

LAND MANAGEMENT PLAN

Record of Consultation

Niagara Power Project

FERC No. 2216

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August 2008

**NIAGARA POWER PROJECT (FERC NO. 2216)
LAND MANAGEMENT PLAN-RECORD OF CONSULTATION**

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NYPA Response Comments Matrix

Albany Office
30 South Pearl Street
Albany, NY 12207-3425
518 433.6700



May 24, 2007

Archimandrite Nicholas
Holy Cross Orthodox Monas
3920 Pine Avenue
Niagara Falls, NY 14301

Dear Consulting Party,

On March 15, 2007 the Federal Energy Regulatory Commission issued a new license for the continued operation of the Niagara Power Project. Although the current license does not expire until August 31, 2007, the Power Authority is initiating work on several license articles which require the development of project plans. Specifically, Article 405 of the new license requires the Power Authority to develop a Land Management Plan for the project. Article 405 requires the Power Authority to prepare the plan in consultation with the following parties: U.S. Fish and Wildlife Service; Bureau of Indian Affairs; National Park Service; New York State Department of Environmental Conservation; New York State Office of Parks, Recreation and Historic Preservation; Tuscarora Nation; Niagara Relicensing Environmental Coalition; and adjacent landowners.

The Power Authority has prepared an annotated table of contents, which is the first step in the development of the Project Land Management Plan. The table of contents describes policies, standards, guidelines, and land use designations used to enhance safety and protect and manage environmental resources, public use, and aesthetics within the project boundary as agreed to in the Relicensing Agreement and required by the NYS Water Quality Certification.

The Power Authority is transmitting this document to you for your review because you are one of the parties specified in Article 405. Please provide your comments on the table of contents no later than June 25, 2007. Your comments should be sent to me at Silliman.k@nypa.gov or to the following address:

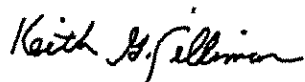
Mr. Keith Silliman
Director of Niagara Relicensing
New York Power Authority
30 South Pearl Street
Albany, NY 12207-3425

Comments received and the Power Authority's response will be posted on the Niagara Power Project web site <http://niagara.nypa.gov>. The Power Authority will consider these comments as it prepares a draft of the Project Land Management Plan. You will be provided an opportunity to review and comment on the draft Land Management Plan before the Power Authority files it with the Commission (on or by September 1, 2008).

At this time, the Power Authority anticipates providing the draft Land Management Plan for your review in late-2007 or early-2008.

If you have any questions on the annotated table of contents or the process to develop the Land Management Plan for the Niagara Power Project, please contact Mr. Edward Alkiewicz at (914) 287-3247 or myself at (518) 433-6735.

Sincerely,

A handwritten signature in cursive script that reads "Keith Silliman".

Keith Silliman
Director, Niagara Relicensing

Enclosure

NYPA Land Management Plan
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5/24/07

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NIAGARA POWER PROJECT

FERC No.2216

LAND MANAGEMENT PLAN

DRAFT ANNOTATED TABLE OF CONTENTS

MAY 2007

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LAND MANAGEMENT PLAN
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Appendix B: Consultation Record

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1.0 INTRODUCTION

1.1 Project Location

This section will include a brief discussion of the project location and surrounding area.

1.2 License Article

This section will detail the license article requiring the land management plan.

1.3 FERC Policies on Use of Project Lands and Waters

This section will incorporate the information that Van Ness Feldman has presented in their 2-15-07 memo and will also include a discussion of FERC standard land use articles as they apply to the project.

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2.0 OVERVIEW

2.1 Goals and Objectives of the Plan

This section will detail the goals and objectives that relate to all aspects of managing project lands. Goals and objectives will be based on existing practices and management needs and the results of consultation between NYPA and stakeholders. The goals and objectives will provide a basis for managing the project lands that is consistent with the FERC license and resource agency requirements while meeting the needs of the project. Primary goals of the plan will be to address project security, use of project lands, project maintenance, and public safety at the project. Objectives necessary to accomplish these goals may include developing Integrated Vegetation Management (IVM) practices, developing an invasive species management protocol, and developing standard road maintenance practices.

2.2 Plan Development

This section will discuss the steps that were taken to develop the Land Management Plan. This section will also discuss the general organization of the document.

2.3 Consultation

This section will document the consultation that occurred during the development of the Land Management Plan as per license Article 405. The article requires that in preparing the land management plan the licensee shall consult with the U.S. Fish and Wildlife Service, National Park Service, New York State Department of Environmental Conservation, New York State Office of Parks, Recreation, and Historic Resources, Tuscarora Nation, Niagara Relicensing Environmental Coalition, and adjacent landowners. The article also requires that the licensee include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has prepared and provided to the U.S. Fish and Wildlife Service; National Park Service; New York State Department of Environmental Conservation; New York State Office of Park, Recreation and Historic Preservation; Tuscarora Nation; and adjacent landowners, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

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3.0 DESCRIPTION OF PROJECT LANDS AND RESOURCES

3.1 Current Land Uses

This section will discuss in detail the current land uses within the project boundary. This information will include up-to-date GIS maps showing the current land uses. A description of each of the land uses will also be included. Current land use categories may include public recreation lands, project operations, agricultural lands, mowed areas, paved surfaces, and natural areas. A table will also be included to show the current acreages for each land use category. A discussion of how this information was determined will also be included.

3.2 Recreational, Aesthetic, Historic Properties, and Natural Resources

A brief description of the current recreation resources located within the project boundary will be included in this section. A summary the aesthetic features of the project will be included in this section. Reference will be made to the development of the HPMP as per Article 406. This section will also include information on the natural resources found within the project boundary.

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4.0 ENTITIES RESPONSIBLE FOR MANAGEMENT WITHIN PROJECT BOUNDARY

4.1 Project Lands Managed by New York Power Authority

A detailed description of lands within the project boundary that are currently managed by the New York Power Authority will be discussed in this section. The discussion will include current uses, location, and the acreages of those lands by land use category.

4.2 Project Lands Managed by Other Entities

4.2.1 NYS Office of Parks, Recreation and Historic Preservation

A description of those lands managed by the NYSOPRHP, including acreages, current land use, for those properties located within the project boundary. Project lands managed by NYSOPRHP include Reservoir State Park, Discovery Center and the Great Gorge Railroad ROW.

4.2.2 National Grid

A description of those lands managed by National Grid, including acreages, current land use for those properties located within the project boundary. This section may require consultation with National Grid.

4.2.3 NYS Department of Transportation

A description of those roads maintained by the NYSDOT including road names will be included. This section may require consultation with the NYSDOT.

4.2.4 Local Transportation Departments

4.2.4.1 City of Niagara Falls

A description of those roads maintained by the City of Niagara Falls including road names will be included. This section may require consultation with the City of Niagara Falls.

4.2.4.2 Town of Lewiston

A description of those roads maintained by the Town of Lewiston including road names will be included. This section may require consultation with the Town of Lewiston.

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LAND MANAGEMENT PLAN
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4.2.5 Niagara University

A description of those roads maintained by the Niagara University including road names will be included. This section may require consultation with the Niagara University.

4.2.6 Other Entities

A description of those lands managed by local farmers or other smaller entities.

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5.0 MANAGEMENT OF PROJECT LANDS

5.1 Overall Guidelines, Policies, and Standards

This section will provide an overview of the Land Management Plan. Best Management Practices (BMPs) and guidelines that will assist in the management of project lands will be discussed. Policies will be established to achieve the goals and objectives that were developed in Section 2.1 of the plan. Standards that will be used on lands within the project boundary will also be recorded.

5.2 Specific NYPA Management Actions

5.2.1 Road Maintenance

This section will detail specific NYPA actions that will be used while managing their roads. This may include changes to improve the current management of the roads. Other topics of discussion may include changes in the application of road salt, type, and/or locations of use. This section will be written in consultation with the NYPA.

5.2.2 Vegetative Management

This section will detail specific IVM practices that will be used by the NYPA in the future. Practices that may be included in this section may be herbicide use and locations, cutting schedules, and mowing schedules.

5.2.2.1 Mowing

5.2.2.2 Herbicides

5.2.2.3 Hand and Mechanical Removal

5.2.2.4 Landscaping and Planting

5.2.2.5 Agricultural Activities

5.2.3 Non-native Species Control

This section will address management actions to control the spread of vegetative invasive species. This section will also look specifically at the crown vetch that covers the reservoir dike. This section will be written in consultation with the NYPA.

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5.2.4 Nuisance Wildlife

This section will address potential ways to improve current methods for managing nuisance wildlife species such as the ground hog. This section will be written in consultation with the NYPA.

5.2.5 Future Use of Project Lands

This section will discuss how project lands are intended to be used in the future. This will include a description of those permitted land uses that will remain the same and those that may change in the near future. This section will be written in consultation with the NYPA.

5.2.6 Aesthetic Enhancements

This section will discuss regarding the maintenance of those aesthetic enhancements that currently exist within the project boundary, such as existing vegetative screening. This section will be written in consultation with the NYPA.

5.3 Management Actions of Other Entities

This section will discuss the land management practices of OPRHP, National Grid, NYSDOT, NU and local transportation departments that manage lands within the project boundary. This section will also lay out a reporting program for those entities to report changes to their management practices the NYPA. If NYPA determines that these practices are in line with the LMP, an addendum will be written and submitted to FERC describing the change.

5.4 Permitting Process

This section will describe the current process for obtaining a permit from the NYPA, what uses require permits, and what standards/requirements apply. A discussion of existing permits, their locations and the nature of the permits will be briefly discussed. The permitting system will remain the same for future permits.

5.5 Implementation Plan and Schedule of Management Actions

An implementation plan will be developed to describe how the specific management actions outlined in this plan will be implemented. This will include steps to be taken to complete the management actions and will identify the department or entity that is responsible for completing these

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steps. This section will also detail scheduled activities associated with completing the actions outlined in the Land Management Plan, such as a schedules for IVM.

5.6 Plan Compliance, Updating and Reporting Program

This section will detail those items that need to be reported to FERC or other resource agencies. It will also discuss a reporting program that will include how often plan compliance will be reported to FERC and measures of how compliance with the land management plan will be determined. This section will detail the steps necessary for updating the land management plan as uses for project lands change or as new management issues arise. This will outline a proposal on future consultation that would be required when updating the plan.

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6.0 RELATIONSHIP OF THE LAND MANAGEMENT PLAN TO OTHER PLANS

6.1 Other NYPA Plans

6.1.1 Recreation Plan

This section will briefly discuss the Recreation Plan and when the plan was written. The discussion will highlight those aspects of the plan that compliment the Land Management Plan. This section will also look at those aspects of the plan, if any, that contrast to the Land Management Plan and the reason for the difference.

6.1.2 Historic Properties Management Plan

This section will briefly discuss the Historic Properties Management Plan and when the plan was written (if it is completed at the time of drafting the Land Management Plan). The discussion will highlight those aspects of the plan that compliment the Land Management Plan. This section will also look at those aspects of the plan, if any, that contrast to the Land Management Plan and the reason for the difference.

6.1.3 Customary Use Plan

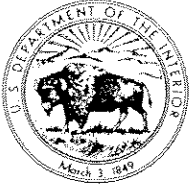
This section will discuss that the Customary Use Plan is currently being developed with the Tuscarora Nation. The Customary Use Plan and the Land Management Plan will be consistent.

6.2 Consistency with Other Plans

This section will offer a brief discussion of the project's consistency with the New York State Coastal Management Program, applicable comprehensive plans, and applicable local waterfront revitalization plans.

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7.0 LITERATURE CITED



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Trust Services
Natural Resources

JUN - 8 2007

Mr. Keith Silliman
Director of Niagara Relicensing
New York Power Authority
30 South Pearl Street
Albany, NY 12207-3425

Dear Mr. Silliman:

The Bureau of Indian Affairs (BIA) appreciates the opportunity to provide comments on the annotated table of contents of the Land Management and Recreation Plans for the Niagara Power Project (NPP). The BIA has no comments regarding the Recreation Plan. In regard to the Land Management Plan, the BIA has the following comments:

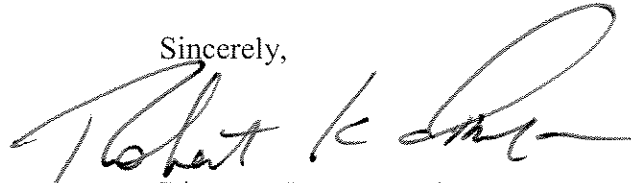
1. Paragraph 5.2.1 Road Maintenance. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the application of road salts and similar activities. The application of road salts has a significant environmental impact on lands receiving the run-off from roads to which salts have been applied. The Tuscarora Nation has several miles of territory along and across which roads maintained in conjunction with NPP operations run.
2. Paragraph 5.2.2 Vegetative Management. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the selection of plants used for erosion control on the NPP dike. The Tuscarora Nation has several miles of lands that abut the NPP dike.
3. Paragraph 5.2.3 Non-Native Species Control. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the selection of herbicides used for control of non-native invasive plants on the NPP dike. The Tuscarora Nation has several miles of lands that abut the NPP dike.
4. Paragraph 5.2.5 Future Use of Project Lands. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the future use of all project lands that are contiguous with Tuscarora lands. If the Tuscarora

Nation elects to place the lands they received as part of their settlement agreement into Federal trust, the BIA will also required consultation.

5. Paragraph 5.2.6 Aesthetic Enhancements. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding any enhancements that are visible from their lands.

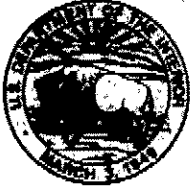
If you have any questions or need additional information, please contact Dr. James Kardatzke, BIA, at (615) 564-6830.

Sincerely,



ACTING Director, Eastern Region

CC: Tuscarora Nation



United States Department of the Interior



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June 11, 2007

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30 South Pearl St.
Albany, NY 12207-3425

**RE: Niagara Power Project (FERC #2216)
Land Management Plan**

Dear Mr. Silliman:

The U.S. Fish and Wildlife Service has reviewed the May 24, 2007, Annotated Table of Contents for the Land Management Plan for the Niagara Power Project. The Table of Contents is adequate to cover the issues of concern. We appreciate the opportunity to review the document. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,

David A. Stilwell
Field Supervisor



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Max Coykendall
Thomas DeSantis
Paul Dyster
Richard Roach
Lynda Schneekloth
Gregory Stevens
Megan Toohey
James Tompkins

Executive Director
Julie Barrett O'Neill

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Mr. Keith Silliman
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30 South Pearl Street
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June 26, 2007

Dear Mr. Silliman,

Thank you for the opportunity to comment on the New York Power Authority Project Land Management Plan and Recreation Plan Tables of Content prepared in support of the Authority's license to continue operation of the Niagara Power Project.

The following comments have been prepared on behalf of Buffalo Niagara Riverkeeper and the Niagara Relicensing Environmental Coalition members.

Land Management Plan

- ◆ Section 2.1 regarding the Goals and Objectives of the Plan should be expanded to specifically include the following
 1. Accessibility
 2. Recreational opportunities
 3. Energy Conservation
 4. Water Conservation
 5. Habitat preservation or restoration
 6. Contamination remediation as required
 7. Reconnection of Niagara Escarpment over fishing access road
 8. Cultural resources (native people history, Portage, history of power/Schoellkopf)
- ◆ Section 5.2.2. Vegetative Management should specifically reference "Best Management Practices" and the strategy should actively restore native plant species.
- ◆ The plan should specifically address water management both in terms of water conservation as well as stormwater runoff/treatment.
- ◆ This plan fails to specifically address the use and management of the Robert Moses Parkway. As the Parkway's current configuration has a substantial impact on Gorge ecological and recreational resources, this matter must be resolved.

Recreation Plan

- ◆ Section 2.0's discussion of regional recreational opportunities should also specifically address recreational trends, strengths, needs and threats.
- ◆ Section 3.0 - Existing Recreation Facilities should be expanded to include the Schoellkopf Ruins, bikeways, hiking trails.
- ◆ Section 4.0 should respond directly to stakeholder comments on deficiencies in the recreational study developed in the relicensing process. As mentioned, parking lot use surveys are not indicative of recreational facility use. Further investigation may be warranted.
- ◆ Section 5.0 Proposed Recreation Facilities should include a discussion of the planned Power Trail and Industrial History

Finally, please discuss where the plan will address the logistic difficulties created by location of the fishing access road parking at the top of the gorge.

We are excited about the active involvement of Buffalo Niagara Riverkeeper and the Niagara Relicensing Environmental Coalition (NREC) signatories in the execution of the Relicensing Agreement.

To ensure smooth communication with all involved parties, please be sure to direct any further correspondence to Buffalo Niagara Riverkeeper directly to Julie Barrett O'Neill at jboneill@bnriverkeeper.org. Each NREC member should also receive direct notification to ensure full opportunity to comment on license activities. Please contact me if you require contact information for the NREC representatives.

Sincerely,

Julie Barrett O'Neill
Buffalo Niagara Riverkeeper

White Plains Office
123 Main Street
White Plains, NY 10601
914. 287. 3247
914. 287. 3294(Fax)



Edward Alkiewicz
Mgr, Environmental Studies & Remediation

January 31, 2008

**Re: Niagara Power Project, FERC No. 2216
Article 405, Draft Land Management Plan**

Dear Consulting Party:

On March 15, 2007, the Federal Energy Regulatory Commission issued a new license for the continued operation of the Niagara Power Project. Article 405 of the new license requires the Power Authority to develop a Land Management Plan for the project. The article also requires the Power Authority to prepare the plan in consultation with the following parties: U.S. Fish and Wildlife Service; Bureau of Indian Affairs; National Park Service; New York State Department of Environmental Conservation; New York State Office of Parks, Recreation and Historic Preservation; Tuscarora Nation; Niagara Relicensing Environmental Coalition; and adjacent landowners.

Because you are one of the parties specified in Article 405 of the project license, the Power Authority is hereby notifying you that the draft Land Management Plan is now available for your review. The draft Land Management Plan is posted on the Niagara Power Project web site at <http://niagara.nypa.gov/documents.htm>. If you prefer, a hard copy of the draft plan will be made available upon request.

The Power Authority is providing 30 days for the above listed entities to comment on the draft plan before it is filed with the Commission on or before September 1, 2008. The final plan that will be filed with the Commission will include documentation of consultation and copies of comments and recommendations. If the Power Authority does not adopt a recommendation, the Power Authority's filing will include the reasons, based on project-specific information. Please provide your comments on the draft plan no later than March 3, 2008. Your comments should be sent to me at Edward.Alkiewicz@nypa.gov or to the following address:

Mr. Edward Alkiewicz
Manager, Environmental Studies & Remediation
New York Power Authority
123 Main Street
White Plains NY 10601

If you have any questions on the draft plan or the process to develop the Land Management Plan for the Niagara Power Project, please contact me at (914) 287-3247.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Alkiewicz" with a stylized flourish below it.

Edward Alkiewicz
Mgr, Environmental Studies & Remediation

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Mr. Steve Patch
3817 Luker Road
Cortland, NY 13045



United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

February 5, 2008

Mr. Edward Alkiewicz, Manager
Environmental Studies and Remediation
New York Power Authority
123 Main Street
White Plains, NY 10601

**RE: Niagara Power Project (FERC #2216)
Article 405, Draft Land Management Plan**

Dear Mr. Alkiewicz:

The U.S. Fish and Wildlife Service (Service) has reviewed the January 31, 2008, *Draft Land Management Plan* (DLMP) produced by the New York Power Authority in compliance with License Article 405 for the Niagara Power Project. The DLMP adequately addresses License Article 405. The Service concurs with this plan. We appreciate the opportunity to review the DLMP. If you have any questions or desire additional information, please contact Steve Patch at 607-753-9334.

Sincerely,

A handwritten signature in black ink that reads "David A. Stilwell".

David A. Stilwell
Field Supervisor

cc: NYSDEC, Albany, NY (M. Woythal, W. Little)
NPS, Boston, MA (D. Hay)
BLA, Nashville, TN (J. Kardatzke)



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

FEB 12 2008

Trust Services
Natural Resources

Mr. Edward Alkiewicz
Manager, Environmental Studies and Remediation
New York Power Authority
123 Main Street
White Plains, NY 10601

Dear Mr. Alkiewicz:

The Bureau of Indian Affairs (BIA) appreciates the opportunity to provide comments on the Draft Land Management and Draft Recreation Plans for the Niagara Power Project (FERC No. 2216). The comments, by plan, are as follows:

Draft Land Management Plan (LMP)

1. Since the Historic Properties Management Plan and the Customary Use Plan for this Project have yet to be provided, the BIA cannot comment on whether the land management policies and activities are consistent with these plans.
2. The draft LMP does not address new recreational enhancements such as the Upper Mountain Parking/Fishing Access that are part of the Settlement Agreement and the License. In order to preclude future amendments to the LMP to incorporate such improvements, the BIA suggests that these enhancements be described and addressed in the current document.
3. The BIA notes that a strip of Tuscarora Nation restricted-fee lands along the eastern edge of the Lewiston Reservoir is included within the project boundary. The usage of this land is for transportation and managed by the New York State Department of Transportation. The BIA recommends that all land management operations conducted in and along Project lands that abut and on Tuscarora Nation lands be coordinated with the appropriate Tuscarora Nation representative prior to being implemented. At a minimum all chemical treatments, be they for vegetation management or road maintenance, should be subject to Tuscarora Nation concurrence.
4. On Page 5-5, the LMP specifies the active ingredient glyphospaté as the specific type of herbicides for use. While this is currently a good choice, the BIA suggests that the general mode of action be used in the LMP rather than a specific active ingredient, much like the LMP does on Page 5-6 when referring to the Lewiston Reservoir dike and right-of-way transmission

corridors. This will preclude the need to amend the LMP when, in the future, the New York Power Authority may wish to change to a different class of product.

Draft Recreation Plan (RP)

The BIA has no comments on the RP except to note that at the Robert Moses Fishing Pier, the LMP refers to 3 American Disabilities Act (ADA) parking spaces and the RP refers to 4 ADA parking spaces.

If you have any questions or need additional information, please contact Dr. James Kardatzke, BIA, at (615) 564-6830.

Sincerely,

A handwritten signature in black ink that reads "Scott C. Meneely". The signature is written in a cursive style with a large, stylized initial "S".

ACTING Director, Eastern Region

CC: Tuscarora Nation



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

**DEPARTMENT OF COMMUNITY
DEVELOPMENT
Office of Planning & Environmental
Services**

March 3, 2008

Mr. Edward Alkiewicz
Manager, Environmental Studies & Remediation
New York Power Authority
123 Main Street
White Plains, NY 10601

**Re: Niagara Power Project, FERC No. 2216
Article 405, Draft Land Management Plan.**

Dear Mr. Alkiewicz:

The City of Niagara Falls Office of Planning and Environmental Services has reviewed the New York Power Authority's Draft Land Management Plan, established in accordance with the Niagara Power Project Relicensing Agreement FERC No. 2216. The City's opinions and suggestions on the proposed policies and practices are contained herein and have been submitted by the deadline of March 3, 2008.

As a whole, the proposed Land Management Plan contains very little in terms of substantive changes from current practices, and states so within the plan itself. The Office of Environmental Services is disappointed that NYPA has not taken advantage of this opportunity to re-evaluate its current management activities and consider altering and updating the policies of the last several years.

Though little has changed regarding the physical nature of project boundaries, the dynamic of the local environment, recreation and the role of these facets in the economy of surrounding municipalities, including the City of Niagara Falls has changed dramatically. As the industrial base for the local economy has deteriorated, local communities are attempting to capitalize on the area's natural resources and human history to facilitate a turn towards an economy based on heritage tourism. A number of land segments within the Project Boundary are crucial to the area's attempt to capitalize on its own natural resources, with environmental preservation and recreational opportunity playing vital roles. The draft plan says little addressing such issues on highly valued lands such as the Upper Niagara River waterfront and the Lower Niagara River Gorge, possibly two of the most important aspects to City's economy.

Of particular concern is the plan's decision not to make any attempt to control non-native species on any lands within the boundary. Asserting that "infiltration of non-native vegetative species is inherent to human disturbance," the draft recognizes that significant amounts of exotic plant species do indeed exist within the boundary, yet sees no need for actively controlling such species. While this may not be of extreme importance on lands within the boundary currently used for industrial purposes or on highly developed lands surrounding the plant itself, the notion that fighting invasive species along waterways such as Gill Creek, the Upper Niagara River, Fish Creek, and of most importance, both segments of the Niagara Gorge that fall under the management plan is futile and thus unnecessary is fundamentally flawed and environmentally unsound. The threats posed to the ecological health of local environments, particularly those of aquatic nature, are well documented. The suggestion that a globally-recognized environmental asset such as the Niagara Gorge should be left untended by the agency that takes advantage of it for power generation and sale and is charged with its management is untenable. The City finds this approach or lack thereof neglectful and unacceptable. It is imperative we safeguard the natural integrity of the Niagara Gorge and preserve its status as a unique ecological site.

The Office of Environmental Services (OES) suggests a thorough exploration into the current situation regarding invasive species within project boundaries. This process would include population surveys, damage evaluation, and a prescription of remedial actions leading to implementation of these actions. Regardless of the 'inevitability' of invasive species infiltration or the extent of that infiltration, simply ignoring the issue and not even investigating the conditions properly are irresponsible. More generally, OES advocates for a more comprehensive plan for the gorge lands in particular that emphasizes ecological preservation and restoration. Active management is implicit in such an effort where human perturbations of the environment are common. The unique nature of the gorge and its fragility demand such efforts.

Also of concern to the OES is the lack of an up to date survey of the conditions, such as biological health and ecological role fulfillment, of Fish and Gill Creeks. Both waterways were enormously disturbed by the construction of the Lewiston Reservoir. It is the responsibility of NYPA to ensure that both waterways have been acceptably reconfigured in a manner that mitigates environmental repercussions in vital ecological processes such as fish and marine species spawning. Avian habitat and nesting areas are also important to consider regarding the impact of stream alteration. It is important to note that it is not only important to observe and maintain stable conditions concerning these streams from year to year, but to restore the ecological role of these bodies of water to their conditions before the construction of the Lewiston Reservoir if it is found through research that it has indeed been altered and inadequately remedied.

The Niagara Falls OES would also suggest that if NYPA is unwilling to take a *proactive* role in managing crucial lands such as the Upper Niagara River bank and the Niagara Gorge, they should consider a cooperative measure with other state agencies to reach an agreement similar to that governing the Reservoir State Park's management, and relinquish management duties to another agency such as the NYS Office of Parks, Recreation, and Historic Preservation. This would be an important first step toward the full and proper management of these lands in a responsible manner.

Though the implementation of aesthetic improvements is mentioned in the draft and discussed in another document, the OES is taking this opportunity to recommend aesthetic improvements in areas away from the power plants and facilities themselves. Of

the potential enhancements, the most visible and that with the biggest impact may be planting of additional native plants, including trees, shrubs, flowering plants, etc. on property along the Robert Moses Parkway, currently under the joint management of NYPA and the NYS Department of Transportation to serve as a buffer to unsightly adjacent industrial properties who are NYPA customers. A means of obstructing residents' and tourists' view of the industrial corridor should be thoroughly explored. OES would also suggest further enhancement of areas such as the Water Intakes site to create a more welcoming, park-like atmosphere. Suggestions would include ornamental plantings there as well as interpretive signage and exhibits concerned with the relevance of the structures.

A final comment from the OES is that NYPA cooperate with the City of Niagara Falls in the formulation of a plan to better utilize lands that overlay the water conduits from the river to the Lewiston Reservoir. The City is exploring the feasibility of establishing a multiple-use recreational pathway from the river to the reservoir along this open greenspace. Cooperation among the City of Niagara Falls, NYPA, as well as the Town of Niagara and the Town of Lewiston will be needed to establish such a path. This yet-to-be-proposed trail would augment current recreational opportunities for hikers, joggers, bicyclists, etc. through the local community and should be seriously considered.

The City of Niagara Falls OES is discouraged by the proposed continuation of status quo management of project lands. We feel NYPA has a responsibility to the local community to manage the lands under its supervision in the most environmentally responsible, proactive, and comprehensive approach possible. In short, this draft fails to show how NYPA will meet that standard. We hope NYPA will reconsider its current plan and modify it in a manner that better serves the local people and protects the surrounding environment, helping the City of Niagara Falls as well as surrounding municipalities make its transition to a new economy based on recreation, environmental resources, and tourism in the coming years.

Do not hesitate to contact the undersigned at 716-286-4462, or via e-mail at nusbaum@nfez.org.

Sincerely,

Alan B. Nusbaum
Environmental Planner/GIS Coordinator

MEMORANDUM
(transmitted via email)

TO: Edward Alkiewicz, New York Power Authority

CC: Nancy Herter, OPRHP
Tonawanda Seneca Nation
Seneca Nation of Indians

FROM: Neil Patterson Jr., Tuscarora Relicensing Director

RE: Comments on CUP, LMP, RMP, Phase 1A Addendum

DATE: August 25, 2008

Below are comments on three of NYPA's draft management plans and the Phase 1A Addendum. Our comments on the Customary Use Plan, the Land Management Plan, and the Recreation Management Plan are mostly wording changes and clarifications that could be resolved before the documents are submitted to FERC. Comments on the Phase 1A Addendum reflect significant conceptual differences and large omissions of information critical to a thorough Phase 1A inventory of cultural resources flooded by the Lewiston Reservoir. These concerns may require the collection of additional information which could be contained in a final or interim 1A Addendum report. As always, we are committed to working with NYPA, the OPRHP and others to resolve these issues and we appreciate the chance to comment on these plans in advance of their submission to the Federal Energy Regulatory Commission.

Comments on the Customary Use Plan

1. Section 1.0, 2nd paragraph, first sentence. Change "members" to "citizens."
2. Section 1.0, 2nd sentence of second paragraph should begin with "Because" rather than "As" because (not as) it is more precise.
3. Section 2.0, Change 1st sentence to "The Tuscarora Nation and the United States of America have had a treaty based relationship for over three centuries old."
4. Section 4.0, 3rd sentence, 1st paragraph should read "Prior authorization shall be obtained two (2) weeks"
5. Section 4.0, 1st sentence, 2nd paragraph should read: "Prior authorization must be obtained from, and pre-notification provided to the following Power Authority Offices. The "please contact" language in the original makes it sound like this document is addressed to the Nation, which it is not.
6. Section 4.0 addresses who at the Power Authority is authorized to receive notification and provide authorization for certain CUP activities but not who the Power Authority is authorized to receive notice or entertain requests for authorization from. There should be language inserted identifying who is authorized to give notice and/or request authorization.

7. Section 5.0 should read “All Activities To Conform With Applicable Federal and State Law.” “Applicable” is used in similar contexts in other relicensing documents to make clear that Indian Nations are not agreeing to any restrictions to which its members are not otherwise subject and should likewise be inserted here. “Requirements” is way too vague a term. “Law” should be substituted. These changes also need to be made elsewhere in the document, including the Table of Contents.
8. Section 5.0 currently references “Local” law. We need clarification on the extent to which “Local” (as opposed to State or Federal) law applies to Lands (or interests in land) within the Project Boundary. CUP activities should not be subject to local restrictions that do not apply to Project Lands and Project Operations in general.
9. Section 5.0 A., 1st sentence, 1st paragraph: The phrase “prohibited on lands within the FERC Project boundary” is still misleading (or at least confusing) in that it could be read as referring to the easement land (since the easement itself is “within the FERC Project Boundary). It should be changed to something like “prohibited on NYPA-owned fee lands within the FERC Project boundary”)
10. Section 5.0, 3d & 4th sentence: same comment as in #7, reference to “local” law.
11. Section 5.0, 4th sentence. Phrase “at the Project” has the same problems as described in #9, above.
12. There appears to be a numbering error on p. 4 (after Section 5.0) in that the next section is also labeled 5.0. Section 6.0 should be Section 7.0 (same in Table of Contents)
13. Title to what should be Section 6.0 should read “ALL ACTIVITIES TO CONFORM WITH APPLICABLE FEDERAL AND STATE LAW” (see comment #7, above)
14. Last bullet in what should be Section 6.0 should read “Any applicable State requirements . . .”

Comments on New Section 4.2.3 of Land Management Plan:

1. Sentence 4 should read: “One of the roads NYSDOT manages within the Project boundary is a section of Garlow Rd., located on 9.9 acres of Tuscarora Nation land to the East of the Lewiston Reservoir. The Power Authority holds an easement interest in that 9.9 acre parcel for the purpose of constructing and maintaining the road.”
2. Note on Fig. 3-1.3 should read: “Power Authority holds an easement in parcel from the Tuscarora Nation. NYSDOT manages . . .”

Comments on New Section 9.0 of Recreation Plan:

1. 2d sentence, 3d paragraph should read “This activity constitutes trespass under Nation law.” It’s not simply the Nation’s “view” that trespass occurs.

Additional Tuscarora comments regarding the Lewiston Reservoir IA Study which are unrelated to this filing have been redacted from this filing.

NIAGARA POWER PROJECT (FERC NO. 2216)
LAND MANAGEMENT PLAN-RECORD OF CONSULTATION

NYPA Response Comments Matrix

Draft Land Management Plan Table of Contents:

- [United States Department of the Interior Bureau of Indian Affairs](#)
- [United States Department of the Interior Fish and Wildlife Service](#)
- [Buffalo Niagara Riverkeeper](#)

Draft Land Management Plan:

- [City Of Niagara Falls, New York](#)
- [United States Department of the Interior Fish and Wildlife Service](#)
- [United States Department of the Interior Bureau of Indian Affairs](#)
- [Tuscarora Nation](#)

Customary Use Plan

- [Tuscarora Nation](#)
-

NIAGARA POWER PROJECT (FERC NO. 2216)
LAND MANAGEMENT PLAN – RECORD OF CONSULTATION
COMMENTS ON THE NEW YORK POWER AUTHORITY'S
DRAFT LAND MANAGEMENT PLAN
TABLE OF CONTENTS

Comment	Response
<i>United States Department of the Interior Bureau of Indian Affairs</i>	
Paragraph 5.2.1 Road Maintenance. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding application of road salts and similar activities. The application of road salts has a significant environmental impact on lands receiving the run-off from roads to which salt has been applied. The Tuscarora Nation has several miles of territory along and across which roads maintained in conjunction with NPP operations run.	The Tuscarora Nation was included in the distribution of the draft Land Management Plan, providing them opportunity to comment on the specifics of maintenance and management activities.
Paragraph 5.5.5 Vegetative Management. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the selection of plants used for erosion control on the NPP dike. The Tuscarora Nation has several miles of lands that abut the NPP dike.	See response above.
Paragraph 5.2.3 Non-Native Species Control. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the selection of herbicides used for control of non-native invasive plants on the NPP dike. The Tuscarora Nation has several miles of lands that abut the NPP dike.	See response above.

NIAGARA POWER PROJECT (FERC NO. 2216)
LAND MANAGEMENT PLAN – RECORD OF CONSULTATION
COMMENTS ON THE NEW YORK POWER AUTHORITY'S
DRAFT LAND MANAGEMENT PLAN
TABLE OF CONTENTS

Comment	Response
Paragraph 5.2.5. Future use of Project Lands. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding the future use of all project lands that are contiguous with Tuscarora lands. If the Tuscarora Nation elects to place the lands they received as part of their settlement agreement into Federal trust, the BIA will also require consultation.	See response above.
Paragraph 5.2.6 Aesthetic Enhancements. Additional consultation should be included for development of this section. At a minimum, the Tuscarora Nation should be consulted regarding any enhancements that are visible from their lands.	See response above.
<i>United States Department of the Interior Fish and Wildlife Service</i>	
The Fish and Wildlife Service has reviewed the May 24, 2007, Annotated Table of Contents for the Land Management Plan for the Niagara Power Project. The Table of Contents is adequate to cover the issues of concern. We appreciate the opportunity to review the document. If you have any questions or desire for any additional information, please contact Steve Patch at 607-753-9334.	Comment noted.

NIAGARA POWER PROJECT (FERC NO. 2216)
LAND MANAGEMENT PLAN – RECORD OF CONSULTATION
COMMENTS ON THE NEW YORK POWER AUTHORITY'S
DRAFT LAND MANAGEMENT PLAN
TABLE OF CONTENTS

Comment	Response
<i>Buffalo Niagara Riverkeeper</i>	
<p>Section 2.1 regarding the Goals and Objectives of the Plan should be expanded to specifically include the following</p> <ol style="list-style-type: none"> 1. Accessibility 2. Recreational opportunities 3. Energy Conservation 4. Water Conservation 5. Habitat preservation or restoration 6. Contamination remediation as required 7. Reconnection of Niagara Escarpment over fishing access road 8. Cultural resources (native people history, Portage, history of power/Schoellkopf) 	<p>None of these goals/objectives were included in the scope of services for the development of the Land Management Plan that was agreed to by the agencies and stakeholders involved in the ALP relicensing of the Niagara Power Project. As such, the table of contents has not been revised to address these new subject areas.</p> <p>The LMP adequately serves its objective to provide guidelines for the management of project lands within the project boundary during the new license term in a manner that is consistent with FERC policies, license requirements, project needs, protection of resources and public interest.</p>

NIAGARA POWER PROJECT (FERC NO. 2216)
LAND MANAGEMENT PLAN – RECORD OF CONSULTATION
COMMENTS ON THE NEW YORK POWER AUTHORITY'S
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<p>Section 5.2.2. Vegetative Management should specifically reference “Best Management Practices” and the strategy should actively restore native plant species.</p>	<p>The LMP adequately serves its objective to provide guidelines for the management of project lands within the project boundary during the new license term in a manner that is consistent with FERC policies, license requirements, project needs, protection of resources and public interest. The Power Authority’s vegetation management incorporates best management practices as exemplified by the Integrated Vegetation Management strategy. This strategy, modeled on the Integrated Pest Management (IPM) process, utilizes cultural (mechanical and manual methods that physically remove tree stems), biological (encouraging low growing plant species and herbivory), and chemical (herbicide) control.</p> <p>A study on the feasibility of restoring native plant species in the gorge has been executed; the resultant report is currently in draft. The Power Authority will be sharing the results of this report with members of the Ecological Steering Committee (ESC). The ESC may propose future measures with regard to potential non-native species mitigation based on the findings and recommendations of this study using funds provided by the Power Authority.</p>

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<p>The plan should specifically address water management both in terms of water conservation as well as stormwater runoff/treatment.</p>	<p>Water management was not included in the scope of services for the development of the Land Management Plan that was agreed to by the agencies and stakeholders involved in the ALP relicensing of the Niagara Power Project. As such, the table of contents has not been revised to address these new subject areas.</p> <p>The LMP adequately serves its objective to provide guidelines for the management of project lands within the project boundary during the new license term in a manner that is consistent with FERC policies, license requirements, project needs, protection of resources and public interest.</p>
<p>This plan fails to specifically address the use and management of the Robert Moses Parkway. As the Parkway's current configuration has a substantial impact on Gorge ecological and recreational resources, this matter must be resolved.</p>	<p>Resolution of the issues regarding the ultimate use of the Robert Moses Parkway was beyond the scope of relicensing (and, by extension, are beyond the scope of the LMP). Moreover, maintenance responsibility for the Parkway was transferred to the New York State Department of Transportation in 1975 under a State Budget Resolution and a memorandum of understanding between OPRHP and the NYSDOT.</p>

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<i>City of Niagara Falls, New York</i>	
The City of Niagara Falls Office of Planning and Environmental Services has reviewed the New York Power Authority's Draft Land Management Plan, established in accordance with the Niagara Power Project Relicensing Agreement FERC No. 2216. The City's opinions and suggestions on the proposed policies and practices are contained herein and have been submitted by the deadline of March 3, 2008	Comment noted.
As a whole, the proposed Land Management Plan contains very little in terms of substantive changes from current practices, and states so within the plan itself.	<p>This statement is accurate. It is the Power Authority's intention to proceed, in large part, with land management activities that are already in practice.</p> <p>The LMP adequately serves its objective to provide guidelines for the management of project lands within the project boundary during the new license term in a manner that is consistent with FERC policies, license requirements, project needs, protection of resources and public interest</p>

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<p>The Office of Environmental Services is disappointed that NYPA has not taken advantage of this opportunity to re-evaluate its current management activities and consider altering and updating the policies of the last several years.</p>	<p>The Power Authority has spent considerable attention to evaluating its land management practices and their potential effects on the environment. Land Management Practices, as they pertain to natural resources within the project boundary, are detailed in a report entitled “Effects of Land Management Practices on Aquatic and Terrestrial Habitats” (E/PRO 2004). This report is cited in the Land Management Plan (LMP).</p> <p>The Power Authority currently employs land management practices that are considered to be feasible from standpoints of public, utility, economic and environmental interests. The Power Authority plans to continue to use methods that have proven to be effective while also serving these interests. This LMP in no way restricts the Power Authority from changing or evolving its practices when and if better techniques arise.</p>

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<p>Though little has changed regarding the physical nature of project boundaries, the dynamic of the local environment, recreation and the role of these facets in the economy of surrounding municipalities, including the City of Niagara Falls has changed dramatically. As the industrial base for the local economy has deteriorated, local communities are attempting to capitalize on the area's natural resources and human history to facilitate a turn towards an economy based on heritage tourism. A number of land segments within the Project Boundary are crucial to the area's attempt to capitalize on its own natural resources, with environmental preservation and recreational opportunity playing vital roles. The draft plan says little addressing such issues on highly valued lands such as the Upper Niagara River waterfront and the Lower Niagara River Gorge, possibly two of the most important aspects to the City's economy.</p>	<p>The Power Authority recognizes the concerns voiced in this comment; however it is not the charge of the LMP or FERC to address these socioeconomic issues.</p> <p>The Power Authority supports recreational and environmental interests in numerous ways. The Power Authority's management of recreation resources (and proposed enhancements) within the FERC project boundary are detailed in the Project's Recreation Plan. The Power Authority's commitment to the protection of historic properties within the project boundary is addressed in the Historic Properties Management Plan. In addition to these Plans, the Power Authority has provided millions of dollars to the local communities and resource protection agencies for the protection and enhancement of fish and wildlife habitat throughout the Niagara River corridor. Additionally, the City will benefit significantly through the Host Community Agreement and the establishment of the Host Community Fund and the Host Community Greenway Fund that can address the pursuit of economic development initiatives and the support heritage tourism.</p>

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<p>Of particular concern is the plan's decision not to make any attempt to control non-native species on any lands within the boundary. Asserting that "infiltration of non-native vegetative species is inherent to human disturbance," the draft recognizes that significant amounts of exotic plant species do exist within the boundary, yet sees no need for actively controlling such species. While this may not be of extreme importance on lands within the boundary currently used for industrial purposes or on highly developed lands surrounding the plant itself, the notion that fighting invasive species along waterways such as Gill Creek, the Upper Niagara River, Fish Creek and of most importance, both segments of the Niagara Gorge that fall under the management plan is futile and thus unnecessary is fundamentally flawed and environmentally unsound.</p>	<p>The Power Authority respectfully disagrees with the opinions projected in this comment. Additionally, we feel the comment mischaracterizes the positions of the Power Authority with statements such as the Power Authority "sees no need for actively controlling such species" or that "fighting invasive species . . . [on lands] that fall under the management plan is futile and thus unnecessary."</p> <p>As conceded by the City of Niagara Falls in this comment, significant amounts of exotic plant species do exist within the project boundary. A later comment concedes that infiltration is inevitable and extensive. Significant amounts of exotic species are present throughout the Niagara region. This includes lands that surround the project and are not subject to the Power Authority's jurisdiction. It should be noted that the area of the project boundary is comparatively diminutive in the overall landscape of this region that has been heavily altered by centuries of anthropogenic forces. Any control measures isolated to the area of the project boundary, even if highly successful, would require a massive effort and would result in little to no net impact on the overall status of invasive species in the region.</p>

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<p>The threats posed to the ecological health of local environments, particularly those of aquatic nature, are well documented. The suggestion that a globally recognized environmental asset such as the Niagara Gorge should be left unattended by the agency that takes advantage of it for power generation and sale and is charged with its management is untenable. The city finds this approach or lack thereof neglectful and unacceptable. It is imperative we safeguard the natural integrity of the Niagara Gorge and preserve its status as a unique ecological site.</p>	<p>The current status of non-native plant species in the gorge is a result of decades (even centuries) of human influence, the vast majority of which is not related to the existence of the Niagara Power project. In addition, sources of non-native species infiltration surround the portion of the gorge over which the Power Authority has jurisdiction; the Power Authority has no control over non-native species on these surrounding lands. Furthermore, it has been well documented that the Erie Canal is a significant source of non-native species introduction, conveyed to the gorge by the river itself.</p> <p>The Power Authority has undertaken significant studies which catalog plant species in the gorge. Furthermore, a study on the feasibility of restoring native plant species in the gorge has been executed; the resultant report is currently in draft. The Power Authority will be sharing the results of this report with members of the Ecological Steering Committee (ESC). The ESC may propose future measures with regard to potential non-native species mitigation based on the findings and recommendations of this study using funds provided by the Power Authority.</p>
<p>The Office of Environmental Services (OES) suggests a thorough exploration into the current situation regarding invasive species within project boundaries. This process would include population surveys, damage evaluation, and prescription of remedial actions leading to implementation of these actions.</p>	<p>The Power Authority has performed extensive habitat and cover type surveys within the project boundary during pre-licensing studies, including the report described above. These studies adequately identified, documented and described the presence of invasive species within project boundaries.</p>

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Regardless of the 'inevitability' of invasive species infiltration or the extent of that infiltration, simply ignoring the issue and not even investigating the conditions properly are irresponsible.	The Power Authority has not ignored the issue and, in fact, has spent considerable efforts performing proper investigations which catalog and define current conditions within the project boundary. Efforts include, but are not limited to, extensive habitat and ground cover surveys within the project boundary, numerous habitat and vegetation studies within the Niagara Gorge, and a feasibility study for re-introduction of native plant species in the Niagara Gorge.
More generally, OES advocates for a more comprehensive plan for the gorge lands in particular that emphasizes ecological preservation and restoration. Active management is implicit in such an effort where human perturbations of the environment are common. The unique nature of the gorge and its fragility demand such efforts.	See previous responses.
Also of concern to the OES is the lack of an up to date survey of the conditions, such as biological health and ecological role fulfillment, of Fish and Gill Creeks. Both waterways were enormously disturbed by the construction of the Lewiston Reservoir. It is the responsibility of NYPA to ensure that both waterways have been acceptably reconfigured in a manner that mitigates environmental repercussions in vital ecological processes such as fish and marine species spawning.	An extensive study was performed which assessed the ecological condition of these waterways during relicensing. The results of this study are available in a report entitled Ecological Condition of Gill, Fish and Cayuga Creeks (URS et al. 2004). You can find this study on the Niagara Relicensing website at: http://niagara.nypa.gov/ .

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<p>Avian habitat and nesting areas are also important to consider regarding impact of stream alteration. It is important to note that it is not only important to observe and maintain stable conditions concerning these streams from year to year, but to restore the ecological role of these bodies of water to their conditions before the construction of the Lewiston Reservoir if it is found through research that it has indeed been altered and inadequately remedied.</p>	<p>The concerns regarding stream alteration expressed in this comment are not relevant to the charge of this LMP.</p>
<p>The Niagara Falls OES would also suggest that if NYPA is unwilling to take a proactive role in managing crucial lands such as the Upper Niagara River bank and the Niagara Gorge, they should consider a cooperative management measure with other state agencies to reach an agreement similar to that governing the Reservoir State Park's management, and relinquish management duties to another agency such as the NYS Office of Parks, Recreation, and Historic Preservation. This would be an important first step toward the full and proper management of these lands in a responsible manner.</p>	<p>The Power Authority has an existing Agreement with the New York Office of Parks, Recreation and Historic Preservation (OPRHP) to use, maintain, control, manage, govern, and police Power Authority lands along the lower Niagara River in the area of the Discovery Center and the trails known as the Ongiara and Whirlpool trails located on the former Great Gorge Railroad right-of-way.</p> <p>Lands within the project boundary on the Upper Niagara River are managed by the Power Authority and improvement to these lands will occur in 2009 under the Recreation Plan.</p>

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<p>Though the implementation of aesthetic improvements is mentioned in the draft and discussed in another document, the OES is taking the opportunity to recommend aesthetic improvements in areas away from the power plants and facilities themselves. Of the potential enhancements, the most visible and that with the biggest impact may be planting of additional native plants, including trees, shrubs, flowering plants, etc. on property along the Robert Moses Parkway, currently under joint management of NYPA and the NYS Department of Transportation to serve as a buffer to unsightly adjacent industrial properties who are NYPA customers. A means of obstructing residents' and tourists' view of the industrial corridor should be thoroughly explored.</p>	<p>Aesthetic improvements discussed in the Land Management Plan were direct recommendations from the report Visual Assessment (The Saratoga Associates, 2005), which was conducted during the relicensing of the Project. The scope for this assessment was determined in consultation with the ALP Stakeholders. No recommendations for the planting of additional native plants along the Robert Moses Parkway were recommended.</p> <p>The Power Authority is providing communities in Niagara County \$3 million annually for the term of the new license for the development of the Niagara River Greenway. Perhaps these funds might be used for this purpose.</p>
<p>OES would also suggest further enhancement of areas such as the Water Intakes site to create a more welcoming, park-like atmosphere. Suggestions would include ornamental plantings there as well as interpretive signage and exhibits concerned with the relevance of the structures.</p>	<p>As outlined in the draft Recreation Plan for the Project, several improvements are proposed for the Upper River Water Intakes, including new interpretive signs, repaving, and recurbings. The intakes were considered in the Visual Assessment report and no recommendations for additional ornamental plantings were made</p>

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<p>A final comment from the OES is that NYPA cooperate with the City of Niagara Falls in the formulation of a plan to better utilize lands that overlay the water conduits from the river to the Lewiston Reservoir. The city is exploring the feasibility of establishing a multiple-use recreational pathway from the river to the reservoir along this open greenspace. Cooperation among the City of Niagara Falls, NYPA as well as the Town of Niagara and the Town of Lewiston will be needed to establish such a path. This yet-to-be-proposed trail would augment current recreational opportunities for hikers, joggers, bicyclists, etc. through the local community and should be seriously considered.</p>	<p>The lands referenced are owned by various entities, including NYPA. In many cases, however, these lands are owned by other entities and are managed by NYPA for their facilities via easements and/or lease agreements. The LMP does not preclude considerations of uses such as the trail described; the City of Niagara Falls is free to initiate the suggested exploration into the feasibility of establishing such a trail. If the trail is deemed feasible, the City of Niagara Falls and cooperating entities are expected to seek permits and develop appropriate agreements with the Power Authority and other entities upon whose property the trail will occur. Such use on Power Authority owned lands would be subject to the permitting process outlined in the LMP.</p>
<p>The City of Niagara Falls OES is discouraged by the proposed continuation of status quo management of project lands. We feel NYPA has a responsibility to the local community to manage the lands under its supervision in the most environmentally responsible, proactive, and comprehensive approach possible. In short, this draft fails to show how NYPA will meet that standard</p>	<p>The Power Authority respectfully disagrees with the City's assumption that current practices are not environmentally responsible, proactive, and comprehensive. Furthermore, the LMP in no way restricts the Power Authority from adopting new practices when and if more environmentally responsible, proactive, and comprehensive alternatives evolve.</p>
<p>We hope NYPA will reconsider its current plan and modify it in a manner that better serves the local people and protects the surrounding environment, helping the City of Niagara Falls as well as surrounding municipalities make its transition to a new economy based on recreation, environmental resources, and tourism in the coming years.</p>	<p>The LMP adequately serves its objective to provide guidelines for the management of project lands within the project boundary during the new license term in a manner that is consistent with FERC policies, license requirements, project needs, protection of resources and public interest.</p>

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Comment	Response
<i>United States Department of the Interior Fish and Wildlife Service</i>	
The U.S. Fish and Wildlife Service (Service) has reviewed the January 31, 2008, Draft Land Management Plan (DLMP) produced by the New York Power Authority in compliance with License Article 405 for the Niagara Power project. The DLMP adequately addresses License Article 405. The Service concurs with this plan. We appreciate the opportunity to review the DLMP.	Comment noted.
<i>United States Department of Interior Bureau of Indian Affairs</i>	
Since the Historic Properties Management Plan and the Customary Use Plan for this Project have yet to be provided, the BIA cannot comment on whether the land management policies and activities are consistent with these plans.	Comment noted.
The Draft LMP does not address new recreational enhancements such as the Upper Mountain Parking/Fishing Access that are part of the Settlement Agreement and the License. In order to preclude future amendments to the LMP to incorporate such improvements, the BIA suggests that these enhancements be described and addressed in the current document.	Proposed recreational enhancements are outlined in the Project's Recreation Plan.

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<p>The BIA notes that a strip of Tuscarora Nation restricted-fee lands along the eastern edge of the Lewiston Reservoir is included within the Project boundary. The usage of this land is for transportation and is managed by the New York State Department of Transportation. The BIA recommends that all land management operations conducted in and along Project lands that abut and on Tuscarora Nation Lands be coordinated with the appropriate Tuscarora Nation Representative prior to being implemented. At a minimum all chemical treatments, be they for vegetation management or road maintenance, should be subject to Tuscarora Nation Concurrence.</p>	<p>The Tuscarora Nation was included in the distribution of the draft Land Management Plan, providing them opportunity to comment on the specifics of land management and road maintenance activities.</p>
<p>On page 5-5, the LMP specifies the active ingredient glyphosate as the specific type of herbicides for use. While this is currently a good choice, the BIA suggests that the general mode of action be used in the LMP rather than a specific active ingredient, much like the LMP does on page 5-6 when referring to the Lewiston Reservoir dike and right-of-way transmission corridors. This will preclude the need to amend the LMP when, in the future, the New York Power Authority may wish to change to a different class of product.</p>	<p>The plan has been revised to remove all reference to glyphosate.</p>
<p>The BIA has no comments on the RP except to note that at the Robert Moses Fishing Pier, the LMP refers to 3 American Disabilities Act (ADA) parking spaces and the RP refers to 4 ADA parking spaces.</p>	<p>The correct number is 4; the Land Management Plan has been revised to reflect the correct number of ADA parking spaces.</p>

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<i>Tuscarora Nation</i>	
Section 4.2.3 Sentence 4 should read: “One of the roads NYSDOT manages within the Project boundary is a section of Garlow Rd., located on 9.9 acres of Tuscarora Nation land to the East of the Lewiston Reservoir. The Power Authority holds an easement interest in that 9.9 acre parcel for the purpose of constructing and maintaining the road	The Power Authority does not believe this change is necessary. The current language in the Land Management Plan clearly and accurately describes the ownership interests of the Tuscarora and the Power Authority in this 9.9 acre parcel.
Section 4.2.3 2.Note on Fig. 3-1.3 should read: “Power Authority holds an easement in parcel from the Tuscarora Nation. NYSDOT manages	See response above.

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<i>Tuscarora Nation</i>	
Section 1.0, 2nd paragraph, first sentence. Change “members” to “citizens.”	The Customary Use Plan has been revised to incorporate this comment
Section 1.0, 2nd sentence of second paragraph should begin with “Because” rather than “As” because (not as) it is more precise.	The Customary Use Plan has been revised to incorporate this comment
Section 2.0, Change 1st sentence to “The Tuscarora Nation and the United States of America have had a treaty based relationship for over three centuries old.”	The first sentence of the last paragraph of Section 2.0 of the Customary Use Plan has been revised to incorporate this comment
Section 4.0, 3rd sentence, 1st paragraph should read “Prior authorization shall be obtained two (2) weeks”	The Customary Use Plan has been revised to incorporate this comment
Section 4.0, 1st sentence, 2nd paragraph should read: “Prior authorization must be obtained from, and pre-notification provided to the following Power Authority Offices. The “please contact” language in the original makes it sound like this document is addressed to the Nation, which it is not.	The Customary Use Plan has been revised to incorporate this comment
Section 4.0 addresses who at the Power Authority is authorized to receive notification and provide authorization for certain CUP activities but not who the Power Authority is authorized to receive notice or entertain requests for authorization from. There should be language inserted identifying who is authorized to give notice and/or request authorization.	The Customary Use Plan has been revised to clarify that any citizen of the Tuscarora Nation may seek prior authorization or provide pre-notification, as required under the CUP
Section 5.0 should read “All Activities To Conform With Applicable Federal and State Law.” “Applicable” is used in similar contexts in other relicensing documents to make clear that Indian Nations are not agreeing to any restrictions to which its members are not otherwise subject and should likewise be inserted here. “Requirements” is way too vague a term. “Law” should be substituted. These changes also need to be made elsewhere in the document, including the Table of Contents.	The Customary Use Plan has been revised to incorporate this comment

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Section 5.0 currently references “Local” law. We need clarification on the extent to which “Local” (as opposed to State or Federal) law applies to Lands (or interests in land) within the Project Boundary. CUP activities should not be subject to local restrictions that do not apply to Project Lands and Project Operations in general.	The Power Authority agrees that, as a general matter, local laws are inapplicable to Project lands. Because of the CUP, by design, did not identify or define any specific customary use that citizens of the Tuscarora nation may pursue on Project lands, however, it is impossible at this time to determine whether a local law could apply to a specific customary use. Such determination will need to occur on a case-by-case basis. Moreover, the Power Authority notes that Section 7.2.1 of the Relicensing Settlement Agreement Between the Power Authority of the State of New York and the Tuscarora Nation specifically provides that ‘{t}he CUP shall not supersede applicable New York State requirements pertaining to hunting and fishing licenses or applicable local ordinances, regulations, or other requirements regarding possession and use of firearms.’ For these reasons, the CUP intentionally uses the qualifying term “applicable” in every reference to local law.
Section 5.0 A., 1st sentence, 1st paragraph: The phrase “prohibited on lands within the FERC Project boundary” is still misleading (or at least confusing) in that it could be read as referring to the easement land (since the easement itself is “within the FERC Project Boundary). It should be changed to something like “prohibited on NYPA-owned fee lands within the FERC Project boundary”)	The CUP has been revised to clarify the point that it applies only to Project lands that are not owned in fee by the Tuscarora Nation.
Section 5.0, 3d & 4th sentence: same comment as in #7, reference to “local” law.	See Comment above.
Section 5.0, 4th sentence. Phrase “at the Project” has the same problems as described in #9, above.	See Comment above.

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There appears to be a numbering error on p. 4 (after Section 5.0) in that the next section is also labeled 5.0. Section 6.0 should be Section 7.0 (same in Table of Contents)	The Customary Use Plan has been revised to incorporate this comment
Title to what should be Section 6.0 should read “ALL ACTIVITIES TO CONFORM WITH APPLICABLE FEDERAL AND STATE LAW” (see comment #7, above)	The Customary Use Plan has been revised to incorporate this comment
Last bullet in what should be Section 6.0 should read “Any applicable State requirements . . .”	The Customary Use Plan has been revised to incorporate this comment