

Land Claim Update



A Report to the People of Oneida County

February 2002

County Executive Ralph J. Eannace, Jr.

MESSAGE FROM THE COUNTY EXECUTIVE

Proposed Agreement An Important Step For Our Region

By RALPH J. EANNACE Jr.

On Feb. 16th, I joined Governor George Pataki and other local officials in announcing a framework to settle the long-standing Oneida Indian land claim and other issues.

This complex — and historic — agreement can resolve over 30 years of litigation surrounding issues of land ownership, taxation and Indian sovereignty. Resolving these issues is critical to healing differences in our community and achieving a brighter future through unity and cooperation.

The settlement framework grows out of treaties that go back not just years, but generations. Transforming the framework into a comprehensive settlement will be part of future negotiations.

This newsletter is designed to help Oneida County residents understand the proposed agreement, the history behind this process and the steps we have already begun taking to fill in the many details needed before the conceptual agreement becomes final.

We have worked hard to keep the people of Oneida County informed and involved at every step of this process. We will continue to do so as this historic and far-reaching agreement moves toward a fair and final settlement.

Oneida Indian Nation Land Claims: Legal Background

The Oneida Indian Land Claim and issues concerning the payment by Indians of sales and property taxes have very deep legal roots. A comprehensive overview exists on the Oneida County web site, www.oneidacounty.org.

Here are some highlights that provide background to understanding the framework that has been developed to resolve a broad range of issues regarding the Oneida Indian Nation of New York and its neighbors.

Basis of claims

The modern legal history of the land claim begins in 1974, when the Supreme Court ruled that the Oneida Indians could assert their land claim against Oneida and Madison Counties in federal court. Eleven years later, the Supreme Court ruled that the Treaty of 1795 between the Oneida Indians and New York State had not been approved by Congress and awarded the Oneidas damages for parcels owned by the Counties.

New issues added

Between 1974 and 1998, there was some movement to settle the land claims dispute, but little progress was made. In that time, the issues surrounding the Oneidas multiplied. In 1993, the Oneidas opened the Turning Stone Casino in Verona, and began to grow economically. A new issue was raised when the Oneidas refused to collect sales tax. As the Nation grew, it began to purchase land within its land claim area from willing sellers on the open market, purchasing almost 15,000 acres to

What's Inside

Framework: A summary of the settlement framework and its impact is on Pages 2 and 3.

The Next Steps: The steps to a final agreement are outlined on Page 4.

date. Because there is a dispute over whether the Nation must pay property taxes, this created a third major area of concern.

Negotiations begin

In 1998, the U.S. Department of Justice intervened on the side of the Oneidas, and later that year the Oneidas sought to add 20,000 private landowners to the case as defendants. This action was strenuously fought by the counties, as well as New York State, and was eventually rejected.

In the Spring of 1999, U.S. District Court Judge Neal McCurn ordered all sides to explore mediation to resolve this issue. Assisted by Settlement Master Ronald J. Riccio, negotiations were held from this time until June of 2000, when talks reached impasse over a number of issues. During this process, Oneida and Madison Counties gained much local input by bringing hundreds of local residents into the negotiation process.

Although the talks broke off in 2000, the agreement that was being discussed at that time included a \$500 million payment to the three Oneida plaintiffs, paid equally by the state and federal governments; \$250 million to the Wisconsin Oneidas, \$225 million to the New York Oneidas and \$25

million to the Oneidas of the Thames. This formed much of the foundation for the framework that was announced this month. However, local issues had not been worked out and all of the other parties made it very clear that those issues were up to the New York Oneidas and the Counties. We have now announced a framework for agreement on the major issues, with the help of Gov. George Pataki.

Sovereignty upheld

In 2001, another court action supported the Oneida Indian Nation of New York in a dispute over its sovereignty. In this case, the City of Sherrill sought to enforce property tax laws against properties owned by the Nation and to evict the Nation for failure to pay property taxes.

U.S. District Court Judge David Hurd granted summary judgment in favor of the Oneida Indian Nation, noting, "As Indian Country, the properties are not subject to taxation by Sherrill or the counties." Judge Hurd further ruled that "The Nation is also protected by sovereign immunity from suit for eviction by Sherrill."

The Sherrill decision is on appeal, and arguments have been made by the Counties and are still pending in that case and in the main case on the merits of the claim. However, all parties continue to agree that the best way, by far, to resolve all the issues concerning the Oneidas in Central New York — sales taxes, property taxes and land claims — would be through a comprehensive negotiated settlement.

The Settlement Framework at a Glance

What is the Settlement Framework?

The framework for a settlement of the local issues among the Oneida Indian Nation of New York, the County of Oneida, Madison County, and the State of New York provides for the following:

- A \$500 million settlement fund, to be paid equally by the State and federal governments. The fund will be allocated as follows: \$225 million to the New York Oneida Indian Nation; \$250 to the Oneida Wisconsin Tribe; \$25 million to the Thames Band Oneidas of Thames, Ontario, Canada. (This comes from the court-ordered mediation sessions involving all the parties.)
- The Counties will receive \$100 million for a fund to be established for their benefit. Fifty million dollars of this amount will come from the Oneidas, and the rest will be paid to the Counties by the State in years 6 through 10 of this agreement. The income from the fund will be used to offset any losses suffered by our counties, localities, or school districts, including diminution of property or sales tax revenues as a result of Oneida Indian Nation of New York-owned lands or businesses. Silver Covenant Chain payments consistent with current levels are also anticipated to be made to the Counties on behalf of local governments and school districts in the early years of the agreement.
- Any shortfalls in real property or estimated sales taxes suffered by the Counties, localities or school districts that are not covered by the income from the fund will be paid by the State of New York to the Counties for local distribution.
- The Oneida Indian Nation of New York would limit the total size of its reservation to a maximum of 35,000 acres of land, 5,000 acres of which shall be designated "forever wild." All reservation land will be acquired voluntarily. The tribe will not add more than 5,000 acres of land to its reservation holdings over the next 10 years. Currently, the Oneida Nation owns almost 15,000 acres of land. The framework contemplates contiguous and compact reservation areas.
- The Nation and local governments will consult

Proposed Settlement vs. Litigation

ISSUE	PROPOSED SETTLEMENT	LITIGATION
LAND	Maximum reservation of 35,000 acres.	Potential maximum of 250,000 acres.
PROPERTY TAXES & SALES TAXES	Counties, localities & school districts "made whole" by \$100 million fund, state guarantees and other contributions from Oneida Indian Nation of New York.	Not part of land claim suit. Separate negotiations or litigation would be needed.
SOVEREIGNTY ISSUES	Agreements to be achieved regarding environment, land use, building codes, policing, etc.	Not part of land claim suit. Separate negotiations or litigation would be needed.
TAX PARITY	Achieved	Not addressed.
TIME	About 2 years estimated for reviews.	At least 10 years.
COST TO LOCALITIES	None.	A negative impact is possible.

with each other on issues such as land use planning and development.

- The State and the Oneida Indian Nation of New York will enter into a tax parity agreement whereby the Oneidas will agree to charge non-Indian customers a Nation sales tax equal to all state, local, and federal sales and excise taxes on all products it sells (including gasoline and cigarettes). The Nation will use the revenue from these sales taxes for Nation governmental purposes only (i.e., not for business/commercial competition with non-Indian owned businesses).
- The Oneida Indian Nation of New York agrees to promote regional tourism in cooperation with the counties and municipal governments.

Answers on the Settlement Framework

Is Anyone Going to Lose Their Land?

- **No!** A settlement will result in extinguishment of all litigation and land claims. Additions to Oneida property will only come voluntarily.

What Will be the New Oneida Reservation?

- A settlement would limit the area of sovereignty from a potential maximum of 250,000 acres to a maximum of 35,000 acres.
- It would allow for the New York Oneida reservation to become contiguous and compact.
- A settlement would limit additional Oneida Indian Nation purchases to 5,000 acres in the first 10 years. Currently, they have almost 15,000 acres.

How Will Businesses be Affected by the Settlement?

- The Oneida Indian Nation of New York would agree to a tax parity compact with the State, the final details of which are still to be worked out.
- The Oneida Indian Nation of New York would agree to charge non-Indian customers a Nation sales tax equal to all state, local, and federal sales and excise taxes on all products that it sells. The Oneida Indian Nation of New York would use the revenue from these taxes exclusively for Nation governmental purposes only. They would not use these revenues for any business purposes.
- The Oneida Indian Nation of New York would support and participate with county and local municipal governments in joint tourism efforts.

How Will Schools and Municipalities in the Land Claim Area be Affected?

- One of the most important goals of this proposed settlement is keeping our schools and governments “whole.” Here is how this would be accom-

plished.

Property Tax

1. Silver Covenant Chain grant payments, consistent with current levels, would be made to the Counties on behalf of local governments and school districts for a defined period of time.
2. Income from the \$100 million fund.
3. The State’s guarantee of tax shortfalls.

Sales Tax:

1. Income from the \$100 million fund.
2. The State’s guarantee of tax shortfalls.

Service/Use and Impact Fees.

1. The Oneida Indian Nation of New York would pay service and impact fees to local governments for costs associated with, and impacts of, development as well as Use and Special District Fees for the cost of fire protection, emergency services, sewer, water, as well as other services.

Building Codes:

1. The Oneida Indian Nation of New York would implement Building Code standards equal to those standards set forth in the National Building Code of the Building Officials and Code Administrators International (BOCA). These and any other standards will be available for public inspection.

What Else Needs to be Decided?

Items subject to negotiation include:

- Provisions regarding land purchases by the Oneida Indian Nation of New York.
- Special provisions concerning purchases in densely populated areas.
- Environmental regulations,
- Zoning regulations,
- Public safety issues,
- On-going discussion and cooperation.

The Next Step: Working Out the Agreement's Details

The framework outlined on the previous two pages lays out the broad picture of how the Oneida Indian Nation of New York, New York State, and Oneida and Madison Counties propose to resolve the local issues of the land claim, as well as resolve other issues regarding the Nation and our communities as neighbors.

Before that framework becomes a settlement, there are numerous details that must be worked out among the various parties.

1st: The Details

For example, one major part of this framework provides a fund that will ensure Madison and Oneida counties are made whole in terms of property taxes and sales tax collections. That's a great step forward. But before that becomes a reality, a process must be developed for deciding how this works in practice. The same is true in all areas of this proposed settlement. Once all the parties in-

involved are in agreement with all of the details — a process that will take months at the very least — a round of formal approvals will then be necessary.

2nd: The Public

We welcome public comment on this framework for settlement. In addition, once the final agreement is ready for approval, the public will have a further chance to comment on it.

The land claims episode has been an emotional time for all of us. We want all of the details of any agreement to be made as public as possible as part of our effort to heal wounds from years of dispute. Once the details are in place, we are confident this will be an agreement that will boost our region's governments, citizens and our overall economy.

3rd: Approval by Local, State, and Federal Governments

After approval by the par-

Contact Us For Information on Framework, Process

The process of resolving the Oneida Indian Land Claim and the tax issues covered by the settlement framework is complicated. We want to answer any and all questions as best we can as the negotiations move forward. If you have questions, please contact us, and we will provide all the help we can.

E-mail: landclaim@co.oneida.ny.us

The Web: Our Web site, www.oneidacounty.org, has a complete section on the land claim issue that has a comprehensive history of the issues. Periodic updates will also be posted on this site.

Phone: If you need information that you can't find on our site, contact the Office of the County Executive, 798-5800.

ties — which will include formal actions by the Oneida County Board of Legislators and the Madison County Board of Supervisors — the state Legislature and Congress must consider and approve the final settlement.

A Brighter Future

It is possible that the work to fill in the details of this plan and gain all necessary approvals will take two years.

That may seem like a long time for those who have waited for years for this issue to be resolved. However, if this case

were to go to litigation, a final resolution could be many more years away and result in a verdict that addresses only the question of the land claim.

In contrast, the framework provides a foundation for resolving a broad range of issues between the Oneidas and all of us as neighbors.

By resolving these issues, not only do we finally put to rest concerns we have inherited from the past, we also can begin looking to a better and brighter future for our entire region.