



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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JUL 6 2009

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

Rating: EC-2

Dear Mr. Chandler:

The Environmental Protection Agency (EPA) has reviewed the draft environmental impact statement (DEIS) issued by the Bureau of Indian Affairs (BIA) for the Cayuga Nation of New York Conveyance of Lands into Trust (CEQ # 20090155). This review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C 7609, PL 91-604 12 (a), 84 Stat. 1709), the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR Parts 1500-1508).

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, seven parcels of land, located in the Village of Union Springs and the Towns of Springport and Montezuma, in Cayuga County, and in the Town of Seneca Falls, in Seneca County, New York, would be placed into trust. 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.

EPA's comments are below:

Air Quality/Traffic

- The DEIS establishes the existing traffic conditions near the Seneca Falls and Union Springs properties based on two traffic counts conducted on June 16 and 17, 2006. EPA does not concur with the assumption that two days of trip data provide enough data to establish a baseline. EPA is also concerned that data collected in June may not represent conservative traffic counts. The Cayuga Lake region is utilized heavily during the summer vacation months, and has several universities that are in full session from September to May. The traffic counts were made during a month when neither of those activities is at its peak, and therefore may not be representative.

- While EPA understands that work on the DEIS started several years ago, the future no build and build years for the traffic conditions must at least be 2009 and preferably further out. The DEIS is using 2007 as the future no build and build year for the Seneca Falls property and the Union Springs property, and must be updated.
- The Institute of Transportation Engineers published the 8th Edition of the Trip Generation Report in 2008. The DEIS should ensure that the latest “casino” trip generation rates are being used to assess future traffic volumes for this project.
- Should the Enterprise lands be taken into trust, is it the intention of the Cayuga Nation to decrease the amount charged for gasoline and cigarettes? If so, this would likely increase the trip generation at the Enterprise properties. The amount of this increase and the impacts on traffic should be determined.
- The Saturday traffic counts around the Union Springs property were made from 3 p.m. to 8 p.m. as compared to the traffic counts around the Seneca Falls property that were made from 10 a.m. to 3 p.m. EPA is concerned that data is not comparable, and that the data collected later in the day near the Union Springs property did not assess the traffic to that property during a peak time.
- The above comments concerning traffic data and counts may change the impacts to air quality as described in Section 4.3.1 of the DEIS.
- Section 4.3 does not take into account the air impacts from the Underground Storage Tank Operations and gas station operations. Federal requirements for underground storage facilities and gas station operation can be found on the web at <http://www.epa.gov/otaq/ld-hwy.htm>.

Hazardous Materials

Section 3.4 of the DEIS appears to indicate that the Cayuga Nation is out of compliance with federal regulations regarding release detection records and Underground Storage Tank records. EPA has inspected this facility twice, most recently in 2007, and worked with the Nation to ensure compliance. If necessary, this section of the DEIS should be updated to reflect the existing conditions.

Specific Comments:

- Page 3.12-2., Jackson Road, 4th sentence - “Station Road” should be “Jackson Road”
- Page 3.12-5., NYS Route 90, 2nd sentence - “NYS Route 89” should be “NYS Route 90”

Based on our review, and because of the need for updated traffic, air quality and hazardous material information, we have rated this DEIS as EC-2 indicating Environmental Concerns - Insufficient Information.

Thank you for the opportunity to comment on the DEIS. 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". The signature is written in a cursive style with a large, sweeping initial "J".

John Filippelli, Chief
Strategic Planning and Multi-Media Programs Branch

Enclosure

SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION
Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of environmental quality, public health or welfare. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommend for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1-Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analysis, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From: EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."