

4.5 Living Resources

This section addresses the environmental consequences of the Proposed Action and the alternatives on the wildlife, vegetation, ecosystems and biological communities, and agriculture of the Study Area. Section 3.5 Living Resources contains a detailed description of each of these living resources.

4.5.1 Wildlife

Significance Criteria

Several criteria were considered in determining whether an action has a potentially adverse effect on wildlife. Potentially adverse effects may occur if the action is likely to directly, indirectly or cumulatively:

- Cause temporary or permanent displacement of, harm to or harassment of wildlife populations (including species considered to be endangered, threatened or of special concern);
- Interfere with the movement of year-round or migratory species or the use of wintering, foraging, breeding or nursery habitats;
- Contribute to the introduction or spread of invasive species that disrupt native wildlife populations or degrade the habitat of native wildlife populations;
- Adversely affect the health of the region's wildlife by increasing the incidence of wildlife pathogens and diseases;
- Diminish the quality of regional wildlife habitat by increasing habitat fragmentation; or
- Result in changes in the regulatory oversight of wildlife populations and habitats including interference with or contravention of New York State and local wildlife management and conservation plans, protection of Federally-protected species or interference with New York State or local programs to monitor or contain dangerous wildlife diseases.

The direct, indirect, and cumulative potentially significant adverse effects of the implementation of the Proposed Action or any of the alternatives are discussed below.

4.5.1.1 Direct Effects

The Proposed Action does not involve construction or alteration of the physical environment. Neither the Proposed Action (Alternative A) nor any of the alternatives described in Section 2.0 Alternatives would result in any physical destruction or modification of wildlife habitat on the Nation lands, on adjacent non-Nation lands or on any surrounding lands within Madison and Oneida Counties. As such, implementation of the Proposed Action or any of the alternatives including the No Action Alternative (Alternative G) would not result in a significant adverse effect on wildlife in the Study Area.

4.5.1.2 Indirect Effects

Implementation of the Proposed Action or any of the alternatives including the No Action Alternative, (Alternative G) would not result in any activity that would indirectly result in any physical destruction or alteration of protected wildlife habitat on Nation lands, on adjacent non-Nation lands, or on surrounding lands located within Madison and Oneida Counties. As such, implementation of the Proposed Action or any of the alternatives including the No Action Alternative (Alternative G) would not have an adverse effect on wildlife of the region.

Implementation of the Proposed Action or any of the alternatives would allow the continued operation of the Turning Stone Resort & Casino and the projected growth associated with casino operations to occur over time. This growth includes an increase in casino visits and an associated increase in casino employment. Such growth would not result in any indirect physical disturbance to wildlife or other natural resources.

There are three taxation-jurisdiction scenarios that apply to those alternatives where some of the Nation lands (Alternatives C through F) are not conveyed into trust. Under the No Action Alternative (Alternative G), none of the lands would be conveyed into trust; there is also the additional scenario (CC-AEC) that the casino and all enterprises close. The scenarios and their associated consequences are discussed below.

The Nation would retain title to its lands but would not have sovereign control under the PTP scenario. The Nation would comply with New York State regulations, pursuant to Article 11 (Fish and Wildlife Law) of the ECL, protecting threatened and endangered wildlife species or species of special concern. The NYNHP documents the presence of seven protected species in the Study Area including brindled madtom (*Noturus miurus*), lake sturgeon (*Acipenser fulvescens*), northern harrier (*Circus cyaneus*), spiny softshell turtle (*Apalone spinifera spinifera*), pied-billed grebe (*Podilymbus podiceps*), upland sandpiper (*Bartramia longicauda*) and short-eared owl (*Asio flammeus*). These species are not protected under the Federal Endangered Species Act (USDOJ 16 U.S.C. 1531-1544, Sections 2-18).

Under Alternative C, Group 3 lands that contain or are near to known occurrences, as documented by the NYNHP, of the short-eared owl, upland sandpiper, and Northern harrier would be under New York State jurisdiction. Under Alternatives D and E, Groups 2 and 3 lands containing these wildlife resources would also be under New York State jurisdiction. Under Alternative F, Parcel 163 in Group 3 that was identified as habitat for northern harrier would be under New York State jurisdiction.

Under the PTNP—F scenario, Nation lands not conveyed into trust might be foreclosed. These lands and their environmental resources would be subject to New York State wildlife regulations and could eventually be developed under new ownership.

The Nation would retain title to the lands not conveyed into trust under the PTNP-DC scenario. The ability of New York State and local governments to collect taxes and to enforce laws and regulations would remain in dispute. The Oneida Indian Nation Environmental Protection Ordinance and the Federal Endangered Species Act would apply to these lands. The two species protected by the Endangered Species Act in the Study Area are the Indiana bat (*Myotis sodalis*) and the Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). It should be noted that the Chittenango ovate amber snail occurs only in Chittenango Falls State Park in Madison County, which is more than 10,000 feet from the nearest Nation parcel.

Under the CC-AEC scenario, the Nation would lose its most important source of revenue that would have a significant effect on its ability to manage its lands and their environmental resources. The Federal government would not acquire any lands from the Nation to be held in trust and these lands would be subject to Federal, New York State, and local wildlife regulations.

4.5.1.3 Cumulative Effects

Past actions of the Nation include the following:

- Construction and subsequent expansion (in accordance with the Nation's Master Plan) of the Turning Stone Resort & Casino and its associated golf, parking, and retail facilities;
- Construction of government, cultural, and residential facilities;
- Agricultural and livestock production;
- Extraction of sand and gravel from the Nation's quarry; and
- Hunting and fishing by the Nation's members on Nation lands designated for these activities.

These past actions have had no apparent significant adverse effects on wildlife populations and habitats on Nation lands or the surrounding areas of Madison and Oneida Counties. Past construction occurred on lands that were generally undeveloped and/or historically used for agriculture. The development was conducted consistent with the Nation's policy to evaluate the environmental effects of its projects, minimize these effects to the maximum extent practicable, and mitigate for unavoidable environmental effects. In order to evaluate and minimize environmental effects regarding protected wildlife populations and habitats, the Nation conducted surveys of the lands effected by the Turning Stone Resort & Casino, Shenendoah golf course, and Villages at Turning Stone RV Park and the Kaluhyat and Atunyote golf courses (Environmental Systems Planning, 1996a; Jason M. Cortell and Associates, 1997; Wetland and Ecological Consultants, 2002a and 2002b). No wildlife species listed by the USFWS or the NYSDEC as endangered, threatened or species of special concern were found during these field investigations. As such, the effects of

these development projects on protected wildlife species and their habitats appear to have been less than significant.

These biological surveys also indicated that the species affected by these developments were commonplace and abundant species typical of successional old fields, beech-maple mesic forests, successional shrublands, and cultivated agricultural lands. These habitats are representative of ecological habitats located on surrounding undeveloped Nation and non-Nation lands and are commonly found throughout Oneida and Madison Counties. As a result, mobile species are likely to have been displaced, without harm to regional wildlife populations, to nearby habitat due to the prevalence of old fields, beech-maple forests, and successional shrub lands in surrounding areas. In addition, many of the common species that occupied the open fields and other early successional habitats prior to construction may continue to occupy the open, man-made or landscaped habitats currently present at these sites such as the golf courses or landscaped areas. Immobile species are likely to have been lost during these construction projects, although, as stated previously no wildlife species protected by the USFWS or the NYSDEC were observed on these sites.

Hunting and fishing by Nation members are regulated by the Nation. The Nation, pursuant to regulations enacted on November 4, 2002, requires prospective hunters to obtain a hunting license, field registration card, carcass transportation tag, and vehicle registration tag from the Nation Office of Public Safety. Nation members are prohibited from hunting with certain types of weapons, selling game, wasting animal meat, and must hunt or fish in designated sites.

Past actions of the Nation have also served to maintain the regional health of wildlife populations by cooperating with the NYSDEC on the testing of white-tailed deer for CWD. In October, 2005 at the NYSDEC's request, Arthur F. Pierce the Nation's Commissioner of Public Safety met with Dr. Ward Stone of the NYSDEC on the matter of CWD. The Nation agreed to work with the NYSDEC to control CWD, giving permission to implement the NYSDEC's CWD Response Plan on Nation lands. Although the NYSDEC has not yet approached the Nation in 2006 on this issue, the Nation has stated its willingness to continue cooperation with New York State in the monitoring and reporting of CWD on their lands. No infected white-tailed deer have been detected on Nation lands and conveyance of the Nation lands into trust would not alter this spirit of cooperation.

These past activities, while effecting wildlife populations at a very local scale, have not resulted in adverse effects on wildlife populations or habitats on Nation lands or the surrounding region as the Nation has conducted biological surveys for wildlife, such as endangered and threatened species, and habitats prior to construction activities; implemented its own requirements to regulate hunting and fishing by Nation members on

Nation lands; and cooperated with the NYSDEC in its efforts to monitor and contain CWD.

None of the Nation's present activities are known to adversely affect wildlife populations or habitats. For example, the Nation conducts normal maintenance activities on its lands that are consistent with current land uses. In addition, the Nation continues to extract small quantities of sand and gravel from the quarry on Parcel 94 (Group 2, Madison County). These actions are not likely to have biological effects as the dominant wildlife species on Nation lands and the surrounding area are adapted to and able to utilize the open, early-successional habitats typical of Nation lands. In addition, there are abundant surrounding areas that feature similar habitats throughout Madison and Oneida Counties that may be utilized by wildlife in the event of short-term disturbances on Nation lands.

The present activities of others on non-Nation lands include farming and other agricultural activities, hunting and fishing, and development activities with the potential to destroy or alter wildlife habitat. An analysis of the significance of these activities on local or regional wildlife populations and habitat would be speculative. These activities are subject to applicable Federal, New York State, and local wildlife regulations.

Ongoing and reasonably foreseeable actions by the Nation are described in Section 4.1.4 Ongoing and Planned Nation Development Projects and Activities. In addition to these actions, the Nation will also implement routine maintenance activities such as mowing of landscaped areas, removal of debris, and application of small amounts of fertilizers, pesticides, herbicides as needed on previously developed Nation lands. The Nation will also continue to extract small quantities of sand and gravel from the quarry. None of these actions are likely to adversely affect wildlife species and their habitats. Both present and future actions by the Nation will be conducted in a manner that is consistent with the Oneida Indian Nation Environmental Protection Ordinance and the Nation's policy to evaluate and minimize its environmental effects and mitigate for unavoidable effects. Actions by others on non-Nation lands are described in Sections 2.0 Alternatives and Section 4.1.6 Future Projects Proposed by Others. These actions would be subject to New York State and local regulations, including Article 11 of the ECL and SEQRA if undertaken.

As previously discussed, the cumulative effects of the Nation's past, present, and future activities that have occurred or will occur on current Nation lands have had no apparent significant adverse effects on wildlife species or their habitats. As a result, the cumulative effects on wildlife resources of conveying Nation lands into trust, as proposed in Section 2.0 Alternatives, Alternatives A through F appear to have been less than significant.

Under Alternative B, the assessment of cumulative effects must also consider the significance of the past effects of others and present/future effects of the Nation and others on the wildlife resources of the additional 17,630 acres to be conveyed into trust in the

future. The Nation has no development plans for these lands for which it does not currently hold title. To assess the effects of the unknown development plans of others on these additional lands would be speculative.

4.5.2 Vegetation

Significance Criteria

Several criteria were considered in determining whether an action has a potentially adverse effect on vegetation. Potentially adverse effects may occur if the action is likely to directly, indirectly or cumulatively:

- Cause or contribute to the elimination of stands of native forest;
- Cause or contribute to the introduction of invasive or nonindigenous vegetation species;
- Modify or cause the fragmentation of rare plant communities;
- Interfere with or contravene New York State or local forest management and conservation plans; or
- Destroy, remove, or otherwise harm protected plant species listed as endangered, threatened, or rare by the NYSDEC or the USFWS, either through direct means or through habitat modification or fragmentation.

The direct, indirect, and cumulative potentially significant adverse effects of the implementation of the Proposed Action or any of the alternatives are discussed below.

4.5.2.1 Direct Effects

The Proposed Action does not involve construction or alteration of the physical environment. Neither the Proposed Action (Alternative A) nor any of the alternatives described in Section 2.0 Alternatives would result in any physical destruction or modification of plant habitat or critical plant communities on Nation lands, adjacent non-Nation lands or any surrounding lands within located Madison and Oneida Counties. As such, implementation of the Proposed Action or any of the described alternatives (including the No Action Alternative) would not have a direct adverse effect on vegetation resources in the region.

4.5.2.2 Indirect Effects

Implementation of the Proposed Action or any of the alternatives (including the No Action Alternative), would not result in any activity that would indirectly result in the physical destruction or alteration of protected plant habitat or critical plant communities on Nation lands, adjacent non-Nation lands or any lands located within the municipalities or counties in the Study Area described in Subsection 3.5.3 Vegetation. As such, implementation of the Proposed Action or any of the described alternatives (including the No Action Alternative), would not have adverse effects on protected plant species or plant resources of the region.

Implementation of the Proposed Action or any of the alternatives would allow for the continued operation of the Turning Stone Resort & Casino and the projected growth associated with casino operations to occur over time. This growth includes an increase in casino visits and an associated increase in casino employment. Such growth would not result in any indirect physical disturbance to protected plant species and other natural resources.

There are three taxation-jurisdiction scenarios that apply to the alternatives where some Nation lands (Alternatives C through F) are not conveyed into trust. The No Action Alternative (Alternative G) also has the additional CC-AEC scenario. The scenarios and their associated consequences are discussed below.

The Nation would retain title to the lands but would not have sovereign control under the PTP scenario. The Nation would submit to New York State regulations, pursuant to Article 9 of the ECL, protecting New York State's native plants. The NYNHP documents the potential presence of 26 plant species protected by the NYSDEC in those municipalities in which Nation lands are located. Only one of these species, the American hart's tongue fern (*Asplenium scolopendrium var. americanum*), is protected under the Federal Endangered Species Act.

Under Alternative C, New York State would not have jurisdiction over Nation lands in Groups 1 and 2. Twenty three New York State protected plant species are potentially located in the municipalities in which these Nation lands are located. Under Alternative D, New York State would not have jurisdiction over Nation lands in Group 1. Ten New York State protected plant species are potentially located in the Towns of Verona and Vernon, in which Group 1 lands are located. Under Alternative E, only two parcels would be conveyed into trust (Parcels 10 and 109). New York State would have jurisdiction over all Nation lands with the exception of these two parcels. These parcels contain the Turning Stone Resort & Casino and its associated facilities and do not provide suitable habitat for protected plant species. Under Alternative F, New York State would not have jurisdiction over Group 1 lands, the majority of Group 2 lands, and some Group 3 lands. Nation lands are located in the Towns of Verona, Vernon, Lenox, Lincoln, Fenner, Smithfield, and the City of Oneida. These lands may potentially provide habitat for 20 New York State-protected plant species. In Alternatives C through F, the Oneida Indian Nation Environmental Protection Ordinance and the Federal Endangered Species Act would apply to all Nation lands.

Nation lands that were not conveyed into trust might be foreclosed under the PTNP-F scenario. These lands and their environmental resources would be subject to New York State regulations and could eventually be developed under new ownership.

The Nation would retain title to the lands not conveyed into trust under the PTNP-DC scenario. The ability of New York State and local governments to collect taxes and to

enforce laws and regulations would remain in dispute. The Oneida Indian Nation Environmental Protection Ordinance and the Federal Endangered Species Act would apply to these lands. Only one plant species found in the Study Area, the American hart's tongue fern (*Asplenium scolopendrium var. americanum*), is protected under the Federal Endangered Species Act.

Under the CC-AEC scenario, the Nation would lose its most important source of revenue that would have a significant effect on its ability to manage its lands and their environmental resources. The Federal government would not acquire any lands from the Nation to be held in trust and these lands would be subject to Federal, New York State, and local regulations protecting native plants.

4.5.2.3 Cumulative Effects

Past actions of the Nation have had no apparent adverse effects on known protected plant species or habitats or rare plant communities on Nation lands or in surrounding areas of Madison and Oneida Counties. Past construction occurred on lands that were generally undeveloped and/or historically used for agriculture. As stated in Section 4.5.1 Wildlife, this construction was consistent with the Oneida Indian Nation Environmental Protection Ordinance and its policies. The NYNHP, in correspondence dated September 9, 2005, indicated that 10 New York State-protected plant species may potentially occur in the Town of Verona where these development projects occurred. However, these species were last reported in the Town of Verona in 1945 or earlier. No plant species listed by the USFWS or the NYSDEC in the NYNHP as endangered, threatened or rare were observed during biological surveys conducted in order to evaluate the environmental effects of construction of the Turning Stone Resort & Casino, Shenendoah golf course, Villages at Turning Stone RV Park, and the Kaluhyat and Atunyote golf courses. As such, these past Nation projects do not appear to have had an effect on protected plant species or their habitats.

These biological surveys also indicated that the plant species affected by these past developments were common and abundant species typical of successional old fields, beech maple mesic forests, successional shrublands, forested and emergent wetlands, and cultivated agricultural lands. These habitats are representative of ecological habitats located on surrounding undeveloped Nation and non-Nation lands and are common throughout Oneida and Madison Counties. As a result, the clearing and subsequent development of these vegetative communities by the Nation is not likely to have had adverse effects to any protected plant species, critical plant communities or the vegetation resources of Madison and Oneida Counties.

The Nation is committed to the preservation and stewardship of its natural resources and has sought to ensure the conservation of natural biological communities and ecosystems by classifying many of its lands as Forever Wild within their own land classification system and is not a legally binding term. The conception of Forever Wild areas within the

Nation's land classification system reflects its efforts to continue to be mindful in the preservation and protection of native plant communities in long range resource planning efforts. In addition, the Nation has also designated 21 acres of land (Parcel 268, Group 2) for forestation with black ash (*Fraxinus nigra*) and has planted and actively maintains a stand of these trees. Black ash is significant to the Nation's culture as its bark was historically used by the Oneida for basket making. These past actions of the Nation have had beneficial effects on the vegetation resources of its lands and the surrounding areas of Madison and Oneida Counties. As discussed elsewhere, the Nation considered various designs for its golf courses and selected course designs that minimized adverse effects to wetlands and wetland vegetation. In addition, the GRWMB restored a wetland, previously drained by others, allowing indigenous wetland vegetation to once again become established on the site. Other wetlands have also been created near the Turning Stone Resort & Casino, thereby creating vegetative habitat there as well.

The Nation's past activities, while effecting vegetation at a very local scale have not resulted in any apparent adverse effects on plant species or communities located on Nation lands or the surrounding areas of Madison and Oneida Counties. The Nation has conducted biological surveys for plant species that are considered to be endangered, threatened or rare by the USFWS and the NYSDEC prior to undertaking development activities, has designated lands as Forever Wild and has established a 21-acre stand of black ash trees on its lands. The Nation has also sought to minimize effects to indigenous wetland vegetation and mitigate for its unavoidable effects.

None of the Nation's present activities are known to adversely affect protected plant species, critical plant communities or the vegetation resources of Madison and Oneida Counties. For example, the Nation conducts normal maintenance activities on its lands that are consistent with current land uses associated with the Turning Stone Resort & Casino, agriculture and livestock production, social and cultural uses, and government administration. In addition, the Nation continues to extract small quantities of sand and gravel from the quarry on Parcel 94 (Group 2, Madison County). These actions have had no apparent adverse effects on protected plant species or on the vegetation resources located on Nation lands or the surrounding areas of Madison and Oneida Counties. Both present and future actions by the Nation will be subject to Federal regulations, the Oneida Indian Nation Environmental Protection Ordinance, and the Nation's policy of evaluating, minimizing, and mitigating its environmental effects.

Present and reasonably foreseeable actions by others on non-Nation lands are described in Section 2.0 Alternatives and Section 4.1.6 Future Projects Proposed by Others. Projects by others would be subject to New York State and local regulations, including SEQRA and regulations pursuant to New York State's protected plant program.

Ongoing and reasonably foreseeable actions by the Nation are described in Section 4.1.4 Ongoing and Planned Nation Development Projects and Activities. These actions are not part of the trust action.

As previously discussed, the cumulative effects of the past, present, and future activities that have occurred or would occur on current Nation lands have had no apparent adverse effect on protected plant species, their habitats or critical plant communities. These various activities have occurred on Group 1, 2, and 3 lands. As a result, the cumulative effects of these activities on vegetation resources of the conveyance of Nation lands into trust Alternatives A, C, D, E, and F appear to have been less than significant.

An assessment of the cumulative effects of the implementation of Alternative B (the future conveyance into trust of an additional 17,630 acres) must also consider the significance of the past effects of others and present/future effects of the Nation and others on the biological resources of the additional 17,630 acres to be phased into trust. The Nation has no proposed development plans for these lands, for which it does not currently hold title. Assessing the effects of the unknown development plans of others on these additional lands would be speculative.

4.5.3 Ecosystems and Biological Communities

Significance Criteria

Several criteria were considered in determining whether an action has a potentially adverse effect to ecosystems and biological communities. Potentially adverse effects may occur if the action is likely to directly, indirectly or cumulatively:

- Destroy, remove or otherwise harm directly or indirectly through habitat modification or fragmentation sensitive ecosystems and biological communities identified in Federal, New York State or local plans, policies or regulations as rare, small in size, geographically limited, vulnerable or exemplary in nature;
- Harm or fragment New York State-designated Critical Environmental Areas.

The direct, indirect, and cumulative potentially significant adverse effects of the implementation of the Proposed Action or any of the alternatives are discussed below.

4.5.3.1 Direct Effects

The Proposed Action does not involve construction or alteration of the physical environment. Neither the Proposed Action (Alternative A) nor any of the alternatives would result in the physical destruction or modification of ecosystems or biological communities on Nation lands, adjacent non-Nation lands or on any surrounding lands located within Madison and Oneida Counties. As such, implementation of the Proposed Action or any of the described alternatives (including the No Action Alternative) would not result in a significant adverse direct effect on the ecological resources of the region.

4.5.3.2 Indirect Effects

Implementation of the Proposed Action or any of the alternatives (including the No Action Alternative) would not indirectly result in the physical destruction or modification of ecosystems or biological communities on Nation lands, adjacent non-Nation lands or on any lands within the municipalities or counties in the Study Area. As such, implementation of the Proposed Action or any of the described alternatives, (including the No Action Alternative), would not result in a significant adverse effect on ecosystems or biological communities in the region.

Implementation of the Proposed Action or any of the alternatives would allow for the continued operation of the Turning Stone Resort & Casino and projected growth associated with casino operations to occur over time. This growth includes an increase in casino visits and an associated increase in casino employment. Such growth would not result in any indirect physical disturbance to ecosystems, biological communities, and other natural resources.

There are no New York State-designated Critical Environmental Areas located in either Madison or Oneida Counties. Two significant ecological communities have been identified by the NYNHP. These communities are located in Chittenango Falls State Park more than 10,000 feet from the nearest Nation lands. Accordingly, New York State jurisdiction over these sensitive ecological resources will continue under the Proposed Action, all alternatives and taxation-jurisdiction scenarios.

4.5.3.3 Cumulative Effects

Past actions of the Nation have had no apparent adverse effects on sensitive ecological communities in Madison and Oneida Counties. These past activities have occurred on lands that were generally undeveloped and/or historically used for agriculture. As discussed in Sections 4.5.1 Wildlife and 4.5.2 Vegetation, the Nation conducted surveys of the lands affected by these projects in order to evaluate the environmental effects of its activities. These surveys indicated that no sensitive ecological communities were present on Nation lands and that the ecosystems affected by these developments were successional old fields, beech maple mesic forests, successional shrublands, forested and emergent wetlands, and cultivated agricultural lands. As a result, the clearing and subsequent development of these ecosystems by the Nation does not appear to have had significant adverse effects on any sensitive ecological communities of Madison and Oneida Counties.

None of the Nation's present activities are known to adversely affect sensitive ecological communities located within Madison and Oneida Counties. For example, the Nation conducts normal maintenance activities on its lands that are consistent with current land uses associated with the Turning Stone Resort & Casino, agriculture and livestock production, social and cultural uses, and government administration. In addition, the Nation continues to extract small quantities of sand and gravel from the quarry on Parcel 94 (Group 2, Madison County). These actions do not have apparent adverse effects on the

sensitive ecological communities in the surrounding areas of Madison and Oneida Counties. Both present and future actions by the Nation would be subject to Federal regulations, the Oneida Indian Nation Environmental Protection Ordinance, and the Nation's policy of evaluating, minimizing, and mitigating its environmental effects.

The present activities of others on adjacent non-Nation lands that could result in effects on ecosystems and biological communities are listed in Section 4.5.1 Wildlife. However, an assessment of the significance of the effects of these activities on ecosystems or biological communities would be speculative and has not been provided.

Ongoing and reasonably foreseeable actions of the Nation are described in Section 4.1.4 Ongoing and Planned Nation Development Projects and Activities. None of these actions are likely to adversely affect sensitive ecological communities. Projects associated with the Turning Stone Resort & Casino are either currently underway or slated to be completed by the time a decision on the Trust Application is made. In addition, the Nation would continue to maintain its Forever Wild lands and its stands of black ash for use in cultural programs. Cumulative effects of the past, present, and future activities that have occurred or will occur on current Nation lands have had no apparent effect to sensitive ecological communities as these activities have not affected rare, small in size, geographically limited, or vulnerable ecosystems. These various activities have occurred on Group 1, 2, and 3 lands. As a result, the cumulative effects of these activities on ecological resources of the conveyance of Nation lands into trust Alternatives A, C, D, E, and F appear to have been less than significant.

Under Alternative B, the assessment of the alternative's cumulative effects must also include consideration of the significance of the past effects of others and present/future effects of the Nation and others on the biological resources of the additional 17,630 acres to be phased into trust. The Nation has no proposed action for these lands, of which it does not currently hold title. Assessment of the effects of the unknown development plans of others on these additional lands would be speculative. These activities would be subject to Federal, New York State, and local environmental review.

4.5.4 Agriculture

Significance Criteria

Several criteria were considered in determining whether an action has a potentially adverse effect on agricultural resources and production on Nation lands, adjacent non-Nation lands, or in the surrounding areas of Oneida and Madison Counties. Potentially adverse effects may occur if the action is likely to directly, indirectly or cumulatively:

- Affect the productivity of agricultural lands;
- Reduce the quality or amount of prime agricultural soils or farmland;

- Threaten the viability of existing agricultural operations in Madison and Oneida Counties or New York State;
- Threaten the future viability of agricultural operations in Madison and Oneida Counties or New York State; or
- Convert prime farmland or farmland of statewide importance to non-agricultural use.

4.5.4.1 Direct Effects

The Proposed Action does not involve the disturbance or alteration of the physical environment. Neither the Proposed Action (Alternative A) nor any of the alternatives described in Section 2.0 Alternatives would result in any loss of agricultural resources or adverse effects on agricultural production on Nation lands, adjacent non-Nation lands or on any surrounding lands located within Madison and Oneida Counties. The USDA reviews Federal actions that lead to the irreversible conversion of farmland to nonagricultural uses, as defined in the Farmland Protection Policy Act. None of the alternatives (including the No Action Alternative) would require the completion of Form AD-1006 as prime, unique or locally important farmland will not be converted to some other use. Nevertheless a Farmland Conversion Impact Rating Form (AD-1006) was completed and submitted to the USDA for this project. The USDA concluded, in correspondence dated August 3, 2006 (Appendix J), that the Proposed Action and all of the alternatives are exempt from the provisions of the Farmland Protection Policy Act as no farmland will be converted to non-agricultural uses. As such, implementation of the Proposed Action or any of the described alternatives, (including the No Action Alternative), would not have a significant adverse effect on agricultural resources in the region.

4.5.4.2 Indirect Effects

Implementation of the Proposed Action or any of the alternatives (including the No Action Alternative) would not indirectly result in the development, degradation, or conversion of agricultural resources on Nation lands or on lands located in the surrounding areas of Oneida and Madison Counties. As such, implementation of the Proposed Action or any of the alternatives, (including the No Action Alternative), would not result in any significant adverse effects on agricultural resources of the region.

Implementation of the Proposed Action or any of the alternatives would allow for the continued operation of the Turning Stone Resort & Casino and projected growth associated with casino operations to occur over time. This growth includes an increase in casino visits and an associated increase in casino employment. Such growth would not result in any indirect physical disturbance to agricultural lands or conversion of agricultural lands to non-agricultural uses.

There are three taxation-jurisdiction scenarios that apply to those alternatives where some lands (Alternatives C through F) are not conveyed into trust. Under the No Action

Alternative (Alternative G) none of the lands would be conveyed into trust; there is also the additional scenario that the Turning Stone Resort & Casino and all Nation enterprises would close. The scenarios and their associated consequences are discussed below.

Lands Conveyed into Trust

The Nation's ongoing and reasonably foreseeable plans do not include the conversion of agricultural lands to non-agricultural use; therefore, significant adverse effects are not expected to occur. The Nation's future plans with regard to lands in trust contemplate the continuation of the current agricultural activities. These activities are consistent with the surrounding practices of other local farmers and would not constitute an effect on agricultural production, the quality of land, or the conversion of agricultural land to some other use. The disposition of agricultural lands under each alternative is summarized below.

Alternative A

Under Alternative A, all 17,370 acres of Group 1, 2, and 3 lands would be conveyed into trust resulting in the Nation's continued ability to use these lands for livestock grazing and livestock boarding (Heifer Hotel, Parcel 210, Group 3), growing of traditional crops for ceremonial use (white corn, beans, squash, pumpkin, and tobacco on Parcels 133 and 211, Group 3), and cultivation of nontraditional crops (barley, yellow corn, wheat, oats, and hay) by Nation members or through lease arrangement. Of the 17,370 acres, approximately 14,817 (or 85 percent) are located within or overlap some farmland classification (see Figures 3.5-3 and 3.5-4). Of the 14,817 acres in a farmland classification, the Nation currently utilizes approximately 11,287 acres for crops, livestock or for both crops and livestock. Continuation of these activities on lands located within the Nation's aboriginal homeland would represent a direct beneficial effect on the Nation and agricultural lands.

Alternative B

Under Alternative B, an additional 17,630 acres of land could be conveyed into trust over time resulting in a total area of 35,000 acres. Alternative B would involve the same agricultural resources as those described under Alternative A, as well as any agricultural resources located on lands acquired in the future. No specific parcels have been identified, but a large proportion of future lands in trust would reasonably be expected to fall within one or more farmland classification.

Alternative C

Group 1 and 2 lands encompass 3,168 acres and 5,679 acres, respectively, of lands in farmland classifications. Of these lands, the Nation utilizes approximately 4,176 acres for crops and livestock. Approximately 7,111 acres located in Group 3 lands would not be conveyed into trust; Group 3 lands contain some of the most important agricultural lands that are located in the Town of Stockbridge (Madison County) and include the Nation Garden, plots for growing white corn, the Heifer Hotel, and pasture for the Nation's Black

Angus beef herd. These latter agricultural activities are operated as an enterprise and supply high quality Angus beef to the Nation's restaurants at the Turning Stone Resort & Casino.

Alternative D

Under Alternative D, Group 1 lands contain the fewest of the Nation's agricultural lands. The 1,250 acres of Group 1 serve primarily as open space within the Turning Stone Resort & Casino, although they are also used for agriculture, primarily crop leasing. Alternative D would exclude most of the Nation's agricultural lands, of approximately 10,040 acres, including the important cultural and commercial agricultural lands in Group 3 discussed above under Alternative C.

Alternative E

Alternative E would convey only the Turning Stone Casino gaming floor tax lot (Parcels 10 and 109) into trust. Agricultural lands are not located on these parcels.

Alternative F

Group 1 lands, the majority of Group 2 lands, and some of the Group 3 lands would be conveyed into trust under Alternative F. As a result, 7,168 acres of the Nation's agricultural lands would continue to be under their control. Many of the agricultural lands in Group 3 and some of those lands in Group 2 total 4,176 acres and including the parcels containing the Heifer Hotel and Nation Garden would not be conveyed into trust.

Lands Not Conveyed into Trust

There are three taxation-jurisdiction scenarios that apply to those alternatives where some lands (Alternatives C through F) are not conveyed into trust. Under the No Action Alternative (Alternative G) Nation lands would not be conveyed into trust; there is also the additional CC-AEC scenario. The scenarios and their associated consequences are identified below.

The Nation would retain title to the lands but would not have sovereign control under the PTP scenario. The Nation would submit to the regulations pursuant to Article 25-AA of the New York State Agriculture and Markets Law on all of its lands not in trust.

Nation lands not conveyed into trust might be foreclosed under the PTNP-F scenario. These lands and their agricultural resources would be subject to New York State regulations and could eventually be developed under new ownership. The loss of these lands would prevent the Nation from cultivating traditional crops and represents an adverse effect on the Nation, as it could interfere with established programs in which traditional recipes and ceremonial uses for white corn and other crops are taught to Nation members, especially children.

The Nation would retain title to the lands not conveyed into trust under the PTNP-DC scenario. New York State's ability to enforce tax and regulatory laws would remain in dispute. The Nation's agricultural policies and Federal laws and regulations would apply to these lands.

Under the CC-AEC scenario, the Nation would lose its most important source of revenue, which would have a significant adverse effect on its ability to manage its lands and their agricultural resources. The Federal government would not acquire any lands from the Nation to be held in trust, and these lands would be subject to Federal, New York State, and local agricultural regulations.

4.5.4.3 Cumulative Effects

Past actions of the Nation have largely been associated with the construction and subsequent expansion of the Turning Stone Resort & Casino and associated golf, parking, and retail facilities; the construction of government, cultural, and residential facilities; and activities associated with agricultural and livestock production. Past actions of the Nation that specifically involved agricultural lands in Group 1 in Oneida County are likely to have included the development or conversion of lands that were previously agricultural in nature. However, not all previously agricultural Group 1 lands were converted as some of these properties are still leased for soy and corn production (e.g., Parcels 117, 118, 201, and 279). Agricultural lands comprise approximately 69 percent of the total land area in Madison and Oneida Counties. Due to the predominance of agricultural land uses in these counties, the past conversion of agricultural lands conducted by the Nation is not likely to have had a significant effect on the regional agricultural resources either in acreage or productivity. Other Nation activities on agricultural lands have included the raising of livestock, grazing and boarding of livestock (Heifer Hotel, Parcel 210, Group 3), growing traditional crops (white corn, beans, squash, pumpkin, and tobacco on Parcels 133 and 211, Group 3), and cultivating non-traditional crops (barley, yellow corn, wheat, oats, and hay). These actions have had no significant effects on agricultural resources of Nation lands or the surrounding areas of Madison and Oneida Counties. Without the Nation's commitment to agriculture, these lands might otherwise have been abandoned.

The Nation has no plans to convert its agricultural lands to other uses. These present and future actions do not contribute to any significant cumulative adverse effects on the agricultural resources of Nation lands or the surrounding areas of Madison or Oneida Counties as these actions do not involve the development, degradation or conversion of agricultural lands. Any proposed actions to convert agricultural lands by others would require approval from the New York State pursuant to Article 25-AA of the New York State Agriculture and Markets Law. Any proposed action by the Nation to convert agricultural lands would also require the approval of the USDA (Form AD-1006).

These various activities have occurred on Group 1, 2, and 3 lands. As a result, the cumulative effects of these activities on agricultural resources of the conveyance of Nation

lands into trust under Alternatives C, D, E, and F appear to have been less than significant. Under Alternative B, an assessment of that alternative's cumulative effects must also consider the significance of the past effects of others and present/future effects of the Nation and others on the biological resources of the additional 17,630 acres to be phased into trust. The Nation has no proposed development plans for these lands, for which it does not currently hold title. An assessment of the effects of the unknown development plans of others on these additional lands would be speculative. Such actions would be subject to Federal, New York State, and Nation environmental review.