

4.12 Unavoidable Adverse Effects

This section identifies unavoidable adverse effects that may occur as a result of implementing the Proposed Action or one of the alternatives. The conveyance of lands into trust would not result in significant direct or indirect effects to the physical environment since, apart from the contemplated enhancements to the Turning Stone Resort & Casino, no ground disturbance would occur and there is no proposed change in land use.

Therefore, resource categories related to the physical environment such as soils, groundwater, air, noise, wildlife, vegetation, wetlands, and others would not be subjected to unavoidable adverse effects. On the other hand, the various scenarios associated with the respective alternatives could have unavoidable adverse effects on New York State, the local communities or the Nation. These potential consequences comprise the majority of the effects addressed in this section.

4.12.1 Regulatory Jurisdiction

New York State and the local governments have asserted that lands transferred into trust would have an unavoidable adverse effect on the state, towns, and counties where they are located in that they would not have the future ability to regulate uses and activities on Nation lands once in trust status. Further, their position has been that the removal of lands from New York State and local regulatory jurisdiction would adversely affect the regulatory scheme as a whole because environmental and municipal laws are effective only if they apply uniformly and equitably over an entire geographic area.

The potential effects on New York State and local governments can be mitigated through several different measures. (As a threshold matter, the Federal government currently holds millions of acres of land in trust for Indian tribes, land that is not subject to New York State and local civil and regulatory statutes.) First, Federal health, environmental, and safety statutes generally apply to Indian trust land and typically address the same issues as comparable New York State and local ordinances. In addition, the land conveyed into trust would be governed and regulated by Nation laws and ordinances, many of which have been in place for more than 10 years. Those tribal ordinances; which apply to building construction, land use, public safety, environmental protection and conservation; frequently mirror New York State and local counterparts and are intended to achieve the same public policy objectives. The Nation's regulatory policies and practices combined with applicable Federal health, safety, and environmental laws could minimize the potential effects related to regulatory jurisdiction identified by the New York State and municipal governments. Moreover, tribal and local governments frequently consult and coordinate with one another and this can be expected to continue.

4.12.2 Land Use Planning and Zoning

New York State and local governments have asserted that lands conveyed into trust would have unavoidable adverse effects on some municipalities if the local government is unable to effectively implement consistent community planning and the enforcement of zoning, land use or other regulations. In all alternatives except Alternative G (No Action Alternative G), portions of Nation trust lands would be interspersed with non-Nation lands. Local governments would have no jurisdictional control over these lands and have stated that this would have an adverse effect on their ability to cohesively plan and to uniformly enforce their zoning and land use regulations. The extent of this potential effect in a given municipality would depend, in part, on the number of acres of land taken into trust in that community. This is more fully discussed in Sections 4.2.4 Land Use and 4.8.6 Land Use Plans and Zoning. The permitted uses of Nation lands under Nation law have been generally consistent with uses of surrounding non-Nation lands. Moreover, most lands reacquired by the Nation are being put to the same use as they were put prior to being acquired by the Nation. The gravel pit, certain Nation member residences, and gas stations are examples. Conveying these lands in trust would result in no change in land use regulations applicable to these properties.

4.12.3 Employment

Losses of jobs would be unavoidable under certain alternatives and their scenarios. In Alternative D, Nation jobs would fall by the year 2011 from 4,611 to 4,581 with a further loss of 53 local non-Nation jobs. Under Alternative E, overall Nation employment would decrease from 4,611 to 3,938 and 127 jobs would be lost from local non-Nation businesses. In Alternatives C, D, E, and F under the PTNP – F scenario, jobs may be lost due to the alienation or foreclosure of the excluded lands, most notably under Alternative D where there would be a short term loss of 336 jobs and under Alternative E a loss of 800 jobs. The short term job loss in Alternative D would be partially offset by the addition of 253 jobs by 2011 due to growth of the Turning Stone Resort & Casino. There is no similar long term growth in Alternative E.

Under Alternative G - No Action CC-AEC or PTNP – F scenarios, there would be a significant drop in employment including the loss of all 3,779 jobs at the Turning Stone Resort & Casino, losses in other Nation enterprises and its government, and a loss of 895 jobs in local non-Nation businesses. Overall, 5,451 jobs would be eliminated, affecting 4,714 residents of Madison or Oneida Counties.

4.12.4 Housing and Real Estate

Under the PTNP – F or CC-AEC scenarios, concerning lands excluded from trust in Alternatives D, E or G, there would be significant adverse consequences to the Nation due to alienation or foreclosure of lands containing most or all current member residences.

In the PTNP – F or CC-AEC scenarios, there would be large amounts of Nation lands foreclosed or alienated and entering the real estate market in Alternative C (7,467 acres),

Alternative D (13,942 acres), Alternative E (17,145 acres), Alternative F (5,384 acres), and Alternative G (17,370 acres). This action could cause an unavoidable reduction in property values in Madison and Oneida Counties as laid-off employees may leave the region or default on their taxes. Further, if the structures on these properties are not properly maintained after foreclosure, they could pose a serious environmental and health risk to the surrounding community.

4.12.5 Taxes

Lands entering trust would be exempt from property tax under Alternative A (17,370 acres and \$2.7 million property tax), Alternative B (35,000 acres and \$5.4 million property tax), Alternative C (9,903 acres and \$2.4 million property tax), Alternative D (3,248 acres and \$1.0 million property tax), Alternative E (225 acres and \$200 thousand property tax), and Alternative F (11,986 acres and \$2.5 million property tax). These tax estimates do not include the disputed assessment of the Turning Stone Resort & Casino. In the future, these foregone taxes would be considered an unavoidable adverse effect on local government revenues, as is the case whenever land is taken into trust. This may also be considered offset by the property, sales, income, and multiplier effect taxes generated by the Nation and its employees. Specifically, total revenues from taxes paid to New York State, Madison and Oneida Counties, and school districts by Nation employees and others in 2005 under a multiplier effect offset the assessed property taxes on Nation lands reported above (see Section 3.7 Socioeconomic Conditions, Section 4.7 Socioeconomics, and Section 5.0 Mitigation for further details.).

The loss of jobs in the PTNP – F or CC - AEC scenarios under of Alternatives D, E, and G would unavoidably reduce income and other tax revenue. Under Alternative G (No Action Alternative) this would represent a future loss of \$3.57 million of income taxes and a drop in the multiplier effect on State and local sales taxes of \$8.77 million.

4.12.6 Traffic

Under Alternatives A through F, traffic is projected to increase to 2,174 trips in the year 2011 at the evening peak due to the projected growth in visitors going to the Turning Stone Resort & Casino facilities that presently exist or are under construction. This action would have an unavoidable adverse effect associated with the growth in visitors and associated increase in employment at the Turning Stone Resort & Casino. Specifically, deterioration in LOS from D to E and some increased delay from 37.1 seconds to 59.5 seconds may occur during peak periods at the intersection of NYS Route 365 and I-90 Exit 33. Due to Nation-funded mitigation measures installed in 1997, the roadways in the area of the Turning Stone Resort & Casino can still adequately accommodate the anticipated increase in traffic volume.

4.12.7 Agriculture

Loss of the Nation's use of agricultural lands and related commercial assets under the PTNP – F or CC - AEC scenarios in Alternatives C through G could result in an

unavoidable adverse effect on the Nation both economically and culturally. This unavoidable adverse effect would include the potential loss of a revenue source to the Nation, the inability to recuperate its capital investments in the development of its agricultural enterprises, and prevention of the Nation from cultivating traditional crops using traditional methods on lands within its aboriginal homeland.

4.12.8 Historic, Cultural, and Archaeological Resources

Alternative C would exclude important cultural, historic, and archaeological assets located on Group 3 lands, the most important of which are located in the Towns of Stockbridge, Fenner, Lincoln, and Smithfield in Madison County. Alternative D and Alternative E convey virtually none of the Nation's important cultural, historic, and religious properties into trust. Alternative D would convey only six and Alternative E would convey none of the Nation's important archaeological sites into trust. Alternative F would include some of the Nation's important cultural and archaeological sites but would exclude some other sites. In Alternatives C through F there would be an unavoidable adverse effect on the Nation in the PTNP – F scenario where omitted lands containing cultural or archaeological resources would be lost due to alienation or foreclosure.

The potential adverse indirect effects on the Nation's cultural and archaeological resources would be far more significant under Alternative G than for the other alternatives. Under the No Action CC - AEC scenario, the Turning Stone Resort & Casino would close and 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 cultural and archaeological assets and programs. The CC - AEC scenario would have a significant unavoidable adverse effect on the Nation's archaeological resources and culture.

Under Alternatives C through G, lands not conveyed into trust and archaeological resources contained there would not have the protection under the ARPA and the NAGPRA. This would have an unavoidable adverse effect on the Nation's culture if, under the PTNP – F or CC - AEC scenarios, these lands are alienated or foreclosed and the properties or cultural assets are impacted by others. Under Alternative G, none of the Nation's archaeological sites would receive protection under the ARPA and the NAGPRA.

4.12.9 Government Services

In the PTNP – F or CC- AEC scenarios of Alternatives D, E or G all the Nation's government programs would be severely curtailed or cease altogether as they are located in facilities on lands that would be alienated or foreclosed. This action would be a significant unavoidable adverse effect on the Nation. To remain viable, these programs would have to rely heavily on Federal funding. Further, it is likely that the Nation would be able to secure from the U.S. only a fraction of the funding required to support existing government programs. As a result, many Nation members, along with other Native

Americans who rely on the Nation's programs, would need to turn to New York State and local social welfare services for assistance, thereby increasing the demand placed on the programs and placing greater burdens on municipal budgets.

Under Alternatives A, B, C or F, the Nation's demand for healthcare, emergency medical services, fire protection, and other community supplied services would increase with incremental growth in the community and potentially with more visitors going to the Turning Stone Resort & Casino. This would be an unavoidable adverse effect on the resources of the local governments to meet the increased service needs. The anticipated growth, however, would not likely increase the demand enough to result in the construction of new facilities or in physical alterations to existing facilities. The increased demand would not likely be large enough to affect current response times for emergency services. Therefore, the effect on these community services is expected to be less than significant.

In the past, the Nation has supported the expansion of these services over time by providing funding to the local municipalities in a variety of ways. The Nation continues to send most of their children to local public schools for their education, utilize existing healthcare facilities, cooperate with local police departments regarding law enforcement, and rely on municipalities for emergency response and fire protection. Under Alternatives A through F and the PTP or PTNP - DC scenarios, the Nation service agreements related to the provision of community services would likely be maintained, though in varying degrees, depending on the alternative. However, under the No Action CC - AEC or the PTNP - F scenarios in Alternatives C through G where Nation lands are alienated or foreclosed, the service agreements would be greatly reduced in scope or terminated.

4.12.10 Hunting and Fishing Lands

Alternative F would secure 78 percent of the Nation's hunting and fishing lands. Alternatives D, E, and G would convey none of the Nation's hunting and fishing lands into trust, representing a direct unavoidable adverse effect on the Nation. Under Alternatives C through G, all or some variable portion of Nation lands used for hunting and fishing would not be conveyed into trust and they would become subject to foreclosure or alienation in the PTNP - F or CC - AEC scenarios. This action would be an unavoidable adverse effect on the Nation and its culture.

4.12.11 Lifestyle and Cultural Values

The projects and programs implemented by the Nation that focus on culture, language, ceremonies, and community are critical and necessary for the Nation to preserve the unique Oneida lifestyle attributes, cultural values, and philosophy. Alternatives D and E both would exclude all of the key lands that contain cultural facilities owned by the Oneida such as the Shako: wi Cultural Center, Ray Elm Children & Elders Center, Village of White Pines, Festival Sites, traditional croplands, plus cultural service departments.

Both Alternatives D and E under the PTNP – F scenario where these lands would be alienated or foreclosed would have the same direct significant unavoidable adverse effect on the Nation. Alternative G would convey no lands into trust and would also have a significant unavoidable adverse effect on the Nation, which would especially be the case in either the CC - AEC or the PTNP – F scenarios where the lands supporting Oneida cultural activities and venues would be alienated or foreclosed.

4.12.12 Environmental Justice

The substantial land areas under Alternatives C, D, E, and F that would be omitted from trust would not have the added protection of the ARPA and the NAGPRA, an unavoidably adverse effect on the archaeological resources of the Nation. In addition, under the PTNP – F scenario for these four alternatives Nation member residences may be alienated or foreclosed with most or all residences affected under Alternatives D or E; this would be a significant unavoidable adverse impact on the Nation. Also, under Alternatives D and E revenue generating properties would be shut down, diminishing the Nation’s ability to provide the same level of services and programs to its people. Alternatives C or F would have similar but less significant unavoidable adverse effects.

In Alternative G under the CC - AEC or PTNP – F scenarios, the closure of income producing enterprises, the alienation or foreclosure of all Nation lands and member housing, and the limiting or eliminating of the Nation’s social, cultural, and health programs would constitute a significantly unavoidable adverse effect on the Nation. Further, to the extent that the Nation’s ability to provide services and programs to its members and other Native Americans is diminished, the affected individuals will likely turn to the New York State and local governments for housing, medical and educational assistance, thereby producing an unavoidable adverse effect on those governments as well.