

1. Purpose and Need for the Proposed Action

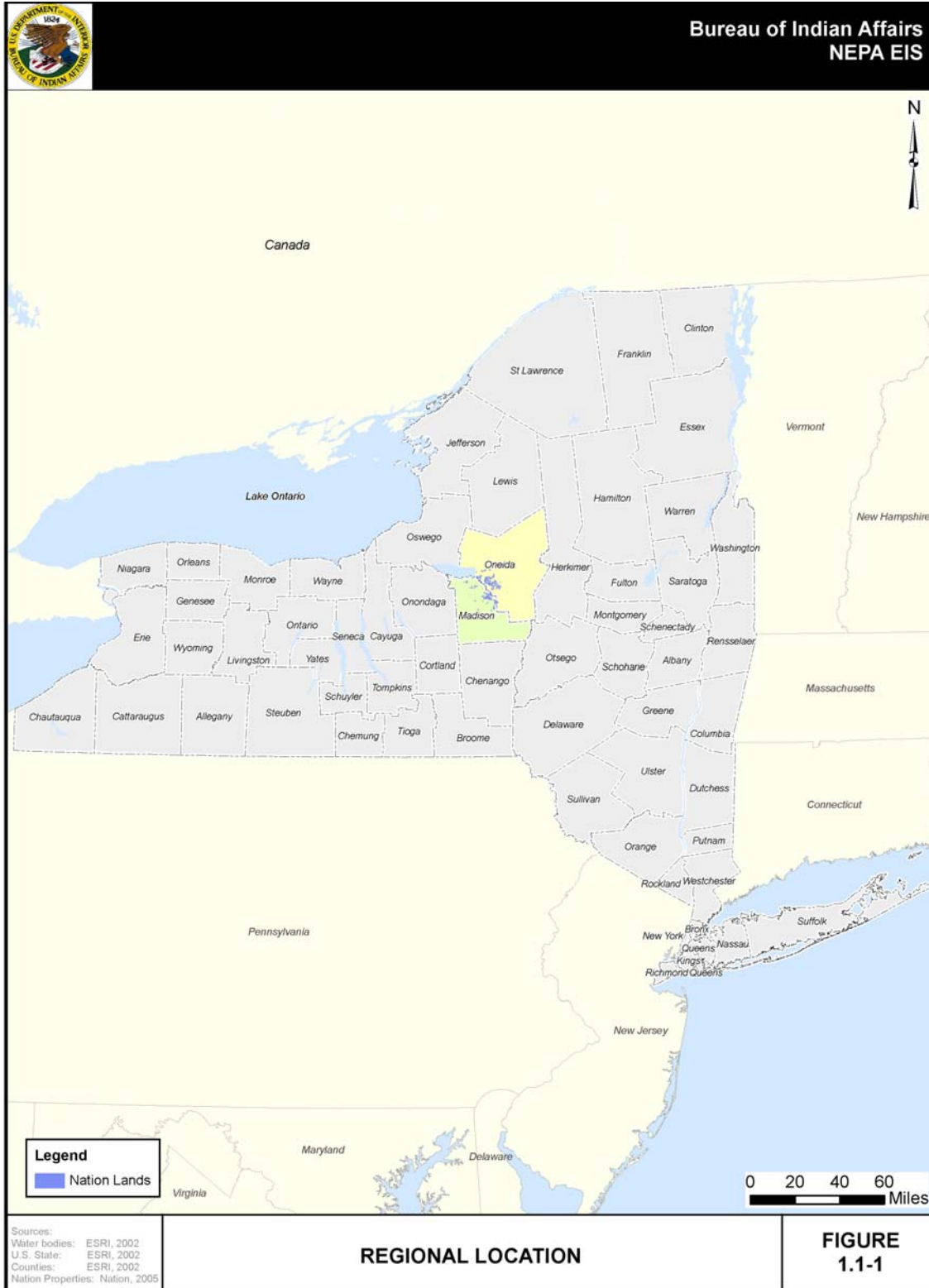
1.1 Introduction

This Environmental Impact Statement (EIS) assesses the environmental effects associated with the Proposed Action of transferring the title to 17,370 acres of land currently owned by the Oneida Nation of New York (the Nation) to the United States (U.S.) to be held in trust for the Nation. The Bureau of Indian Affairs (BIA), as part of the U.S. Department of the Interior (USDOI), is the Federal agency charged with reviewing and approving tribal applications pursuant to 25 U.S. Code (U.S.C.) § 465 and 25 Code of Federal Regulations (C.F.R.) Part 151 to take land into Federal trust status. As such, the BIA is the lead agency and is responsible for the preparation of the EIS. The Draft EIS has been prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq* and the Council on Environmental Quality Regulations for Implementing NEPA (40 C.F.R. 1500-1508), the USDOI Manual 516 DM 1-7 and 10, and the BIA NEPA Handbook 59 IAM 3-H (May 5, 2005). This Draft EIS provides a detailed description of the Proposed Action and alternatives to the Proposed Action, and includes an analysis of the potential consequences associated with the implementation of the Proposed Action or one of its alternatives. The No Action Alternative is also addressed. This section of the Draft EIS documents the purpose and need for the Proposed Action and provides an overview of the environmental review and trust application process.

1.1.1 Geographic and Historic Context

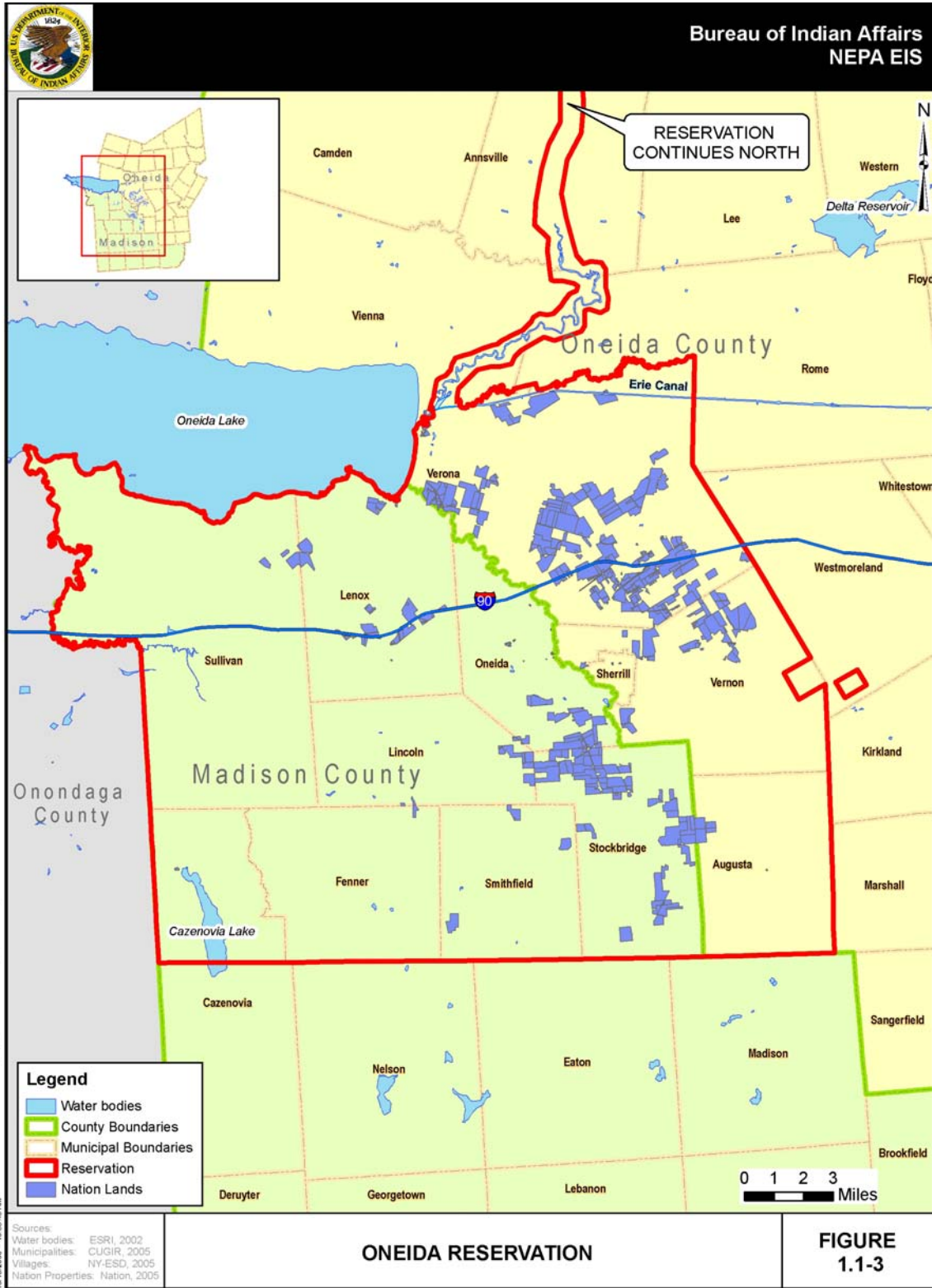
The 17,370 acres of land proposed for conveyance into trust are located in Madison and Oneida Counties, New York within the exterior boundaries of the Oneida's historic and cultural homeland and within their reservation acknowledged by Federal treaties (Figures 1.1-1 through 1.1-3). The Nation has applied to the BIA to take 17,370 acres of land contained entirely within the reservation boundaries and currently owned by the Nation into trust, pursuant to 25 U.S.C. § 465 and 25 C.F.R. Part 151. The Nation is a Federally-recognized Indian tribe (see 70 Federal Regulation 71194 and 71196 (Nov. 25, 2005) and the 1794 Treaty of Canandaigua). The historic Oneida have been recognized as an Indian tribe by the Federal government since the earliest days of the U.S. when they fought with the colonists against the British in the Revolutionary War. In 1794, the U.S. acknowledged an area in central New York State of about 300,000 acres to be the reservation and property of the Oneida (Figure 1.1-3). Thereafter, almost all of that land was alienated away from the Oneida mostly to the State of New York in violation of Federal law, leaving them with possession and control of very few acres (see *County of Oneida v. Oneida Nation*, 470 U.S. 226 (1985), and *United States v. Boylan*, 265 F. 165 (2d Cir. 1920)).

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A large number of individual Oneida left New York State and went to Wisconsin and Canada from the 1820's through 1840's. These emigrants formed two new tribes, the Oneida Tribe of Indians of Wisconsin and the Oneida of the Thames. Since the 1838 treaty of Washington, the U.S. has recognized the Oneida Tribe of Indians of Wisconsin as a separate and distinct Indian tribe with its own reservation and government in Wisconsin. Today, the Oneida Tribe of Indians of Wisconsin continues to exercise sovereignty over its reservation in Wisconsin and to establish the tribe's own membership criteria, which are different from those of the Nation and other Iroquois tribes in New York State. The Oneida Tribe of Indians of Wisconsin is included on the list of Federally-recognized tribes, published at 70 Federal Register 71194, 71196 (November 25, 2005). The Oneida of the Thames is a Canadian tribe and thus not on the list of Federally-recognized tribes published in the Federal Register. It does not have a government-to-government or trust relationship with the U.S. The Oneida of the Thames is recognized as an Indian tribe by the Government of Canada and has its own reservation and government in Canada.

1.2 Purpose and Need for the Proposed Action

The purpose of the Proposed Action is to help address the Nation's need for cultural and social preservation, expression and identity, political self-determination, self-sufficiency, and economic growth by providing at least a portion of an adequate tribal land base and homeland that:

- is subject to tribal sovereignty;
- allows for a diversified and productive economic base to support the Nation's financial integrity and the employment and financial well-being of its members;
- provides for the location of government and administrative buildings, housing for Nation members, agriculture, hunting, fishing, recreation, cultural, social, health and educational facilities, and burial grounds;
- protects Oneida historical and cultural sites under Oneida sovereignty and control;
- assures the preservation of a homeland for those Nation members located elsewhere in New York State and throughout the U.S.;
- is restricted against future alienation and immune from New York State and local taxation and regulation;
- allows the Nation to avail itself of Federal laws that apply to lands held in trust status including the Indian Gaming Regulatory Act; and
- permits further growth and consolidation of Nation lands.

The USDOJ and the BIA administer over 55 million acres of land held in trust by the U.S. for the benefit of Native Americans, Alaska Natives, and Indian tribes. The statutory authority for acquiring lands in trust status for Indian tribes is provided in the Indian Reorganization Act of 1934 (IRA), with regulations under 25 U.S.C. 465 and codified at

25 C.F.R. Part 151. The Land Acquisition Policy presented in 25 C.F.R. Section 151.3 states that, “land may be acquired for a tribe in trust status when that land is within the tribe’s reservation boundaries; or is already owned by the tribe; or the Secretary of the Interior determines that land acquisition is necessary to facilitate tribal self-determination, economic development or Indian housing.” The U.S. Supreme Court has stated, “[t]he 60 years preceding the [IRA] had witnessed a calculated policy favoring elimination of Tribal institutions, sale of Tribal lands, and assimilation of Indians as individuals into the dominant culture.” (Duro v. Reina, 495 U.S. 676, 691 (1990)). Through the IRA, the U.S. Congress intended to help tribes like the Oneida Indian Nation of New York reassemble an adequate tribal land base from which they could achieve economic and cultural self-sufficiency.

As the Oneida lost access to their historic reservation many of its members were forced to live on other Indian reservations in New York State, on non-Indian land located within the reservations elsewhere in New York State, and even across the U.S. Poverty and associated social problems caused economic hardship for tribal members. These economic hardships were evident in terms of higher unemployment, lower household income, lower levels of education, inadequate health care, and limited home ownership. The inadequate land and economic base threatened the social, health, and cultural fabric necessary to ensure their continued existence in New York State.

Beginning in 1987, the Nation began to reacquire possession of its previously alienated lands for varied purposes such as cultural, social, agricultural, hunting, government, and housing, and for diversified business and economic development. The Nation now has a large member housing area known as the Village of the White Pines, which has permitted the Oneida once again to live together in a single community. The Village of the White Pines is located near another large community facility, the Ray Elm Children & Elders Center. Other member housing, usually single family homes already established on lands when they were reacquired, is located elsewhere within the 17,370 acres owned by the Nation. Governmental infrastructure including offices for administration, environmental, and other self-regulation services; police; housing; social services; communications; and transportation services are located on the reacquired lands.

The Nation has constructed a major cultural center, the Shako:wi Cultural Center, on its reacquired lands and has built its own cemetery. The Nation has also sought to reacquire other culturally significant lands such as existing cemeteries, traditional longhouse locations, and former village sites. The Nation has constructed a diversified business structure in convenience stores, a newspaper publishing enterprise, gasoline stations, and a major destination resort known as the Turning Stone Resort & Casino. The Nation has developed agricultural lands, hunting areas, marinas, and a Black Angus cattle herd. In addition to this development of lands, the re-gathering of the Oneida and the proceeds of economic development have permitted the Nation to develop the Oneida language

programs; major primary, secondary, and college education programs; social and cultural programs; legal and justice services; job training programs; child-care programs; and medical programs including health insurance for Nation members and their families.

In 2005, the U.S. Supreme Court held in *City of Sherrill v. Oneida Nation*, 544 U.S. 197 (2005) that the Nation's reacquired lands were subject to New York State and local tax laws unless accepted into trust by the U.S. pursuant to 25 U.S.C. § 465. As a consequence of the U.S. Supreme Court's decision, the New York State and local governments now seek to tax the reacquired lands on which the Nation seeks to continue its social, political, and economic development. New York State and local governments have asserted that the Nation cannot regulate its lands and have asserted that the Nation's Turning Stone Resort & Casino cannot legally continue to operate in the absence of tribal sovereignty over the relevant lands. Even a decision to take casino lands into trust, however, will not resolve all ongoing disputes regarding the operation of the Turning Stone Resort & Casino. Further, New York State and local governments have asserted that the decision of the U.S. Court of Appeals for the Second Circuit in the Cayuga land claim requires that the Oneida's land claim litigation, arising from the alienation of Nation land in violation of Federal law, be dismissed with no remedy at all. The Nation has, therefore, filed its Trust Application with the BIA regarding the reacquired lands.

As stated previously, the purpose and need for the Proposed Action is to help address the Nation's need for cultural and social preservation, expansion and identity, political self-determination, self-sufficiency, and economic growth as a Federally-recognized Indian tribe. By virtue of the U.S. holding land in trust status for a Federally-recognized Indian tribe, the tribe is afforded the following exemption of the lands and conduct thereon from most New York State and local taxation and regulation; protection of the lands against alienation; the ability to exercise tribal sovereignty over the land; and the opportunity for the tribe to avail itself of Federal laws that apply to lands held in trust status including but not limited to the Indian Gaming Regulatory Act. These features of trust status are intended to foster and protect a tribe's culture and society, political self-determination, self-sufficiency, and economic growth.

1.3 Overview of the Trust Land Acquisition and Environmental Review Process

1.3.1 Trust Land Acquisition Process

Trust lands or lands held in trust status refer to "land the title to which is held by the United States for an individual Indian or tribe" (25 C.F.R. Section 151.2). Under Federal law, the conveyance of land to trust requires approval of the U.S. Secretary of the Interior. The general source of authority to acquire land for Indians (both tribes and individual Indians) is the Indian Reorganization Act (IRA). The regulations are codified at 25 C.F.R. Part 151, which is often referred to as the Part 151 Process. The IRA gives the U.S.

Secretary of the Interior the discretion to acquire land into trust for individual Indians and Federally-recognized Indian tribes. The IRA does not require the U.S. Secretary of the Interior to acquire any specific tract of land, any specific amount of land or to acquire any land at all.

Placing lands into trust is a real estate transaction which creates Federal title to the lands involved. The process begins with the submission of a Trust Application to the BIA; in this case the Nation submitted a Trust Application in April, 2005 to the BIA. If trust status is approved, the U.S. will hold legal title and the Nation will hold beneficial title and exercise tribal sovereignty over the lands.

After receipt of an application to acquire land in trust, the BIA notifies the New York State and local governments having regulatory jurisdiction over the land. The New York State and local governments are provided an opportunity to provide comments on the acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments. The last of three comment periods on the Nation's Trust Application closed on March 1, 2006. New York State and local governments made extensive comments generally opposing trust status for any Nation lands.

1.3.2 Environmental Review Process

The BIA is preparing this EIS as part of an environmental review process for the Nation's Trust Application under NEPA. The EIS analyzes the purpose and need for a proposed action (in this case taking land into trust), identifies reasonable alternatives, and evaluates potential environmental (including socioeconomic) effects. As part of the review process, the BIA issued a Notice of Intent to prepare an EIS on December 23, 2005. Subsequently, the BIA conducted scoping meetings on January 10 and 11, 2006 and received comments and input from governmental agencies, the public, and interested parties on the issues to be addressed in the EIS. A scoping document was then prepared and published on July 28, 2006. The next step in the environmental review process is to prepare a Draft EIS, which is this document. The Draft EIS discusses the alternatives under consideration and their comparative potential effects. There will be a 45-day public comment period for the Draft EIS which includes a public hearing. A Final EIS will be prepared that will consider comments received on the Draft EIS. The final step in the process will be to prepare a Record of Decision. Any notice of a final decision to acquire land in trust status will be published in the Federal Register and in local newspapers.