNTY 2010-11

JOHN M. BECKER
CHAIRMAN
MADISON COUNTY
BOARD OF SUPERVISORS

FELLOW SUPERVISORS, EMPLOYEES, CITIZENS, TAXPAYERS:

Welcome. Again it is an honor to bring you the state of our county address. Madison County is not unlike many areas of the United States: rural, fairly conservative and facing many unknown circumstances that will shape our future.

Towns throughout our county will be facing challenges that will threaten their very existence in the next 10 years. If towns do not grow, then taxes must be raised, and people in New York State, as well as our towns and county, cannot take any higher taxes.

I said 3 years ago when the board appointed me chairman that there would be change, and there has been; it's nothing to be scared of. Change needs to be embraced, taken as a challenge, shaped, molded, pondered upon, spit back out and turned into a positive.

It was also said that we would try new things, and we did. Some have worked, some not so hot, but it is – as Teddy Roosevelt said 99 years ago – a greater person to try and fail than to sit and do nothing.

2010 saw a good start on our \$20 million emergency communications system upgrade project. When completed, 95 percent of our county will be covered by the system. It is because of Paul Hartnett, Darrin Ball, and the rest of their team that this project is finally going to culminate in 2011.

The emergency communications project had its first full year of effect on the budget. A total of \$2.4 million in principal and interest payments are due in 2011. Home rule bills were introduced in both the New York State Assembly and Senate that would have provided an estimated \$671,000 in new revenues from increased landline and cell phone surcharges and mortgage recording fees.

Regrettably, these bills were not taken up by either chamber due to the political chaos of the last state legislative budget session in 2010.

Also in 2010, our new Sheriff, Allen Riley, started. Allen has done a superb job, not only straightening out the many complex and tedious personnel problems, but also has raised the bar on professionalism and morale in that department. Allen also has appointed a new undersheriff who is experienced in working with inmates and correctional facilities.

We hope for their continued success as they streamline procedures, working collaboratively with our District Attorney, judges and Probation Department.

MADISON COUNTY SHERIFF'S OFFICE

* The Pistol Permit section has been updated to serve the public more efficiently. Another person has been added to the staff to decrease the amount of time it takes to process an applicant.

Electronic fingerprinting has been added to speed up the process, and we are in the process of updating to a laminated pistol permit ID card.

* An inside-the-facility work crew was also formed. They are painting the inside of the correctional facility and conducting all janitorial duties. The work crew is also responsible for waxing and cleaning all Madison County fleet cars twice a year.

* A program was developed with the Department of Mental Health to reduce the cost of housing inmates with mental health issues.

Currently, the inmate gets evaluated here by a licensed psychiatrist and the medication is dispensed here, allowing the inmate to stay at our

facility at a fraction of the cost. Previously, the inmate had to be transported to Rochester or Marcy for an evaluation, then admitted for treatment at the cost of \$350 to \$400 per day.

In 2009, the county spent \$81,700 on this type of care for inmates. In 2010, those services cost \$17,450 – a savings of \$64,250.

This savings does not include personnel and transportation costs for the inmate.

PROBATION DEPARTMENT

* In August, 2010, Leandra's Law went into effect, with ignition interlock being a mandated sentence for all offenders being convicted of DWI. The Probation Department has had to adopt various new rules and regulations to be in compliance with this law and has had to provide additional investigations to the various courts and supervisor those defendants sentenced to ignition interlock.

The Probation Department, District Attorney's Office and STOP DWI worked tirelessly in a collaborative effort to develop a county plan to implement this law as required by the state.

* The Probation Department collected \$230,000 in restitution from offenders in 2010 to return to victims of crime.

* The Probation Department continued its electronic monitoring program in 2010. This program recently celebrated its third year, and, in 2010, the department supervised 10 offenders who received and

electronic monitoring sentence. The fiscal implications for the county are immense with this cost-saving alternative to incarceration.

Those 10 offenders cost \$6,500 to supervise throughout their electronic monitoring sentences versus those offenders instead being sentenced to jail at an approximate cost of \$145,000.

DEPARTMENT OF SOCIAL SERVICES

* For the first time ever, 4,000 families were receiving Food Stamps at the end of 2010. This represents an increase of nearly 400 families above the previous year. Despite the enormous strain this increase has placed on DSS, we continue to point out that the program is for nutrition and puts back into our local economy more than \$12 million annually to local supermarkets, farmers' markets and the county's agricultural operations, including Madison Bounty.

* 92.5 percent of our \$28.9 million tax levy is necessary to cover state-mandated costs. Medicaid is the largest mandated cost; it accounts for \$10.6 million of the levy: 37 percent of our tax levy.

* The Medicaid program has had unsustainable growth for a number of years, and this past year was no exception, with one in seven county residents in receipt of Medicaid at the end of 2010. It is no longer tied to the other Social Services programs where it started and is the single largest health insurance provider in New York State.

Statewide, the program pays for 75 percent of all nursing home costs and 50 percent of all births. This coming year will be a challenge with 1) the pending loss of Federal Medical Assistance Percentages (which means the loss of \$1 million in annual revenue); 2. the state intending to take over Medicaid administration; and 3. the raging federal health care reform debate.

* The Home Energy Assistance Program ended in May 2010 and will long be remembered as one of the smoothest program years in recent memory, both in the number of citizens assisted (more than 5,000 families) and the efficiency (most applicants were able to mail information to DSS without unnecessary travel to Wampsville).

This is in stark contrast to the program that opened in November 2010, when it was determined in late October that many who were able to mail applications last year must now trek to Wampsville this year combined with the pending loss of almost half the funding from the previous year.

This loss of money had predictions that the program would not make it through December without closing; fortunately, continuing resolutions by our federal officials will keep the program open into early 2011, but this fiscal reality will surely play itself out in the future and funding will once again be limited.

* The Public Assistance program showed slight slowing in growth over the course of the last year; this suggests that times might be getting better for those county residents with the least resources; however, there were 814 households – 4,545 individuals – presenting as homeless or pending eviction last year: 2,704 adults and 1,841 children.

* With a record number of people in receipt of assistance, it should be no surprise that more people than ever were assigned to activities leading to employment. The cornerstone remains the Mobile Work Crew, the members of which completed more than 14,000 hours of work that benefited municipalities and non-profit agencies.

We will continue to insist that those who can work, do so;

that those who may not be able to work, get the help they need to get back to work;

and that those who are permanently disabled get the treatment and support they need and a more stable income provided by Social Security benefits.

We are implementing Family Assistance Response in Madison County, a new response that encourages families to address deficiencies instead of DSS mandating it. The approach is being successfully used in other counties and in other states across the U.S. and lessens trauma to families faced with a traditional CPS report.

* Foster Care placements remained steady in 2010 compared to 2009. We continue to see this leveling-off of the placement rate, having the intended consequence of returning three-quarters of our children to caring, safe adults within 18 months. The average length of stay in Foster Care has been reduced to less than nine months, and the rate of

placement is slightly more than one child per every 1,000 – down from three children per 1,000 two years ago.

Keeping children safely with their parents has resulted in more preventive cases and services to work with these families. These services are a proven strategy and cost-effective means to put an end to child abuse and neglect.

One-quarter of Madison County residents are on some form of Public Assistance.

PUBLIC HEALTH DEPARTMENT

In Public Health, a very large change came in the divestiture of our home health services. While no one wanted this to happen, it became a reality of the times. As for the union's claim it was done in the dark of night, it was not night for the preceding six months where no policy changes came forth from leadership and leadership of the unions actually walked away from the table.

The CSEA claims that there was a "secretive and unannounced vote" surrounding the intent to sell the CHHA. There was no secretive and unannounced vote as the rules of annual session were followed. A resolution of intent to sell the CHHA was presented and approved at the public health meeting on Dec. 27, which was open to the public. The approved resolution was presented to the Board of Supervisors at its last meeting of annual session on Dec. 28.

The decision to sell the CHHA is not a decision that needs to be discussed with the CSEA. The Board of Supervisors are elected to make

difficult and complex decision for the benefit of the citizens of Madison County; however, in May 2010, I as chairman of the board, along with other leaders of Madison County, reached out to employees and their union leadership. At this meeting, we discussed problems within the CHHA and what could be done to turn this program around.

Despite our efforts in implementing a variety of strategies, interventions and changes in the programs based on statistical data, no significant improvements were achieved. When comparing this to proposals for the purchase of the CHHA, it became clear that it was in the best interest of the residents of Madison County to sell the CHHA to an agency that could provide the best possible care while reducing costs to county taxpayers. The county leadership has done its due diligence and despite best efforts to make this work, the best decision was to sell our CHHA to the best private agency that can provide the services our residents deserve.

It is becoming clear that home care is a business that county government can no longer operate efficiently as demonstrated by 25 counties in New York state that are in the process of decertifying their home care agencies or no longer provide home care services through their local government. That list is likely to grow based upon discussions at recent county administrator meetings.

I am disappointed, but not surprised by the unprofessional personal attacks made by the CSEA's leadership against myself and other leaders of Madison County. I have, and will likely continue to have, an ineffective relationship with the CSEA's local leadership because of these and similar actions. It is unfortunate that the hardworking employees and members of the CSEA have to be caught in the middle of our strained relationship. I value the hard work and services that Madison County employees provide to our residents and would like to work cooperatively with CSEA leadership, but not this leadership, but I fear that is not possible at this time.

The union, and the Board of Supervisors, both knew this was a possibility; government cannot run this complex an operation with guidelines and reimbursements undergoing almost constant change.

Two years ago, we added seven new positions with the hope the number of daily visits would rise from three to five or six. After substantial investment, we were still at three visits a day, and the state was becoming increasingly critical of how we operated. One supervisor brought in an article from the local newspaper from more than 10 years ago, and it is virtually the same situation as today.

MENTAL HEALTH DEPARTMENT

* This year – 2011 marks the 45th anniversary of the Mental Health Department in Madison County.

*By implementing changes identified through a business process analysis, the department successfully eliminated the six- to eight-week waiting time for clients seeking treatment through the outpatient mental health clinic. Clients are seen the same week they make contact or the next week, depending on the schedule of the client.

* The Mental Health Department, along with the Madison-Oneida BOCES began the application process for a multi-million dollar, multi-year grant through the Safe Schools/Healthy Children initiative.

* Dr. James Yonai was appointed to the Commissioner's Advisory Council for the New York State Office for People with Developmental Disabilities.

*2010 marks the first full year of successfully outsourcing the operation of the Cedar House continuing day treatment program to Consumer Services of Madison County, Inc.

PLANNING DEPARTMENT

* The Planning Department, under the leadership of Scott Ingmire, completed a Coordinated Transportation Plan for Madison County that will lead to improvements in the Madison Transit System, minimize route duplications, and share transit resources to reduce overall costs and provide better service to Madison County residents.

Implementation of this plan continues into 2011.

* Working closely with Colgate University Upstate Institute Field Fellow Michael Palmer, we created the first comprehensive natural gas lease map for Madison County, showing that more than 84,000 acres – 20 percent of the county’s total land area – has been leased in Madison County since the mid-1990s.

Also, a newly formed task group led by Nelson Supervisor Roger Bradstreet is researching the challenges and opportunities associated with natural gas development.

* We began the process of consolidating our 13 Agricultural Districts into four larger districts, thereby reducing confusion and creating conformity with our municipal boundaries.

The process will be completed by 2013.

EMPLOYMENT AND TRAINING

* 2010 was a busy year for Employment and Training staff at the Career Center in Oneida. In conjunction with their partner agency staff members, they had 17,791 jobseeker visits, averaging 72 people per day in the center. The unemployment rate in Madison County was at its highest since 1992 at 9.7 percent in January and 7.9 percent in November.

Using Federal and State funds, 73 county residents received funding to upgrade their occupational skills to ease re-entry into the workforce.

* Recognizing that basic computer skills are a must in anyone's job search today, Employment and Training partnered with Utica School of Commerce and Mohawk Valley Community College to provide that training at the Career Center to 132 jobseekers.

MVCC will continue to provide that training during 2011 at the Center under a new federal grant they received.

* The close working relationship between Employment and Training and the Madison County Industrial Development Agency continued to grow during 2010. Federal and state money available for employment and training provided wage subsidies to 15 Madison County employers as they worked to hire and train new employees.

Increasing that number is a priority for the department for 2011.

* Through the support of Career Center staff, 2,453 area residents entered employment at some level, even during a rough economy.

The Employment and Training Department, in collaboration with the Department of Social Services, has developed two new programs for 2011 targeted to people applying for or receiving Public Assistance. Employment and Training staff will provide dedicated, intensive services to those referred, which we believe will result in cost savings for Social Services and increased employment opportunities for participants.

HIGHWAY DEPARTMENT

* 2010 was a continuation of the last three years of doing more with less in the Madison County Highway Department. Efficiencies and cost savings continued in every budget line item. Although salaries, pension costs, materials, equipment and utility costs have all increased in the last three years, Highway Department appropriations have decreased 14 percent over the same time period. At the same time, services – including highway and bridge construction and maintenance – have improved.

* The county maintains 438.43 miles of county highway with 130 bridges and 134 culverts. The estimated value of the bridges and culverts is \$105 million; highways are more than \$220 million.

In 2010, the department worked on 13 road rehabilitation projects, with a total of 14.17 miles; in 2009 it was six projects totaling 13.4 miles; and in 2008, eight projects totaled 12 miles.

In 2010, the department covered 40.6 miles of road with surface treatments, compared to 49.5 in 2009 and 42.6 in 2008.

In-house staff designed and installed three box culverts and replaced another large culvert, eliminating a dip in the road and improving sight distance and safety.

* In 2010, the department eliminated a management position at the Morrisville shop and created a single operations manager position, merging staff and equipment between the Morrisville and Wampsville shops. The result was increased cooperation on road maintenance and construction projects, with improved quality and consistency of work.

* The department also gained efficiencies in the engineering department that allowed quicker surveying, design and implementation of projects, even with a 50-percent reduction in staff from 2007. Also, a comprehensive database of road conditions and project information was developed to improve future project selection and quality.

* Efficiencies and cost savings were gained by expanding one-person plowing from 10 out of 21 to 19 out of 19 routes, and once the agreement with the CSEA is complete, the addition of an afternoon shift will further those gains for 2011.

Efficiencies in plow routes and the use of multi-use dump boxes help maintain the truck fleet; five new 10-wheel dump trucks have been purchased within the last three years.

* County-town partnerships will allow for cost-effective winter road maintenance, with two of the 13 agreements with the towns being no-cost arrangements.

* The highlight project of 2010 was Oxbow Road. With an unusually high number of fatal motor vehicle accidents in 2008 and 2009 along a particularly dangerous section in the town of Lincoln, the Highway Department quickly took action to temporarily improve safety by restriping and eliminating a passing lane.

The section of road was surveyed and analyzed by in-house engineering staff to determine what improvements could be made. A total redesign of that particular section was completed and reconstructed within just a few months' time. The result was improved geometry, increased sight distance, and a better guiderail system to improve motorist safety.

The work was completed using a combination of departmental staff and contractors.

* The Highway Department continues to assist local municipalities with various projects. In conjunction with the Madison County Soil and Water Conservation District and the village of DeRuyter, 250 feet of the Tioughnioga [TIE-OFF-KNEE-OH-GUH] Creek bank was stabilized in adverse conditions resulting in the preservation and protection of property for residents in the area.

SOLID WASTE AND RECYCLING

* Madison County has been a leader in New York State's recycling efforts since the first plastic bottle was accepted for recycling in July, 1990. Since that time – 20 years ago – the list of items that are now recyclable has grown to include televisions, computer monitors, mercury and products containing mercury, plastic bags, license plates, pizza boxes and more.

ARC and the county celebrated a 20-year partnership in May of last year.

The management and staff of the Department of Solid Waste and Sanitation take pride in the fact that Madison County is on the cutting edge when it comes to new recycling initiatives and programs that save energy and protect the planet.

* **Methane Gas:** In a public-private partnership with Waste Management, Inc., methane gas is being turned into electricity at the

gas-to-energy facility and sold on the grid. A small portion of the excess heat produced by the CAT generator/engine is providing free heat to the ARC Recycling Center, the ARC Break/Training building and the Scale House & Education Center.

In December, the county received a grant from the U.S. Department of Energy in the amount of \$990,000 to cover the remaining capital costs of the project.

The Solid Waste and Recycling Committee is contemplating the establishment of a business park – Agriculture and Renewable Energy (ARE) Park at the landfill site. Businesses that choose to relocate will be encouraged to take advantage of the low-cost excess heat produced by the gas utilization generator.

***Solar Panels:** Madison County received a grant for the New York State Energy Research and Development Authority (NYSERDA) to allow the Department of Solid Waste to install 11 solar panels on the south-facing slope of the closed west side landfill cell. These solar

panels will produce electricity that will be utilized by the ARC Recycling Center. The power will be net metered: any power not used by the ARC will go back into the grid.

The Madison County landfill is the first municipal landfill in the United States to utilize solar technology on a flexible landfill cap. Work was started on this project in fall 2010 and should be completed by July.

* Saving the Planet: The county instituted mandatory recycling of computer monitors and televisions in September 2004. These units contain mercury, cadmium, lead and other toxic chemicals that are now being kept out of our landfill.

To date, 418 tons of electronic items have been safely recycled in Madison County.

MADISON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Our IDA, headed by Kipp Hicks, is finally running at full steam. Five years ago, we set it up as a one-stop shop for economic development, and with his leadership, it is finally at a point where we can say it truly is.

Among the IDA's credits this year are:

- 1) \$33 million in refinancing for Colgate University bonds;
- 2) \$300,000 in financing was provided through revolving loan funds, netting 50 jobs in the county;
- 3) Securing \$200,000 in micro-enterprise grants; and
- 4) Securing \$750,000 in loan funds for a beef processing facility for our farmers.

Farmers will also benefit from:

1) Expansion of Madison Bounty, which is now a completely free-standing entity – something that was merely concept three short years ago. More than 50 local farmers provide produce, meats and value-added products for the program; and

2) USDA crop insurance for soybeans, a feather in our cap as a Board, along with help from our lobbyists, Park Strategies. This will help not only Madison County's crop farmers, but also struggling dairy farmers as they transition to crop production.

CONCLUSION

The Madison County Board of Supervisors presented a ZERO-increase tax levy this year, despite significant increase in state-mandated programs, such as a 41-percent increase in state retirement from \$3 million to \$4.26 million.

In 2000, our state retirement costs were \$31,000. Retirement costs made up \$14.7 percent of our tax levy in 2011.

In 2005, a house assessed at 100 percent paid \$10.14 per \$1,000 of assessed value; in 2011, despite our challenging environment, the adopted county levy was \$7.47 per \$1,000 of assessed value.

Clearly, and I MEAN CLEARLY, this Board is doing its job. Despite the challenges facing us this year, I do not see an increase for 2012.

People cannot depend on government for everything. The roads will not get plowed as much; you will need to slow down. Services will not be on the spot; you will have to be patient.

Looking forward to 2011, it will certainly be more challenging than the previous year, with unfunded mandates like Medicaid and our state retirement system, which is expected to top out at 25 percent of payroll – up significantly from previous years.

We also expect that even greater pressure will be put on the Department of Social Services as the economy worsens. New ways of doing business outside of the box will have to be done – perhaps a three- or four-year maximum on Public Assistance benefits, then you can no longer collect.

I am part of the Madison County Literacy Program and know that if a person cannot read at the fourth-grade level, they are eligible for benefits. The Literacy Program should be a mandatory program, not

only to help the person read more proficiently, but also to get them off the public dole, as well.

In Public Health, the divestiture should be nearly complete, with more efficiency to the ill and recovering.

Also in 2011, we will take a closer look at consolidating Public Health, the Department of Social Services and Mental Health into one Department of Health and Human Services – an initiative that Brookfield Supervisor John Salka has been researching and hoping to get underway in the year ahead.

I want to take the time to thank the Stockbridge Munsee Tribe for being a true partner with the county this year in reaching an historical settlement. The Stockbridge Munsees have a long history in Central New York.

The partnership forged with the state, county and town of Stockbridge should be a template for all tribes across our great state.

Opponents say they are an out-of-state tribe; the answer is yes, and by negotiating in good faith they took no land in our county into trust and will forever share the wealth of the profits from their enterprises with New York State, Sullivan County and the town.

That is way more than our neighboring tribe has ever offered.

To our neighboring tribe, the Oneidas, thanks for nothing; nothing but a dribble of propaganda of which only a Third World dictator would be envious.

Quit your harping on spending taxpayer dollars when we the people of Oneida and Madison counties continue to subsidize, yes, subsidize, your enterprises to the tune of \$65 million a year. If we offered any major corporation a 66-percent subsidy on payroll, there is no doubt they would move all operations here.

The money that we spend on Park Strategies is a mere drop in the bucket, compared to what the Oneidas spend. One other effective example is how we have been able to make many friends across the

United States to help defeat the quick Carcieri Fix. If you don't understand Carcieri, then you don't understand why we need help like Park Strategies.

An excerpt from a recent press statement by the Oneidas reads, "...the people of Madison County deserve better leadership than that."

We have lead by example, by defending our county from a hostile foe. Five governors, four chairmen, three federal mediators and a state mediator and only one thing was constant: Oneida leadership.

This leads us to believe maybe the Oneida people – all Oneida people – deserve better leadership.

To the Nation leadership, if you truly want to negotiate, send me a letter or call and tell me or our attorneys what you want to negotiate, and we will see. I'll bet this offer generates no responses, or there will be some smart-ass remark about how our offer isn't genuine.

A 1665 quote from Vol. I, Chapter III, “The Documentary History of the State of New York:

“It must be premised that the Iroquois are composed of five Nations, of which the nearest to the Dutch, is that of the Mohawk consisting of two or three villages containing about three to four hundred men capable of bearing arms. These have always been at war with us, though they sometimes pretend to sue for peace.”

In closing, I want to thank County Attorney John Campanie for his many hours of work on many different fronts here at the county.

I also want to thank the many, many Madison County employees – union and non-union – who come to work every day, stay quiet, mind their own business and just do their jobs and want to provide for their families, as most of us do.

Finally, I want to thank Sen. Chuck Schumer and his staff, though our politics don’t always agree, on his hard behind-the-scenes work on

getting our farmers soybean insurance and all of his hard work on Indian issues that pertain to our county.

EXHIBIT B



MADISON COUNTY BOARD OF SUPERVISORS

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Chairman

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Administrative Assistant to the Chairman

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Clerk

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April 4, 2012

Via First Class Mail

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: Repeal of NYSDEC Consultation Policy CP-42

Dear Governor Cuomo:

Your leadership is producing real progress on the economic development front in Madison County. Thanks to the excellent work of the Regional Economic Development Councils helping our local businesses we are seeing job creation and increased economic opportunities for our citizens. In light of these critical efforts and the fragile state of our collective recovery, we are duty bound to identify and address legacy issues that may hinder our progress or undermine our efforts. This letter concerns a troubling policy from a former administration that is hampering Madison County's economic development efforts.

On behalf of the citizens of Madison County, New York we write today to request the repeal of the New York State Department of Environmental Conservation ("Department") Policy CP-42 entitled Contact, Cooperation and Consultation with Indian Nations dated March 27, 2009 issued under the authority of Alexander B. Grannis, Commissioner.

As you know, The State of New York, Madison County and numerous other local governments have been subjected to decades long litigation with certain Indian Nations over governmental rights as fundamental as application of the rule of law, the power to levy and collect taxes, and the right of our citizens to own, occupy, govern and enjoy their lands. The litigation has had a polarizing effect and spawned the use against our communities of a form of modern economic warfare, where interference with critical infrastructure projects and obstruction of economic development projects has become the Oneida Indian Nation of New York's ("OIN") weapon of choice. The use of teams of high priced lawyers and lobbyists, and resultant deprivation of community projects and economic growth is being used to create leverage. The worst part of this ugly reality is that ordinary citizens are suffering the collateral damage at a time when all New Yorkers are afflicted by external economic forces over which no one has control.

From the outset, Madison County opposed the Department's Consultation Policy because it places an unreasonable burden on the Department staff to "consult" with the OIN in connection with important County projects. OIN has amassed great wealth from its Turning Stone Casino and tax free sales of tobacco and gasoline. Its new found wealth is fueling aggressive litigation and lobbying against New York State, Madison County and numerous local governments. Moreover, OIN is actively using the Consultation Policy to obstruct legitimate County projects in an effort to intimidate our leadership by perpetrating acts of economic terrorism in an attempt to generate leverage against its adversaries.

According to filed federal lobbying reports, during the last three full years (2009-2011), the OIN has paid one of its many law firms and lobbyists, Washington DC based Akin Gump Strauss Hauer & Feld LLP, alone, \$980,000 to aggressively interfere with and inhibit key local projects.

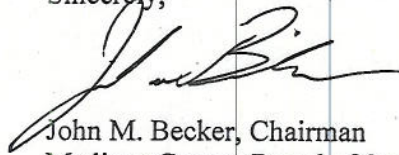
The Department plays a critical role in permitting or approving the environmental aspects of numerous County projects including Madison County's Agriculture and Renewable Energy Park ("ARE Park"). The ARE Park is an innovative economic development project that will utilize hundreds of acres of County property located adjacent to the County landfill to promote businesses that will either produce or utilize renewable energy in connection with agricultural products. The first project will be a private lumber kiln that uses excess heat generated by the County's 1.2 megawatt landfill gas-to-energy project to dry locally produced lumber. Phase two of the project will be a greenhouse in collaboration with SUNY Morrisville that further uses the excess heat to hydroponically grow vegetable crops. These projects funded in part by the Central New York Regional Economic Development Council will create jobs and return County property to the tax roll.

The Consultation Policy imposes the obligation on Department staff to "work[s] toward a consensus [with Indian Nations] before a decision is made or an action is taken". In January 2010 the Department invited Madison County to attend a consultation meeting with OIN. In spite of the ongoing litigation between the County and OIN we attended in good faith. Subsequent meetings were held including a tour of the County landfill property that was attended by Department Staff from Central Office, Region 7, the State Historic Preservation Office as well as OIN. The County spent enormous sums on archeological field studies to characterize cultural resources and document archeological matters. Every effort was made by the County and its professional archeologists and engineers to consult with OIN throughout the process. The Board of Supervisors ordered preparation of a full environmental impact study to inform its decision making on the ARE Park.

Recently, in response to publication of the ARE Park draft environmental impact statement, on behalf of the OIN, Akin Gump Strauss Hauer & Feld LLP submitted comments repeatedly alleging that the County "failed to consult" with OIN. OIN further demands that the Department use its permitting powers to halt all further development of the landfill (which is already fully permitted by the Department) as well as the ARE Park. Moreover, we understand the OIN has requested further CP-42 consultation meetings with the Department and Madison County. This clearly illustrates the unending pernicious effect of the Consultation Policy as it is being wielded by OIN.

We ask that you review the situation and consider the dilemma confronting the Department staff. They have the obligation under Article 70 of the Environmental Conservation Law, i.e. The Uniform Procedures Act to ensure a fair, timely and thorough review of all permit applications while at the same time consulting with the applicant's adversary to reach a consensus before acting. Whatever the good and altruistic intentions of former Commissioner Grannis may have been, the result is a policy that should never have been. We respectfully request that Consultation Policy 42 be repealed.

Sincerely,



John M. Becker, Chairman
Madison County Board of Supervisors

cc: Joseph Martens, Commissioner
NYS Department of Environmental Conservation