

## 4.10 Environmental Justice

### 4.10.1 Overview and Background

Executive Order 12898, “*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*,” issued in 1994 directs Federal agencies to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations. The USEPA describes environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people including racial, ethnic or socioeconomic should bear a disproportionate share of the negative environmental consequences resulting from the execution of Federal, state, local, and tribal programs and policies. The goal of fair treatment is not to shift risks among populations, but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these effects.

This environmental justice assessment follows the guidance and methodologies recommended in the USEPA *Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses* (April 1998). An environmental justice assessment requires an analysis of whether minority and low-income populations and/or Indian tribal resources (i.e., the populations of concern) would be affected by a land trust alternative and whether they would experience adverse effects from any of the proposed alternatives. If there are adverse effects, then the severity and proportionality of these effects upon the populations of concern must be assessed in comparison to the larger non-minority or non-low income populations. At issue is whether such adverse effects fall disproportionately on minority and/or low-income members of the community and/or tribal resources and, if so, whether they meet the threshold of disproportionately high and adverse. If disproportionately high and adverse effects are evident, the USEPA guidance advises that it should trigger consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts.

### 4.10.2 Populations of Concern

For the purpose of the environmental justice evaluation, the Study Area has been defined as those census block groups that contain or are located within 0.25 miles of a property owned by the Nation. Given the land use patterns in Madison and Oneida County, a quarter mile has been determined to be the radius in which those residing could experience effects. The Study Area comprises one or more block groups within 15 census tracts in Madison and Oneida County. The Study Area reflects the geographic area most likely to experience the direct effects, and, in most cases, the indirect community, health, and environmental effects from placing lands into Federal trust.

#### 4.10.2.1 Communities and Neighborhoods with Meaningfully Greater Minority Populations

Consistent with the CEQ's *Environmental Justice Guidance Under the National Environmental Policy Act*, low-income populations in potentially affected areas have been identified using the poverty thresholds from the U.S. Census Bureau. Minorities have been defined by the U.S. Census Bureau as members of the following population groups: American Indian or Alaska Native; Asian or Pacific Islander; Black or African-American, not of Hispanic Origin or Hispanic. Minority populations have been identified whether either: the minority population of the affected area exceeds 50 percent or the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population of other appropriate unit of geographic analysis.

Municipalities located within Madison and Oneida Counties are predominantly White with a small number and proportion of minority populations. This pattern of social composition is also true for the Study Area. As can be seen in Table 4.10-1 Overview of Background, the Study Area in most cases contains no greater proportion of minorities than Madison or Oneida Counties overall. With the exception of Hispanic Whites in Oneida County, none of the minority groups in the Study Area are prevalent in greater percentages than the overall county percentage. In Madison and Oneida Counties overall, Blacks and African Americans make up the largest minority group representing 5.2 percent and 5.7 percent of the population, respectively. In contrast, in the Madison County Study Area Blacks and African Americans constitute 0.6 percent of the population while in the Oneida County Study Area Blacks and African Americans constitute 5.2 percent of the population.

The largest minority group in the Madison County Study Area is Native Americans and Alaska Natives. This minority group constitutes 0.8 percent of the population in the Madison County Study Area while they represent 0.5 percent of Madison County overall. As noted above, Blacks and African Americans are the largest minority group in both the Oneida County Study Area and Oneida County. Native Americans compose 0.5 percent of the population in the Oneida County Study Area, but comprise 0.2 percent of Oneida County.

#### 4.10.2.2 Communities and Neighborhoods with Meaningfully Greater Low Income Populations

Compared to their respective counties, the Study Area of Madison County has a higher poverty rate (10.4) than overall Madison County, while the Study Area of Oneida County has a lower poverty rate (6.7) than overall Oneida County.

Per capita incomes for the Study Area are generally similar to per capita incomes in the counties that surround the Study Area. With respect to median household incomes, the Study Area is quite similar to Madison County; however, the Oneida County Study Area's

**Table 4.10-1  
Population and Economic Characteristics of Census Blocks within the Project Area**

	Census Block Groups of Project Area in Madison County		Madison County		Census Block Groups of Project Area in Oneida County		Oneida County	
	Number of Residents	Percentage	Number of Residents	Percentage	Number of Residents	Percentage	Number of Residents	Percentage
White Alone	29,251	97.3	67,006	96.5	24,783	91.8	212,414	90.2
Hispanic White	141	0.5	442	0.6	506	1.9	3,814	1.6
Non-Hispanic White	29,110	96.8	66,564	95.9	24,277	90.0	208,600	88.6
Non-White Alone	815	2.7	2,435	3.5	2,200	8.2	23,055	9.8
Black or African American	180	0.6	916	1.3	1,401	5.2	13,521	5.7
American Indian and Alaska Native	243	0.8	358	0.5	135	0.5	549	0.2
Asian	99	0.3	387	0.6	131	0.5	2,722	1.2
Native Hawaiian or Other Pacific Islander	3	0.0	10	0.0	2	0.0	55	0.0
Other <sup>1</sup>	290	1.0	764	1.1	531	2.0	6,208	2.6
<b>TOTAL</b>	<b>30,066</b>	<b>100.0</b>	<b>69,441</b>	<b>100.0</b>	<b>26,983</b>	<b>100.0</b>	<b>235,469</b>	<b>100.0</b>
Hispanic Origin	219	0.7	734	1.1	941	3.5	7,545	3.2
Minority Population <sup>2</sup>	956	3.2	2,877	4.1	2,706	10.0	26,869	11.4
Persons Below Poverty (1999)	3,076	10.4	6,313	9.8	1,631	6.7	28,764	13.0
Per-Capita Income (1999) <sup>3</sup>	\$19,622		\$19,105		\$18,509		\$18,516	
Median Household Income (1999) <sup>3</sup>	\$40,464		\$40,184		\$42,282		\$35,909	

Notes: <sup>1</sup>The Other category includes some other race alone and two or more races.

<sup>2</sup>The total minority population includes all those who have classified themselves as Black/African American, Asian, Hispanic, American Indian or Alaska Native, Pacific Islander or Other.

<sup>3</sup>The per-capita and median incomes were calculated by taking the weighted averages of the median incomes of all the block groups in a given project area.

Source: United States Bureau of Census, Census 2000, SF1 and SF3 data tables.

median household income of \$42,282 is approximately \$6,000 more a year than the reported for Oneida County that is \$35,909

#### **4.10.2.3 Census Block Groups with High Concentrations of Minority and/or Low Income Persons**

Table 4.10-2 identifies the percentage of low income and/or high minority concentrations within census block groups of the Study Area. County averages for minority residents and persons living below poverty are the basis for determining areas with higher concentrations of minority persons or persons living below poverty. For comparison purposes, the NYSDEC's environmental justice definitions are also included. New York State's criteria set higher threshold levels in their initial screening of populations of concern (i.e., higher proportions of low-income or minority populations must be present in the Study Area) to warrant a heightened scrutiny of adverse effects for their social distributional effects.

##### ***Madison County***

In Madison County, four census block groups have a high minority population; and they are located in the City of Oneida. The largest minority population is located in Census Tract 301.03, Block Group 3; 11.1 percent of the population is a minority of which 9.6 percent are categorized as Native Americans or Alaskan Natives.

Ten of the census block groups in the Madison County portion of the Study Area have a greater percentage of residents living below the poverty level than in the overall county. Half of the block groups are located in the City of Oneida while the others are located in the Towns of Lenox, Lincoln, Smithfield, and Stockbridge. Some of the low income block groups have a high level of poverty. For instance, in one part of the City of Oneida (Tract 301.02, Group 2) 24.9 percent of the residents live below the poverty level. This block group also has a high minority population, composed primarily of Native Americans or Alaska Natives and Other. In the Towns of Lenox (Tract 303, Group 1), 26.3 percent of residents live below poverty.

##### ***Oneida County***

In Oneida County there is only one block group with a high minority population and one with a high poverty level. Tract 228, Group 1, located in the City of Rome is 53 percent minority. Within the block group the largest minority group is Black and African Americans (33.2 percent) followed by Hispanic Whites (10 percent). The Nation does not own land in the City of Rome, although it owns properties within a quarter mile of the City of Rome border and as a result this census block group is included in the analysis.

One block group has a greater percentage of residents living below the poverty level than average, (Tract 246, Group 4), in Vienna. In this block group, 20.5 percent of residents live below the poverty level. This block group is sparsely populated and actually has the

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**Table 4.10-2**  
**County Thresholds and Census Block Groups in the Study Area with**  
**High Concentrations of Minority or Low-Income Persons**

	Minority Threshold (%)	Poverty Threshold (%)
Madison County	4.1	9.8
Oneida County	11.4	13
New York State Thresholds – EJ	33.8*	23.6

Note: New York State identifies two minority thresholds, one for urban areas (51.1%) and one for rural areas (33.8%). A rural area is defined as any area not classified as urban by the U.S. Census.

		Census Tract	Block Group	Minority Persons	Percent Minority	Percent Below Poverty	Median Household Income \$	Per-Capita Income \$	High Minority	High Below Poverty Level
Madison County	City of Oneida	301.01	1	50	4.0	19	25,302	15,073		X
	City of Oneida	301.01	2	41	2.8	10.5	32,917	16,213		X
	City of Oneida	301.02	1	38	3.8	10.3	36,276	14,030		X
	City of Oneida	301.02	2	98	4.5	24.9	23,802	14,088	X	X
	City of Oneida	301.02	3	15	1.8	7.3	32,778	22,560		
	City of Oneida	301.02	4	20	2.0	4.8	57,500	24,300		
	City of Oneida	301.03	1	68	4.8	10.4	44,348	24,757	X	X
	City of Oneida	301.03	2	53	5.2	2.4	40,208	20,526	X	
	City of Oneida	301.03	3	94	11.1	4.5	55,375	26,500	X	
	Lenox	302	1	19	1.7	8.3	43,125	19,151		
	Lenox	302	2	52	3.6	5.1	46,193	17,562		
	Lenox	302	3	17	1.9	11.8	38,750	17,316		X
	Lenox	303	1	59	4.0	26.3	26,369	14,493		X
	Lenox	303	2	37	2.6	10.8	33,816	16,082		X
	Lenox	303	3	23	2.4	5.8	44,712	16,659		
	Lenox	303	4	40	2.9	4.4	43,872	20,944		
	Sullivan	304.01	4	5	0.8	6.2	37,750	29,788		
	Sullivan	304.01	5	13	1.2	7.9	46,628	18,448		
	Cazenovia	305.02	1	30	1.5	1.6	71,711	36,537		
	Stockbridge, Smithfield	306	1	75	3.7	12.7	37,440	15,968		X
Smithfield, Lincoln, Stockbridge	306	2	50	3.4	14.1	35,625	14,944		X	
Lincoln, Fenner, Smithfield	306	3	31	2.1	4.6	48,929	22,394			
Fenner and Smithfield	306	4	28	1.5	7.9	43,500	18,699			
Oneida County	Rome	228	1	2062	53	6.4	46,507	16,963	X	
	Westmoreland	230	1	85	3	4.5	51,481	18,798		
	Vienna	246	2	75	3.3	7.8	33,145	16,940		
	Vienna	246	3	40	3.5	6.6	50,152	18,230		
	Vienna	246	4	8	1.7	20.5	28,194	12,590		X
	Vienna	246	5	12	2.3	12.8	35,313	20,185		
	Verona	247	1	45	3.4	6.6	37,898	17,573		
	Verona	247	2	31	1.7	8.3	44,667	20,318		
	Verona	247	3	34	4.3	0	51,020	17,573		
	Verona	247	9	60	2.4	4.9	41,512	16,637		
	Sherrill	248	1	49	2.4	2.4	52,625	22,024		
	Sherrill	248	2	32	2.9	1.7	38,365	22,840		
	Vernon	249	1	79	2.7	9.6	39,766	21,017		
	Vernon	249	2	65	2.7	10	37,156	17,721		
	Augusta	256	3	29	3	5.6	36,641	15,314		

Source: United States Bureau of the Census, 2000.



smallest number of minorities, (eight people), of all the block groups in the Oneida County Study Area.

#### **New York State Thresholds**

Based on New York State thresholds, one block group is identified as a community of concern based on minority population and two block groups are identified as a community of concern based upon income levels.

The above mentioned Census Tract 228, Group 1 located in the City of Rome has a minority population that is 19.2 percentage points higher than the New York State threshold. Again, the Nation does not own land in the City of Rome, but the census tract reporting unit falls within the buffer area.

Two block groups, both located in Madison County, have a low income population that is greater than the New York State threshold. In Census Tract 301.02, Group 2, which is located in the City of Oneida, 24.9 percent of the population lives below the poverty level. This is 1.3 percentage points higher than the State threshold. Additionally, Lenox contains one block group (Census Tract 303, Group 1) which has a greater percentage of the population living below the poverty level than the New York State threshold. In this block group, 29.8 percent of the population lives below the poverty level. This is 2.7 percentage points higher than the New York State threshold.

#### **4.10.2.4 Meaningful Public Involvement to Populations of Concern**

The BIA held public scoping meetings in January 2006, conducted a subsequent informational meeting to further address public comments, and reviewed and addressed comments expressed during the scoping process in advance of the Draft EIS. These outreach activities involved the general population but also were successful in attracting the participation and comments from Nation members and other Native Americans. Further details pertaining to these events are provided in the Scoping Report.

#### **4.10.2.5 Summary: Populations of Concern**

Based on a review of the data presented above, there are no minority or low-income populations that would be significantly affected by the Proposed Action or any of the alternatives. However, there could be potential effects on the resources of the Nation, a local Native American community requiring an environmental justice assessment under USEPA's *Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* (April, 1998). Accordingly, the BIA considers the Nation to be an environmental justice community for the proposed Federal action and the potential effects of the various alternatives on the Nation are presented in the following section.

#### **4.10.3 Assessment of Environmental Justice Effects**

The conveyance of lands into trust status does not result in direct or indirect adverse effects on the physical environment, since no ground disturbance occurs and there is no

change in land use. Therefore, resource categories related to the physical environment such as soils, groundwater, air, noise, wildlife, vegetation, wetlands, and others are not subject to unavoidable adverse effects. Similarly, there are no adverse consequences on human health that may be linked to regulatory oversight of these resources.

On the other hand the cultural, economic, and social resources related to the human environment could potentially be more affected by the conveyance of lands into trust. The taxation and regulatory jurisdictional scenarios within the respective alternatives may have the potential for unavoidable adverse effects whether to New York State, Madison and Oneida Counties, local governments or the Nation. This section assesses whether any adverse effects fall disproportionately upon low-income and minority populations and/or tribal resources.

#### **4.10.3.1 Alternative A**

Alternative A would convey Group 1, 2, and 3 lands into trust. The Nation would have control over its reacquired lands and they would be protected by Federal laws that apply to tribal land. There would be no adverse effects that fall disproportionately on low-income and minority populations under the Proposed Action or under any of the other alternatives.

With regard to the Nation, it has made significant progress in developing programs and services and delivering benefits – job security and member distributions, health care facilities and insurance, educational scholarships, housing grants, and cultural programs to its members in the past 15 years. Nation members’ social and economic conditions have improved dramatically in measurable terms such as educational attainment, household income, and the percentage of children living in families in poverty (see Section 3.7.4 Tribal Demographics and Socioeconomic Conditions for a more detailed discussion).

The Nation’s enterprises and government have created job opportunities that have raised the economic circumstances of its members along with other Native Americans in the Study Area. Operating surpluses from the Nation’s enterprises’ have been transferred as subsidies to the Nation’s government programs and services. These surpluses have also served as capital to advance economic diversification strategies in an effort to reduce over-dependency on gambling and foster social, cultural, and economic development.

Under Alternative A, the Nation would be provided the taxation and regulatory environment to continue to successfully operate its revenue-generating enterprises. The revenue generated by Nation enterprises would be used to continue to fund programs essential to delivering benefits to Native Americans, including Nation members, ensuring that there is no delay in the receipt of benefits for housing, education, health care, and cultural programs. The Nation’s varied government programs and services are described in Section 3.7.5.1 Nation Government Services; Figure 3.7.10 illustrates the rising spending levels by the Nation for its government programs and services.

Alternative A would also provide more comprehensive protection for the Nation's cultural, historic and archaeological resources. Under this alternative, archaeological resources would be provided with the full measure of protection of the ARPA and the NAGPRA.

#### **4.10.3.2 Alternative B**

Alternative B includes all the parcels in Alternative A and an additional 17,630 acres resulting in a total trust area of 35,000 acres. The beneficial effects on the Nation would generally be the same under Alternative B as under Alternative A.

#### **4.10.3.3 Alternative C**

Group 3 lands would not be conveyed into trust under Alternative C. The Nation enterprises would continue to generate revenues because they are located on Group 1 and 2 lands. As a result, the Nation's governmental programs and services (i.e., its social, education, health programs, etc.) would continue to function as described under Alternative A.

However, Group 3 land uses such as cultural, gardening, and agricultural crop activities would be affected particularly under the PTNP-F scenario. Additionally, some hunting and fishing grounds, religious sites, and burial sites would not be conveyed into trust. These parcels are within the original reservation area and have a significant cultural and historical value to the Nation. The potential loss of these lands under this scenario would preclude the Nation from cultivating traditional crops using traditional methods on lands located within its aboriginal homeland.

Alternative C would exclude important cultural, historic, and archaeological resources on Group 3 lands in several towns located in Madison County. Group 3 lands would not be subject to the specific protection of artifacts and human remains under the ARPA and the NAGPRA. The effects of reducing the jurisdictional extent of Federal laws for cultural resource protection does not fall equally to all populations, but is predominantly borne by Native American populations and the Nation's members.

Group 3 lands also contain 13 residences of Nation members. If the homeowner's lands are not conveyed into trust, it is unclear what may happen to the 13 households. Currently, the Nation owns the lands occupied by these Nation member households. With the imposition of the taxation and regulatory authority of New York State and local governments on Group 3 lands, Nation members could potentially lose their homes due to foreclosure. This type of potential indirect displacement impact would be predominantly borne by Native American households rather than any other type of household.

#### **4.10.3.4 Alternative D**

Under Alternative D, only Group 1 lands would be conveyed to trust while the Group 2 and 3 lands would be potentially subject to the regulatory and taxation authority of the

State and local governments. The effects resulting from Group 3 lands not being conveyed to trust would be the same under Alternative D as under Alternative C.

Nation members would be subject to other effects should the Group 2 lands not be conveyed into trust. Group 2 contains some revenue-generating properties such as the 12 SavOn gas stations and convenience stores, retail outlets, marinas, and Four Directions Media. If these lands are not conveyed into trust and subjected to local regulation and taxation, the net operating surpluses from Group 2 lands that have supported the Nation's governmental programs and services would be adversely affected. As a result, the Nation may not be able to fully sustain its past commitments or grow its resource allocation for governmental services and programs which benefit Nation members and other Native Americans who may be beneficiary recipients of select programs.

Additionally, Group 2 and 3 lands contain the majority of Nation member housing, a total of 96 residences. As described under Alternative C, it is unclear what would happen to these households in the event that Nation lands are alienated or subject to foreclosure. This indirect displacement effect would be appreciably borne by Native Americans and Nation members.

Nation lands were purchased specifically because they are part of the Oneida's aboriginal homeland with the purpose of reclaiming and preserving their culture. Alternative D would exclude key lands with cultural facilities owned by the Oneida (e.g., the Shako:wi Cultural Center, Ray Elm Children & Elders Center, Village of White Pines, Festival Sites, traditional croplands plus their cultural service departments). Without Federal trust status, under the PTNP-F scenario where these lands would be alienated for foreclosure, the Nation owned properties would be subject to the authority of local communities that may not place as great a value on the preservation of the Nation's cultural preservation as the Nation itself or the Nation in combination with the protections afforded by the Federal government. The consequences of this loss of control would be borne predominantly by Native Americans, and more specifically, by the Nation and its tribal members.

#### **4.10.3.5 Alternative E**

Under Alternative E, only the Turning Stone Resort & Casino gaming floor tax lot would be placed into trust. Specifically this includes the gaming area, the golf dome, a portion of two golf courses, parking areas, and one SavOn gas station and convenience store. All other Nation lands would be excluded from conveyance into trust and would be subject to regulation by New York State and local governments.

In addition to the revenue-generating properties that would be subject to taxation and regulation as discussed in Alternative D three golf courses and club houses, which include 6,000 square feet of meeting space and a 400 seat banquet hall, and the Villages at Turning Stone RV Park and Peaceful Pines Campground would not be conveyed into trust. If these lands along with those discussed under Alternative D are not conveyed into trust

and thereby are subject to local regulation and taxation, then the revenues they generate for Nation enterprises would be greatly diminished. As a result, the Nation may not be able to provide the same level of governmental programs and services that it currently provides. The consequences to the Nation, Nation members, and other Native Americans are as described under Alternatives C and D.

There would be no Nation member housing conveyed into trust under Alternative E. As in Alternative C and D, it is unclear what would happen to these households. In the PTNP-F scenario, Nation members could potentially lose their homes due to foreclosure.

As with Alternative D, Alternative E conveys virtually none of the Nation's important cultural, historic or religious properties into trust and none of the Nation's important archaeological sites into trust. Lands would be subject to taxation and potentially lost due to alienation or foreclosure. Historical artifacts and human remains are awarded a higher level of protection when the artifacts and remains are located on Federal or Indian lands. The effects of loss of the protections such as those afforded by the ARPA and the NAGPRA would be borne predominantly by Nation members and Native American populations.

#### **4.10.3.6 Alternative F**

The implementation of Alternative F combines all Group 1, 2, and 3 lands to facilitate the formation of a more compact and contiguous group of trust lands. Alternative F includes the majority of member housing, most of the Nation enterprises, all of the Nation's government facilities, and all of the properties containing members services. Alternative F avoids most adverse effects and places lands into trust that sustain the Nation's government programs and services.

In contrast to Alternatives D and E, Alternative F would include some of the Nation's important cultural and archeological sites but would exclude others. However, there would be unavoidable adverse effects for this alternative (along with Alternatives C through F) where excluded lands containing archaeological or cultural resources would be lost due to alienation or foreclosure. These effects would be predominantly borne by Native Americans and Nation members.

#### **4.10.3.7 Alternative G**

Under Alternative G –No Action, no reacquired Nation lands would be conveyed to trust. All revenue-generating property, including the Turning Stone Resort & Casino would be subject to taxation and regulation by local authorities. Under the CC-AEC scenario, it is assumed that the Turning Stone Resort & Casino could not legally operate and it, along with all other Nation enterprises, would cease operations. The closure of the Turning Stone Resort & Casino would terminate the means by which the Nation funds its social programs and services. Subject to local taxation and regulation, the SavOn gas stations and convenience stores and other enterprises would face increasing pressure on their profit

margins and would not generate sufficient revenue to support the Nation's governmental programs and services at current levels. Under this scenario, the Nation would be unable to meet its tax obligations and all of its reacquired land would be alienated or foreclosed.

Since the Nation began to reacquire lands in 1987 and with the growth of its enterprises, it has successfully elevated many of its members out of poverty and provided access to education and educational support, which greatly increased the number of members with high school and college degrees. With the closure of the Nation's enterprises, the potential support for future growth in the education or income of members for building affordable housing and providing access to health care would be significantly affected.

The potential adverse indirect effects on the Nation's cultural and archaeological resources would be more significant under Alternative G than for the other alternatives. Under the CC-AEC scenario, all lands containing archaeological and cultural resources would be alienated or foreclosed as the Nation would lose its most significant source of the revenue that enables the Nation to maintain its cultural assets and programs. This scenario would have a significant adverse effect on the Nation's resources and culture.

Under Alternative G as with other alternatives (Alternatives C through F), archaeological resources on lands not conveyed into trust would fall outside the protection of the ARPA and the NAGPRA. Loss of these protections would have adverse effects on both the physical resources and the Nation's culture if these lands are alienated or foreclosed and the properties or cultural assets are not managed as sensitively by others. The effects of this absence of protection would be borne predominantly by Native Americans and Nation members.