

4.6 Cultural Resources

Introduction

Section 4.1 Introduction provides a definition of what constitutes a significant effect. Generally, a significant effect is determined with regards to context and intensity. Section 4.1 Introduction and Section 2.0 Alternatives provide a definition and explanation of the possible taxation and jurisdictional scenarios that could apply to lands not conveyed into trust by the BIA. With respect to cultural resources, these scenarios have a potential effect on not only the resources but the Nation as well. Effects in this case can be direct, indirect or cumulative. The Oneida are tied both culturally and spiritually to the 17,370 acres of land proposed for trust transfer. Potential effects, therefore, can not only occur to cultural resources but to the rights of the Nation as well with respect to the possession, control or disposition of objects that are of human, funerary, sacred or patrimonial importance. One aspect of the purpose and need for the Proposed Action is the protection of Oneida historical and cultural sites. The geographic boundary for the consideration of effects includes Oneida and Madison Counties inclusive of the area considered to be within the Oneidas' 300,000-acre reservation recognized in the 1794 Treaty of Canandaigua. For cultural resources, this geographic boundary is also considered the APE. The timeframe for consideration of the cumulative effects analysis extends to 2011. This is the five-year planning horizon considered to be reasonable for evaluating the potential effects of the Proposed Action and the alternatives. Section 4.6.1 Cultural, Historic, and Religious Properties provide an assessment of effects on cultural, historic, and religious properties. Section 4.6.2 Archaeological Resources provides an assessment of effects on archaeological resources. Many Oneida sites as recorded by the Nation's Historian have prior to purchase by the Nation been disturbed by amateur archaeologists and artifact seekers. The pattern of disturbance goes back decades and physical evidence can still be seen on some parcels.

As part of the data gathering process for this Draft EIS, the BIA consulted with the OPRHP for information concerning cultural resources. These letters dated August 17 and August 18, 2005 (one each for Oneida County and Madison County) and March 14, 2006 are included in Appendix J. The OPRHP responded to the letters in 2005 by directing the information request to their website at <http://nysparks.state.ny.us>. To date, a response to the March 14, 2006 letter has not been received. Further consultation with the OPRHP pursuant to 36 CFR Part 800 concerning the National Register of Historic Places status of sites and the potential effects to them is ongoing. The BIA-SHPO consultation letter, dated August 16, 2006, is included in Appendix J. On October 19, 2006, the SHPO responded to the BIA's request for consultation and concluded, "Based upon this review, the SHPO concurs that the fee-to-trust undertaking will have No Effect upon historic properties in or eligible for inclusion in the State and National Registers of Historic Places".

Additionally, the BIA initiated formal consultation with the Tribal Historic Preservation Officers (THPO) of the Oneida Tribe of Indians of Wisconsin, the Stockbridge-Munsee Community of Wisconsin, and the Tuscarora Nation. The purpose of the consultations was to ascertain whether these tribes held any religious or cultural significance to the lands proposed for trust transfer. These letters dated January 20, 2006 are included in Appendix J. To date, responses have not been received.

Using the information obtained from the OPRHP, NYSM, and the Office of the Nation Historian, and described in Section 3.6.3 Historic, Cultural, and Religious Properties and Table 3.6-3, it can be seen that the number and types of cultural resources present on or within 1,000 feet of Nation lands differ among the Proposed Action (Alternative A) and the trust alternatives (Alternatives B through F). Within the six alternatives, the number and types of resources present differ among Groups 1 through 3. The resource types consist of:

- Properties listed on the New York State or National Registers of Historic Places;
- Buildings and structures fifty years of age or older;
- Previously identified archaeological sites; and
- Archaeologically sensitive areas previously defined by the OPRHP.

In order to place the analysis of potential effects into the proper context, a summary of this information is presented below.

Alternatives A and B

Alternatives A and B are discussed together since the same parcels are affected. A total of 447 cultural resources are on or in proximity to Nation lands that are included in Alternatives A and B. These consist of 13 properties listed on the National Register of Historic Places, 85 other structures fifty years of age or older, 157 previously identified archaeological sites, and 192 Nation parcels that are considered by the OPRHP to be archaeologically sensitive.

Within these two alternatives, 51 cultural resources are associated with Group 1 lands including 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 archaeologically sensitive properties. Properties listed on the New York State and National Registers of Historic Places are not associated with Group 1 lands. Two hundred and seventy-six cultural resources are associated with Group 2 lands and consist of 11 properties listed on the New York State and National Registers of Historic Places, 55 structures fifty years of age or older, 94 previously identified archaeological sites, and 116 archaeologically sensitive properties. One hundred and twenty cultural resources are associated with Group 3 lands within these alternatives. These consist of two properties listed on the New York State and National Registers of Historic Places, 18 structures fifty

years of age or older, 57 previously identified archaeological sites, and 43 archaeologically sensitive properties.

Alternative C

A total of 327 cultural resources are located on or in proximity to Nation lands that are included in Alternative C. These cultural resources consist of 11 National Register of Historic Places properties, 67 other structures fifty years of age or older, 100 previously identified archaeological sites, and 149 Nation parcels that are considered by the OPRHP to be archaeologically sensitive.

Within Alternative C, there are 51 resources associated with Group 1 lands consisting of 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 archaeologically sensitive properties. Properties listed on the New York State and National Registers of Historic Places are not associated with Group 1 lands. Two hundred and seventy-six resources are associated with Group 2 lands and consist of 11 properties listed on the New York State and National Registers of Historic Places, 55 structures fifty years of age or older, 94 previously identified archaeological sites, and 116 archaeologically sensitive properties. Group 3 lands are not included with Alternative C.

Alternative D

Alternative D includes only Group 1 lands. A total of 51 cultural resources are located on or in proximity to these lands and consist of 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 Nation parcels that are considered by the OPRHP to be archaeologically sensitive. Properties listed on the New York State and National Registers of Historic Places are not associated with Alternative D lands.

Alternative E

Only two archaeologically sensitive sites are located within the vicinity of lands included in Alternative E.

Alternative F

A total of 343 cultural resources are located on or in proximity to Nation lands included in Alternative F. These cultural resources consist of one property on the National Register of Historic Places, 71 other structures fifty years of age or older, 111 previously identified archaeological sites, and 160 Nation parcels that are considered by the OPRHP to be archaeologically sensitive.

Within Alternative F there are 51 cultural resources associated with Group 1 lands consisting of 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 archaeologically sensitive properties. Properties listed on the New York State and National Registers of Historic Places are not associated with Group 1 lands. Two hundred and forty-eight cultural resources are associated with Group 2 lands and consist of one property listed on the New York State and National Registers of

Historic Places, 49 structures fifty years of age or older, 87 previously identified archaeological sites, and 111 archaeologically sensitive parcels. Forty-four cultural resources are associated with Group 3 lands within Alternative F and consist of 10 structures fifty years of age or older, 18 previously identified archaeological sites, and 16 archaeologically sensitive properties. A summary of the cultural resources located on or within 1,000 feet of Nation lands is provided in Appendix D and on Table 4.6-1.

4.6.1 Cultural, Historic, and Religious Properties

Significance Criteria

For the purposes of defining whether the Proposed Action or the alternatives, including the No Action Alternative, have a potentially significant adverse effect on cultural, historic or religious properties including cultural values and heritage of the Oneida, the following criteria are considered. Whether the action is likely to directly, indirectly or cumulatively:

- Cause an adverse change in the significance of a historical resource (including a historic building, district, site, structure or object) as defined by Section 106 of the National Historic Preservation Act (16 U.S.C. 470 and 36 C.F.R. Part 800) and/or the New York State Historic Preservation Act (SHPA, Article 14 ECL). This includes resources listed or eligible for listing on either New York State or Federal Registers of Historic Places;
- Affect a resource that is significant in American history, architecture, engineering, or culture;
- Affect a National Historic Landmark;
- Affect a resource that has yielded or may likely yield, information important to the prehistory or history of Madison or Oneida Counties, New York State, the Nation or the U.S.;
- Potentially alienate control of cultural, historic or religious properties that are important to the cultural and historical record of the Nation and afforded protection under the Federal Archaeological Resources Protection Act of 1979 (ARPA), (16 U.S.C. 470 and 25 C.F.R. Part 262, 43 C.F.R. Parts 6 and 7) and the Native American Graves Protection & Repatriation Act of 1990 (NAGPRA) (25 U.S.C. 3001 and 43 C.F.R. Part 10).

Overview of ARPA and NAGPRA

In 1996 the U.S. Congress passed the NHPA establishing the basic elements of the national historic preservation program. The program includes historic and archaeological properties under its umbrella and establishes, among other things, the National Register of Historic Places and a regulatory process for the protection of such properties. The NHPA has been amended to include Native American Tribes and certified local governments as partners in the preservation process.

One of the most significant pieces of legislation to afford protection specifically to archaeological sites is the ARPA. The ARPA directly addressed the looting and vandalism

**Table 4.6-1
Summary of Cultural Resources within 1,000 Feet of Nation Lands**

Resource Type	Group 1 <u>Lands</u>	Group 2 <u>Lands</u>	Group 3 <u>Lands</u>	Total <u>Sites</u>
New York State or National Register of Historic Places	0	11	2	13
Buildings and Structures (50 years plus)	12	55	18	85
Archaeologically Sensitive Properties	33	116	43	192
Archaeological Sites	<u>6</u>	<u>94</u>	<u>57</u>	<u>157</u>
Total Resource Count	51	276	120	447
Resource Type	Group 1 <u>Lands</u>	Group 2 <u>Lands</u>	Group 3 <u>Lands</u>	Total <u>Sites</u>
New York State or National Register of Historic Places	0	11	0	11
Buildings and Structures (50 years plus)	12	55	0	67
Archaeologically Sensitive Properties	33	116	0	149
Archaeological Sites	<u>6</u>	<u>94</u>	<u>0</u>	<u>100</u>
Total Resource Count	51	276	0	327
Resource Type	Group 1 <u>Lands</u>	Group 2 <u>Lands</u>	Group 3 <u>Lands</u>	Total <u>Sites</u>
New York State or National Register of Historic Places	0	0	0	0
Buildings and Structures (50 years plus)	12	0	0	12
Archaeologically Sensitive Properties	33	0	0	33
Archaeological Sites	<u>6</u>	<u>0</u>	<u>0</u>	<u>6</u>
Total Resource Count	51	0	0	51
Resource Type	Group 1 <u>Lands</u>	Group 2 <u>Lands</u>	Group 3 <u>Lands</u>	Total <u>Sites</u>
New York State or National Register of Historic Places	0	0	0	0
Buildings and Structures (50 years plus)	0	0	0	0
Archaeologically Sensitive Properties	2	0	0	2
Archaeological Sites	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Resource Count	2	0	0	2
Resource Type	Group 1 <u>Lands</u>	Group 2 <u>Lands</u>	Group 3 <u>Lands</u>	Total <u>Sites</u>
New York State or National Register of Historic Places	0	1	0	1
Buildings and Structures (50 years plus)	12	49	10	71
Archaeologically Sensitive Properties	33	111	16	160
Archaeological Sites	<u>6</u>	<u>87</u>	<u>18</u>	<u>111</u>
Total Resource Count	51	248	44	343

of sites that was occurring around the U.S. at the time of its passage. The ARPA prohibits the unauthorized excavation of archaeological sites and artifacts on Federally-owned lands and establishes civil and criminal penalties for violations. A permit system regulates the undertaking of legitimate and scientific investigations of such sites on Federally-owned lands.

The NAGPRA clarifies ownership and control of Native American cultural items, including human remains that are excavated or discovered on Federal or tribal lands. The NAGPRA establishes a process by which Native Americans may claim remains and cultural items they believe have cultural affinity. In addition, the NAGPRA requires that if such materials or human remains are discovered during an excavation that the work stops until the lineal descendants or groups claiming cultural affiliation are consulted on the final disposition of the materials. The NAGPRA also addresses the final disposition of the materials once excavation is complete.

Section 106, which derives from the NHPA, establishes the process whereby cultural resources are evaluated and a regulatory process for their protection. Section 106 does not specify what constitutes a violation or provide for specific penalties. The New York State Historic Preservation Act, Article 14 is an out-growth of the NHPA. The NYSDEC, Section 14.09, and the SEQRA deal mostly with New York State and local agency responsibilities for the consideration of cultural resources in the planning, approval and implementation of projects including the survey, identification, and treatment of cultural materials. On a Federal level, the ARPA and the NAGPRA were enacted to strengthen the protection of archaeological sites and in particular, sites containing Native American materials. ARPA and NAGPRA only apply to Federal lands and lands under sovereign control. The laws include protection from interstate trafficking of artifacts and remains, which is a protection unavailable to states. Section 106 of the NHPA, New York State Article 14, the ARPA, and the NAGRPA, therefore, serve complimentary, although not identical, functions in the protection of archaeological resources and in particular Native American artifacts and remains.

Section 2 of the ARPA states the following:

“(a) The Congress finds that

- (1) Archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) These resources are increasingly endangered because of their commercial attractiveness;
- (3) Existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) There is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological

community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.”

Section 10.1 of the NAGPRA states the following:

“(a) Purpose: These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

(b) Applicability: (1) these regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:

- (i) In Federal possession or control; or
- (ii) In the possession or control of any institution or state or local government receiving Federal funds; or
- (iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.

(2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.”

Overview of Historic, Cultural, and Religious Properties

Section 3.6.3 Historic, Cultural, and Religious Properties describe the historic, cultural, and religious properties potentially affected by the Proposed Action and the alternatives. Table 3.6-1 provides a summary of cultural resources distributed among Group 1, 2 and 3 lands. Figures 3.6-1, 3.6-2 and 3.6-3 identify Nation lands located within 1,000 feet of sites listed on the New York State and National Register of Historic Places. Figures 3.6-4 through 3.6-13 identify Nation lands with buildings 50 years or older that have been evaluated for potential National Register of Historic Places eligibility.

There are no National Historic Landmarks on any Nation lands proposed for conveyance into trust. There are no New York State or National Register of Historic Places sites, structures or buildings contained on any Nation lands proposed for conveyance into trust but several are within 1,000 feet of Nation lands (see Appendix D). There are 11 such cultural resources in located within 1,000 feet of Group 2 lands and two located within 1,000 feet of Group 3 lands. One Nation parcel (Oneida Nation Police Department, Parcel 33 in Group 2 lands) lies within the bounds of a Historic District and a Multiple Resource Area in the Village of Canastota (South Peterboro Street Residential District). This parcel is also located within 1,000 feet of a second Historic District, the South Peterboro Street Commercial Historic District. Six sites on the National Register of Historic Places are located within 1,000 feet of Parcel 33. The two other sites on the National Register of Historic Places (on North Peterboro Street) are located within 1,000

feet of Nation Parcels 75, 76, 79, 80, 87, and 111 (all in Group 2 lands) in the Village of Canastota. Although not assigned any New York State or National Register of Historic Registers status, two Nation parcels (Parcel 75 and 76) at this locale make up an important Nation cultural-festival site. Two other sites on the National Register of Historic Places are located within 1,000 feet of Nation lands and include Parcel 166 (Group 3 lands, used for corn production) in the City of Oneida located adjacent to the Mt. Hope Reservoir and Parcel 112 (Group 2 lands, Standing Stone Gaming) in the Town of Vernon located within 1,000 feet of the Vernon Methodist Church.

The Nation (under the direction of the Nation Historian, Anthony Wonderley, Ph.D.) contracted an architectural historian (Ms. Cynthia A. Carrington) in the fall of 2005 to conduct a detailed survey and review of all structures 50 years or older located on lands proposed for conveyance into trust to determine their architectural significance and potential eligibility for listing on the National Register of Historic Places (see Appendix D). A total of 90 structures were recorded and evaluated by the Nation Historian. Three of the structures are considered eligible for inclusion on the New York State and National Registers of Historic Places and seven other structures are considered potentially eligible for listing; these structures are located on Parcels 16, 139, 159, 208, 209, 109, 237, and 251 in Group 2 lands and on Parcels 171 and 228 in Group 3 lands. The remaining 80 structures are considered to be architecturally insignificant. The results of this eligibility assessment were submitted to the SHPO for consultation purposes by the BIA on August 16, 2006.

Eighty-one Native American and Historic period archaeological sites have been previously recorded within the site files of the OPRHP, NYSM, and Office of the Nation Historian that are now located within or in proximity to the APE. More precise information concerning the locations of the sites is not provided in order to protect them from looters and to aid in their preservation. In addition, available data on the sites is insufficient to provide definitive information as to their boundaries. National Register of Historic Places significance evaluations for the sites have not been conducted by the OPRHP.

Accordingly, none of the sites are listed on the New York State or National Registers of Historic Places or have been determined eligible for listing. A preliminary evaluation of the eligibility of the sites was conducted for the EIS based upon the information available in the collections and files of the agencies identified above as well as the archaeological literature has determined that 36 of the sites are potentially eligible for listing on the New York State and National Registers of Historic Places and 12 of the sites are not eligible for listing (see Appendix D). Not enough information is available for a determination to be made of the remaining 33 archaeological sites. Regardless of their status, however, none of the identified archaeological sites will be affected by the trust action because the ground will not be disturbed and there will not be a change in property use. None of these sites are located on parcels with deteriorated structures slated for demolition by the Nation. Consultation with the OPRHP currently is ongoing concerning these National Register of

Historic Places status determinations and the potential effects or lack thereof that the Proposed Action will have on the archaeological sites.

In addition to sites, structures, buildings, and districts listed on the New York State and/or National Registers of Historic Places, there are cultural and religious properties which are important to the Nation contained on the lands proposed for conveyance into trust. These properties have special cultural and ancestral importance to Oneida heritage, tradition, and world view identity and they include, for example, the Shako: wi Cultural Center (Parcel 3, Group 2) that also includes burial grounds, the Ray Elm Children & Elders Center (Parcel 4, Group 2), the Festival Site (Parcels 75 and 76, Group 2), the Living History Reenactment Site (Parcel 259, Group 2) the traditional Three Sisters cropland and white corn sites (Parcels 211 and 33 in Group 3) and others. The ancestrally significant Nation properties typically support a combination of salient historic, cultural, and religious events and activities. There are a number of ancient Oneida burial sites and culturally important sites that have been acquired by the Nation specifically for this reason and are mostly contained in Group 3 lands; these are more fully described in Appendix D. A number of the properties discussed in the section are also associated with components considered archaeological resources as well.

4.6.1.1 Direct Effects

Direct effects, which are applied in various ways throughout this section, are:

- Those that could have a direct physical effect to a cultural resource;
- Those that could affect the regulation of that resource; and
- Those that could affect the Nation's ability and right to preserve and protect their culture on lands considered their aboriginal homeland.

While the implementation of the Proposed Action on the alternatives would have no direct physical effects on cultural resources, there are direct effects on both the regulation of those resources and the ability to preserve and protect the Nation's culture under the various alternatives and taxation-jurisdiction scenarios.

There are no direct adverse effects on cultural, historic, and religious properties resulting from the Proposed Action (Alternative A) or any of the alternatives (Alternatives B through F) including the No Action Alternative (Alternative G), which pertains to cultural resources located both on and off Nation lands. Direct effects in this sense are defined as physical or contextual effects (e.g., viewshed or character) to the resource as might occur if a site were developed or changed in some way. The Proposed Action or any of the alternatives do not involve the physical disturbance or modification to such cultural, historic or religious properties. None of the alternatives involve the construction of new buildings or facilities on Nation lands that could affect the integrity, setting, feeling or association of adjacent cultural, historic, and religious properties. Nation parcels within Historic Districts or within 1,000 feet of Historic Districts or resources listed on the New

York State and/or National Registers of Historic Places would simply transfer from Nation title to Federal title to be held in trust for the Nation. New York State and Federal protection afforded by Section 106 of the National Historic Preservation Act (16 U.S.C. 470 and 36 C.F.R. Part 800) for these districts and structures would still apply with the lands in trust or not in trust. The seven potentially eligible New York State and National Register of Historic Places structures located on Nation lands would still be afforded protection under Section 106.

The State of New York has asserted that trust status affects their ability to identify and protect cultural and historic properties on and adjacent to Nation lands conveyed into trust. Further, New York State has asserted that any inability to protect potentially significant cultural, historical, archaeological, and architectural resources including protection against potential viewshed impacts from future activities on Nation lands conveyed into trust would constitute a significant adverse effect. The Nation's ongoing and reasonably foreseeable plans do not involve activities that would physically affect such cultural resources or their viewsheds and, therefore, significant adverse effects are unlikely. The Nation has coordinated with the OPRHP in the past and has shared information contained in each others databases. It is reasonable to assume that this coordination would continue under Alternatives A through F for lands conveyed into trust.

Alternative A

Under Alternative A, all 17,370 acres of land in Groups 1, 2, and 3 would be conveyed into trust and afforded protection under the ARPA and the NAGPRA. This would result in additional protection to cultural, historic, and religious properties on their lands and would have a beneficial direct effect on the Nation. While New York State would not have jurisdictional authority over these cultural resources, they would still be afforded protection under Section 106 of the NHPA, the ARPA, and the NAGPRA.

Alternative B

Under Alternative B, an additional 17,630 acres of land could be conveyed into trust over time resulting in a Nation reservation of 35,000 acres. Alternative B would involve the same cultural, historic, and religious properties and cultural resources as Alternative A in addition to other cultural resources potentially located on those additional lands. Alternative B, from the standpoint of the Nation, could potentially protect the most cultural assets (e.g., villages, burial grounds, camp sites or religious sites) including some of which might contain interments that would be purchased by the Nation over time. Many of the Nation parcels especially in Group 2 and 3 lands were identified and purchased specifically because they contained cultural assets important to the Nation. It is reasonable to assume that additional cultural, historic, and religious properties and assets important to the Nation could be located on future properties comprising this alternative. These properties, all located within the Oneidas' reservation and aboriginal homeland, would be conveyed into trust at some point. Once in trust, these cultural assets would be

afforded the additional protection of the ARPA and the NAGPRA, which represents a direct beneficial effect to the Nation.

Alternative C

Cultural, historic, and religious properties and assets important to the Nation located on Group 3 lands would not be conveyed into trust and, therefore, not afforded the additional protection of the ARPA and the NAGPRA. Several of the Nation's significant cultural, historic, and religious properties (Parcels 136, 282, 310, and 315) are located on Group 3 lands within the Town of Stockbridge. Absent trust status, the protection afforded by the ARPA and the NAGPRA would not apply. The ARPA and the NAGPRA laws only apply to Federal public properties and Indian lands. Part of the need for conveying lands into trust is the preservation and protection of an Indian tribe's culture. The National Historic Preservation Act of 1966, Section 106 requires consultation with Indian tribes to protect cultural assets. Historical artifacts and human remains, however, are afforded an additional level of protection when occurring on Federal public lands or Indian lands. New York State would assert its jurisdiction over cultural properties contained on Group 3 lands not in trust. Protection afforded by Section 106 of the NHPA would also apply to the lands not conveyed into trust.

Alternative D

Cultural, historic, and religious properties and assets important to the Nation located on Group 2 and 3 lands would not be conveyed into trust and, therefore, not afforded the additional protection of the ARPA and the NAGPRA. Absent trust status, the protection afforded by the ARPA and the NAGPRA would not apply. The same adverse effects on the Nation described under Alternative C would apply. New York State would assert its jurisdiction over cultural properties contained on Group 2 and 3 lands not in trust but not those sites or sensitive properties on Group 1 lands. Protection afforded by Section 106 of the NHPA would also apply to the lands not conveyed into trust.

Alternative E

Under Alternative F, only the single Turning Stone Resort & Casino tax lot totaling approximately 225 acres in size would be conveyed into trust. Cultural, historic, and religious properties and assets important to the Nation located on Group 2 and 3 lands would not be conveyed into trust in addition to other New York State identified sites and sensitive properties on Group 1 lands, and, therefore, not afforded the additional protection of the ARPA and the NAGPRA. The same potential effects to the Nation described under Alternative C would apply. The direct effects asserted by the New York State on their jurisdiction over cultural resources for lands conveyed into trust would not apply as none are located on this tax lot. New York State would assert its jurisdiction over cultural properties located on Group 1, 2, and 3 lands. Protection afforded by Section 106 of the NHPA would also apply to the lands not conveyed into trust.

Alternative F

Under Alternative F, all Group 1 lands and the majority of Group 2 lands would be conveyed into trust along with some Group 3 lands. The Group 2 lands comprising this alternative would include some of the most significant and important Nation cultural properties such as burial grounds located in Madison County, festival sites, the Shako: wi Cultural Center, and the Ray Elm Children & Elders Center. However, a significant cultural property located in the Town of Cazenovia, Madison County containing multiple resource components (Parcel 57) would not be included. In addition, Alternative F includes two parcels (Parcel 255, Parcel 314) containing cultural resources. These sites are two of the most significant cultural, historic, and religious properties of the Nation. These sites also have significant importance to the State of New York. These sites are more fully described in Section 3.6.3 Historic, Cultural, and Religious Properties and in Appendix D. These properties are located within the Oneidas' reservation and aboriginal homeland. Once in trust, these cultural assets would be afforded the additional protection of the ARPA and the NAGPRA. Some of the cultural, historic, and religious properties and assets important to the Nation located on Group 2 and 3 lands would not be conveyed into trust under this alternative and, therefore, not afforded the additional protection of ARPA and NAGPRA. Several of the Nation's significant cultural, historic and religious properties (Parcels 136, 282, 310, and 315) are located in Group 3 lands within the Town of Stockbridge and are subject to a competing tribal claim. The same direct adverse effects to the Nation described under Alternative C would apply if these lands are not conveyed into trust. New York State would assert its jurisdiction over cultural properties contained on Group 2 and 3 lands not conveyed into trust. Protection afforded by Section 106 of the NHPA would also apply to the lands not conveyed into trust.

Alternative G

Under Alternative G, Nation lands containing cultural, historic, and religious properties will not be conveyed into trust. There are no direct physical effects to such properties or cultural resources under the No Action Alternative (Alternative G). If the lands are not in trust, the Nation's cultural assets would not be afforded protection under the ARPA and the NAGPRA. The ARPA and the NAGPRA laws only apply to Federal public properties and Indian lands.

Applicable New York State laws and regulations would apply to lands not in trust (SHPA, Article 14 ECL, Sections 3.09 and 14.09 of New York State Parks, Recreation and Historic Preservation Law, 9 NYCRR Part 428). The No Action Alternative would allow New York State to assert jurisdiction over cultural, historic, and religious resources including the viewsheds of such resources. Section 106 of the NHPA (16 U.S.C. 470 and 36 C.F.R. Part 800) would still apply under the No Action Alternative as with any of the other trust alternatives.

There are three taxation-jurisdiction scenarios which apply to alternatives where some lands (Alternatives C through F) or no lands (Alternative G) are conveyed into trust. The No Action Alternative (Alternative G) also has the additional CC-AEC scenario. These scenarios only apply to those alternatives that exclude lands from conveyance into trust (Alternatives C through G)

The Nation would retain title to the lands not in trust but would submit to regulation of cultural, historic, and religious properties under applicable New York State laws under the PTP scenario. Section 106 of the NHPA (16 U.S.C. 470 and 36 C.F.R. Part 800) would apply. The Nation would not assert sovereign control over its cultural resources. Cultural resources would not be afforded additional protection under the ARPA and the NAGPRA.

The PTNP-F scenario would have the same adverse regulatory and cultural effects to the Nation as the PTP scenario, but with the added adverse effect that properties containing cultural, historic, and religious resources might be foreclosed or alienated away from the Nation. Loss of these properties and the cultural assets would also have a direct significant adverse effect on the Nation.

The Nation would retain title to the lands and apply control of cultural, historic, and religious properties under the PTNP-DC scenario, but absent the additional protection afforded under the ARPA and the NAGPRA. The Nation would continue to apply its cultural resources ordinances and manage the properties as it has in the past. New York State regulation of cultural resources would remain in dispute.

Under the CC-AEC scenario, the Turning Stone Resort & Casino would close and lands containing cultural resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The CC-AEC scenario would have a significant adverse effect on the Nation's self-governance and protection of important cultural resources.

Summary of Direct Effects

There are no direct physical effects on Nation-owned or non-Nation cultural, historic, and religious properties resulting from the implementation of the Proposed Action (Alternative A), any of the trust alternatives (Alternatives B through F) or the No Action Alternative (Alternative G). The various trust action alternatives (Alternatives A through F) involve different land groupings and Nation parcels. As a result, different Nation and non-Nation resources would be involved in each. Different alternatives would involve different Nation lands with structures 50 years or older with some eligible or potentially eligible for listing on the National Register of Historic Places. Regardless of the alternative, Federal laws and regulations still apply to all lands not conveyed into trust with the exception of the ARPA and the NAGPRA. Federal law applies to lands in trust with the additional protection of the ARPA and the NAGPRA. No currently listed sites, structures, or districts on the New York State or National Register of Historic Places would be conveyed into

trust under any alternative. National Historic Landmarks would not be affected under the Proposed Action or any of the alternatives. Under some alternatives, the Federal government would convey into trust some structures on Nation lands eligible for listing on the New York State and National Register of Historic Places.

Alternatives affording greater trust protection and sovereign control over Oneida cultural, historic, and religious properties would have a greater beneficial direct effect on the Nation than those affording less protection and less control. These alternatives could be viewed as best fulfilling the Nation's purpose and need for placing lands into trust with the BIA. In this regard, the implementation of Alternative A would be superior to the implementation of Alternative F and both the implementation of alternatives would be superior to the implementation of Alternative C. The implementation of Alternatives D and E would be the least desirable as Group 2 and 3 lands contain the cultural resources important to the Nation. The implementation of Alternative B could potentially accommodate the most cultural, historic, and religious properties since both identified and yet to be identified Oneida sites (not yet owned by the Nation) containing cultural assets (e.g., villages, religious sites) including some which might contain interments, would be purchased by the Nation over time. The implementation of Alternative G results in none of the Nation's cultural resources and properties being conveyed into trust; Alternative G fails to support the purpose and need expressed by the Nation.

4.6.1.2 Indirect Effects

As defined in Section 4.1 Introduction, indirect effects can be caused by an action but occur later in time or farther removed in distance from the action, and are still reasonably foreseeable. Potential adverse indirect effects on Nation-owned cultural, historic, and religious properties may occur under alternatives where lands are not afforded trust protection. In addition, there is also a potential indirect effect on the Nation's culture if cultural properties and assets are not afforded trust protection. There are no identified indirect effects on the New York State regulation of cultural properties.

Alternatives acquiring fewer Nation cultural resources that are not afforded protection under the ARPA and the NAGPRA potentially have a greater indirect effect on cultural resources contained there. Absent trust status, the protection afforded by the ARPA and the NAGPRA would not apply. Lands and the historical artifacts and human remains contained there would not be afforded this more comprehensive protection. Several Nation lands contain identified cultural, historic, and religious resources critical to the history of the Oneida as a distinct Indian tribe. The Nation acquired (through purchase) these previously alienated lands within their aboriginal homeland specifically to preserve their artifacts, culture, and heritage. Part of the need for conveying lands into trust is the preservation and protection of cultural materials and tribal heritage. The NHPA, Section 106 requires consultation with Indian tribes to protect cultural assets. Historic artifacts

and human remains, however, are afforded an additional level of protection when they are located on Federal public lands or Indian lands.

Under Alternative A and Alternative B, all of Nation lands are conveyed into trust. All cultural, historic, and religious assets of the Nation contained on these properties would be afforded additional Federal protection including the restriction from future alienation. Thus, implementation of Alternatives A and B would not result in indirect adverse effects to cultural resources or to the Nation's culture.

Implementation of Alternative C would exclude important cultural, historic, and religious assets located on Group 3 lands, the most important of which are in the Towns of Stockbridge, Fenner, Lincoln and Smithfield in Madison County. Implementation of Alternative D or Alternative E would convey none of the Nation's important cultural, historic, and religious properties into trust. Implementation of Alternative F would include some of the Nation's important cultural sites but would exclude some sites located on Group 2 and 3 lands.

Under Alternatives C through G, lands not conveyed into trust and cultural materials contained there would not be afforded protection under the ARPA and the NAGPRA. Lack of these protections could have an indirect adverse effect on both the physical resources and the Nation's culture if these lands are foreclosed and the properties or cultural assets are disturbed by others. Under Alternative G, none of the Nation's cultural assets would receive protection under the ARPA and the NAGPRA. The potential adverse indirect effects on the Nation's cultural properties, assets, and culture are far more significant under Alternative G than under the other alternatives.

There are three taxation-jurisdiction scenarios which apply to alternatives where some lands (Alternatives C through F) or no lands (Alternative G) are conveyed into trust. The No Action Alternative (Alternative G) also has the additional CC-AEC scenario. These scenarios only apply to those alternatives that exclude lands from conveyance into trust (Alternatives C through G).

The Nation would retain title to the lands not in trust but would submit to regulation of cultural, historic, and religious properties under applicable New York State laws Under the PTP scenario. The SHPA (Article 14 ECL, Sections 3.09 and 14.09 of New York State Parks, Recreation and Historic Preservation Law, 9 NYCRR Part 428) and Section 106 of the NHPA (16 U.S.C. 470 and 36 C.F.R. Part 800) would apply. The Nation would not assert sovereign control over its cultural resources. Cultural resources would not be afforded additional protection under the ARPA and the NAGPRA.

The PTNP-F scenario would have the same adverse cultural effects on the Nation as the PTP scenario, but with the added adverse effect that properties containing cultural, historic, and religious resources could be foreclosed or alienated away from the Nation.

Loss of these properties could result in an indirect effect on cultural assets if the properties are affected by future development activities on these lands by others.

Under the PTNP-DC scenario, the Nation would retain title to the lands and apply control of cultural, historic, and religious properties but absent the additional protection afforded under the ARPA and the NAGPRA. The Nation would continue to apply its cultural resources ordinances and manage the properties as it has in the past. New York State regulation of cultural resources would remain in dispute.

Under the CC-AEC scenario, the Turning Stone Resort & Casino would close and lands containing cultural resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The CC-AEC scenario would have a significant adverse indirect effect on the Nation's assets and culture.

There are no indirect adverse effects on non-Nation cultural, historic, and religious properties from any of the alternatives. None of the alternatives involve the physical disturbance, contextual or viewshed modification to non-Nation properties that might indirectly affect a resource. None of the alternatives involve the construction of new buildings or facilities on Nation lands that could indirectly affect the integrity, setting, perception or association of adjacent non-Nation cultural, historic, and religious properties.

4.6.1.3 Cumulative Effects

Cumulative effects are the effects beyond those solely attributable to the implementation of the Proposed Action or any of the alternatives, which result from the incremental effect of the action when added together with other past, present, and reasonably foreseeable future actions. There are several points worth considering when assessing whether cumulative effects on cultural, historic, and religious properties could potentially occur. First, whether the cultural resources may be especially vulnerable to incremental effects under any of the alternatives and second, whether these effects have been historically significant for this resource. The same points can be stated for cumulative effects to the Nation and the Oneida culture.

Essentially, there are two broad categories of potential cumulative effects on cultural, historic, and religious properties:

- Cumulative effects resulting from lands held in trust by the U.S. government, and
- Cumulative effects resulting from lands not held in trust by the U.S. government.

The former category results in more comprehensive Federal protection, tribal sovereignty, and restriction from foreclosure or alienation of cultural resources while the latter category does not.

Past historical actions adversely affecting the Oneida and their cultural, historical, and religious sites and materials include the alienation of their reservation and aboriginal homeland and the loss and destruction of cultural assets contained there. Many Oneida sites as recorded by the Nation Historian have (prior to purchase by the Nation) been disturbed by amateur archaeologists and artifact seekers. The pattern of disturbance goes back decades and physical evidence can still be seen on some parcels (e.g., pits, trenches, stakes, and mesh screens for sieving artifacts). Some of these disturbances have involved grave sites and interments. Since taking possession of some of their cultural assets, the Nation has implemented a program to preserve and protect the sites on those parcels as well as to archive important artifacts and data recorded from those sites. These sites are now part of important Nation programs regarding cultural, historic, and religious education to both Nation members and non-Nation members alike.

Those alternatives acquiring fewer Nation cultural resources that are not afforded protection under the ARPA and the NAGPRA potentially have a greater indirect effect on cultural resources contained there and on the Nation's culture. Elimination of the protection afforded by the ARPA and the NAGPRA potentially subjects these cultural resources to future impacts by others. Foreclosure or alienation of these lands again could make these cultural resources vulnerable to additional future effects and exacerbate historical damages to Oneida cultural assets that include village sites, camp sites, and burial grounds. Potential future damages to cultural properties not held in trust could affect a resource that has yielded or may likely yield information and artifacts important to the prehistory or history of the Nation, New York State, Madison and Oneida Counties or the U.S.

4.6.2 Archaeological Resources

Significance Criteria

For the purposes of defining whether the Proposed Action or any of the alternatives the including No Action Alternative (collectively referred to as the action) have a potentially significant adverse effect on archaeological resources or on the Nation, the following are considered. Whether the action is likely to directly, indirectly or cumulatively:

- Cause an adverse change in the significance of an archaeological resource;
- Directly or indirectly destroy a unique archaeological or historical resources or records that are sacred or ritually important;
- Affect a resource that has yielded or may likely yield, information important to the archaeological record of Madison and Oneida Counties, New York State, the Nation or the U.S.;
- Potentially alienate control of archaeological resources including human remains and burial grounds that are important to the cultural and historical record of the Nation and afforded protection under the Federal ARPA (16 U.S.C. 470 and 25 C.F.R. Part 262, 43 CFR Parts 6 and 7) and the NAGPRA (25 U.S.C. 3001 and 40

C.F.R. Part 10). Refer to the overview of the ARPA and the NAGPRA in Section 4.6.1 Cultural, Historic, and Religious Properties.

Overview of Archaeological Resources

Section 3.6.4 Archaeological Resources of the Affected Environment describes the archaeological resources potentially affected by the Proposed Action and any of the alternatives. Table 3.6-3 provides a summary of archaeological sensitive properties (192) and identified sites (157) distributed in and among Group 1, 2, and 3 lands. Figures 3.6.-14 through 3.6.-24 identifies the general locations of previously identified archaeological sites by USGS Quadrangle that are associated with Nation lands. These data are derived from OPRHP, NYSM, and Nation Historian files. OPRHP file review and consultations with staff occurred on November 18, 2005, December 13-15, 2005, and December 19, 2005. Figures 3.6.-25 through 3.6.-33 identifies Nation parcels by USGS Quadrangle located within OPRHP areas of prehistoric archaeological (Native American) sensitivity.

Eighty-one Native American and historic period archaeological sites have been previously recorded within the sites files of the OPRHP, NYSM or Office of the Nation Historian that are now located within or in proximity to the APE for the Proposed Action. All of these sites are located within the Oneida's reservation and aboriginal homeland. National Register of Historic Places significance evaluations for the sites have not been conducted by the OPRHP nor has such evaluations been requested. However, a preliminary evaluation of the eligibility of the sites was conducted for the trust transfer (conducted by Eugene J. Boesch, Ph.D. Principal Archaeologist, MP) based upon a field site reconnaissance, a review of information available in the collections and files of the OPRHP, NYSM, and the Office of the Nation Historian as well as the archaeological literature. This evaluation has determined that 36 of the sites are potentially eligible for listing on the New York State and National Registers of Historic Places and 12 of the sites are not eligible for listing. Not enough information is available for a determination to be made for the remaining 33 archaeological sites. None of the sites are listed on the New York State or National Registers of Historic Places or have been determined eligible for listing. Appendix D provides detailed information on these sites. Precise location information for them is not provided since it is considered confidential in order to aid in their preservation.

Numerous sites are specific to the Oneida and illustrate a pattern of historic occupation on these lands spanning almost 500 years beginning around 1350 (Nichols Pond, c. 1350-1400) through 1820 (Oneida Castle, c. 1762-1820). These sites include camp sites (10), village/habitation sites (32) of which nine contained burials, other mortuary sites (11), and sites (2) of stray finds. Twenty-seven of the village sites comprise the accepted Oneida village development sequence (refer to Section 3.6.4.1 Previously Identified Archaeological Sites for a listing of these sites). Of the 27 sites, nine of them are located on Nation lands. Some of the nine sites contain burials. Of these nine sites, three are located Group 2 lands and six are location Group 3 lands. No previously recorded sites are location Group 1

lands. Six of the 27 sites are located within the immediate vicinity (1,000 feet) of Nation lands. Some of the more notable archaeological sites located within Group 2 lands or its APE include those referred to as Nichols Pond, Sterling, Oneida Castle, and McNab. Within Group 3 lands or its APE, sites identified include those referred to as Vaillancourt, Dungey, Simpson, Wilson, Marsh, Stone Quarry, and Onneyuttehage. Twelve other sites, concentrated primarily in the Towns of Stockbridge and Smithfield, are not located on or within 1,000 feet of Nation lands. All are village site types and at least five are associated with burials. These sites lie in an around the very center of the Oneida aboriginal homeland.

One site located in the Town of Stockbridge, but not on the Nation's lands, known as Primes Hill, also has spiritual significance to the Oneida culture. Oneida legend says that as they moved throughout their territory, they were followed by a large granite stone which finally rested upon one of the highest hills in their lands. Thus, they came by the name by which they refer to themselves, the People of the Standing Stone. The Oneida looked upon this stone as an entity that possessed life and intelligence, hence the word Oneida in the original Native dialect from *Onei* meaning stone and *ta* signifying life or living stone. The stone was a symbol of their culture and identity, their very essence accordingly. The Oneida were known by the placement of a stone marking the boundary of their villages. It is thought that one of their earliest settlements, where the stone rested, was on Primes Hill. The hill was a place where the Oneida held councils and built beacon fires to communicate with other settlements. The Oneida settled and built their villages in valleys and along terraces in the surrounding area.

The OPRHP has also identified zones considered to be archaeologically sensitive for the presence of Native American sites. These zones contain environmental settings that are similar to those of previously identified sites accordingly, it is expected by the OPRHP that archaeological sites may be found anywhere within a sensitive zone. One hundred and ninety-two Nation parcels proposed for conveyance into trust are situated within the OPRHP zones of archaeological sensitivity for Native American sites. Of the 349 identified archaeological sites and sensitive properties, the majority occurs on or is located within 1,000 feet of Group 2 lands (210) and Group 3 lands (100). Thirty-nine sites/sensitive properties occur on or are located within 1,000 feet of Group 1 lands.

The wealth of information on these cultural resources and the association of the Nation with the lands which comprise the Proposed Action and any of the alternatives are evidence of:

- The long history and association of the Oneida with these specific lands;
- An even longer term occupation of the area by prior Native American cultures;
- and,

- The importance of these lands to Oneida heritage, tradition, culture, identity and world view both spiritually and to developed lifeways and adaptations.

The lands that the Nation purchased beginning around 1987 are previously guaranteed to them through Federal treaties, the most significant of which is the 1794 Treaty of Canandaigua. This treaty acknowledges an area of some 300,000 acres within the larger 6 million-acre Oneida aboriginal homeland in Central New York State. The significant archaeological sites are all located within this area and are the reason that the Nation purchased these specific, previously alienated lands instead of lands elsewhere in New York State.

4.6.2.1 Direct Effects

Direct effects are applied in various ways throughout this section; those that could have a direct physical effect to an archaeological resource, those that could affect the regulation of that resource, and those that could affect the Nation's ability and right to preserve and protect their culture on lands considered their aboriginal homeland. While there are no direct physical effects to archaeological resources, there are direct effects to both the regulation of those resources and the ability to preserve and protect the Nation's culture under the various alternatives and taxation-jurisdiction scenarios.

There are no physical effects on archaeological resources resulting from the implementation of the Proposed Action (Alternative A) or any of the alternatives (Alternatives B through F) including the No Action Alternative (Alternative G). This pertains to archaeological resources both on and off Nation lands. Direct effects in this sense are defined as physical effects to the resource as might occur if a site were developed or changed in some way. The Proposed Action or any of the alternatives do not involve the physical disturbance or modification to such archaeological resources. None of the alternatives involve the physical disturbance or modification to properties containing archaeological resources. None of the alternatives involve the construction of new buildings or facilities on Nation lands that could affect the integrity, setting, feeling or association of adjacent cultural, historic, and religious properties.

The State of New York has asserted that the inability to identify and protect archaeological resources on or adjacent to lands conveyed into trust, including working with local communities to balance the consideration of environmental effects against project needs on such lands, would constitute a significant adverse effect on the people of the State of New York. This concern of New York State would presumably apply to all alternatives where lands are conveyed into trust. Further, New York State has asserted that any inability to protect archaeologically significant resources would constitute a significant adverse effect. The Nation's ongoing and reasonably foreseeable plans do not involve activities that would directly affect such archaeological resources, therefore, adverse effects are unlikely.

The Nation has enacted the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance (Ordinance Number 00-01), which establishes procedures for identifying, evaluating, and protecting cultural, historical, and archaeological resources of the Nation. They have a Historic Preservation Committee empowered to recommend purchasing of sites with cultural resources and to implement study on existing lands for information recovery, education, or avoidance of effects. This committee consists of cultural resource experts and an Oneida Council Member. The Nation has appointed a representative historian (Nation Historian) to oversee the collection, study, and archiving of its cultural materials; the Nation has coordinated with the OPRHP in the past and has shared information contained in each others' databases. The Nation and the SHPO signed a cooperative agreement on March 18, 2004 agreeing to share archaeological site file information (see Appendix D). It is reasonable to assume that this coordination would continue in the future under Alternatives A through F for lands conveyed into trust and will serve to help mitigate the type of concerns expressed by New York State.

Alternative A

Under Alternative A, all 17,370 acres of Group 1, 2, and 3 lands would be conveyed into trust and afforded protection under the ARPA and the NAGPRA. This would result in additional protection to archaeological resources on their lands and would have a beneficial direct effect on the Nation. The effects asserted by New York State on their jurisdiction over archaeological resources would appear less than significant given that a cooperative agreement is in place with the SHPO and that the Nation regulates archaeological resources on its lands through a dedicated historian and application of the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance.

Alternative B

Under Alternative B, an additional 17,630 acres of land could be conveyed into trust over time resulting in a total trust land area of 35,000 acres. Implementation of Alternative B would involve all of the archaeological resources located within Alternative A in addition to other resources potentially located on those lands. Alternative B from the standpoint of the Nation could be viewed as the most preferable alternative since both identified and yet to be identified Oneida archaeological sites not yet owned by the Nation containing cultural assets (e.g., villages, burial grounds, and artifacts), including some which might contain interments, would be purchased by the Nation over time. Many of the Nation parcels especially located in Group 2 and 3 lands were identified and purchased specifically because they contained archaeological resources important to the Nation. It is reasonable to assume that additional archaeological resources important to the Nation could be located on future properties comprising this alternative. These properties, all located within the Oneida reservation and aboriginal homeland, would be conveyed into trust at some point. Once in trust, the cultural assets would be afforded additional protection of the ARPA and the NAGPRA, which represents a beneficial direct effect to the Nation. The effects asserted by New York State on their jurisdiction over

archaeological resources would appear less than significant given that a cooperative agreement is in place with the SHPO and that the Nation regulates archaeological resources on its lands through a dedicated historian and application of the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance.

Alternative C

Archaeological resources important to the Nation located Group on 3 lands would not be conveyed into trust and, therefore, are not afforded the additional protection of the ARPA and the NAGPRA. Several of the Nation's significant archaeological resource (Parcels 136, 171, 255, 282, 310, and 314) are located on Group 3 lands located within the Towns of Stockbridge, Lincoln, Fenner, and Smithfield. Four of these sites are located in the Town of Stockbridge (Parcels 136, 171, 282, and 310). Absent trust status, archaeological resources are not afforded the protection of the ARPA and the NAGPRA. The ARPA and the NAGPRA only apply to Federal public properties and Indian lands. Part of the need for conveying lands into trust is the preservation and protection of an Indian tribe's culture. The National Historic Preservation Act of 1966, Section 106 requires consultation with the Indian tribes to protect cultural assets. Historical artifacts and human remains, however, are afforded an additional level of protection when occurring on Federal public lands or Indian lands. New York State would assert its jurisdiction over archaeological resources contained on Group 3 lands not in trust. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust. The effects asserted by New York State on their jurisdiction over archaeological resources located on Group 1 and 2 lands would appear less than significant given that a cooperative agreement is in place with the SHPO and that the Nation regulates archaeological resources on its lands through a dedicated historian and application of the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance.

Alternative D

Under Alternative D, archaeological resources important to the Nation that are located on Group 2 and 3 lands would not be conveyed into trust and, therefore, not afforded the additional protection of the ARPA and the NAGPRA. These resources would include those Group 3 lands mentioned under Alternative C with the addition of Group 2 lands containing significant archaeological resources (Parcel 57 in the Town of Cazenovia; Parcels 138, 139, 140, 142, and 150 in the Town of Verona and the Village of Sylvan Beach; Parcel 297 in the Town of Vernon or the site known as Oneida Castle). Absent trust status, the protection afforded by the ARPA and the NAGPRA would not apply. The same potential effects on the Nation described under Alternative C would apply. This alternative would not include any of the Nation's identified archaeological sites but would include six previously identified sites by New York State. The effects asserted by New York State on their jurisdiction over archaeological resources located on Group 1 lands would appear less than significant given that a cooperative agreement is in place with the SHPO and that the Nation regulates archaeological resources on its lands through a

dedicated historian and application of the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance. New York State would assert its jurisdiction over cultural properties located on Group 2 and 3 lands. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust.

Alternative E

Under Alternative E, only the Turning Stone Resort & Casino gaming floor tax lot totaling approximately 225 acres in size would be conveyed into trust. Archaeological resources important to the Nation located on Group 2 and 3 lands would not be conveyed into trust, in addition to other New York State identified sites and sensitive properties on Group 1, lands and, therefore, not afforded the additional protection of the ARPA and the NAGPRA. The same direct effects on the Nation described under Alternative C would apply. The direct effects asserted by the New York State on their jurisdiction over cultural resources for lands conveyed into trust would not apply as none are located on the grounds of the Turning Stone Resort & Casino New York State would assert its jurisdiction over cultural properties contained on Group 1, 2, and 3 lands. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust.

Alternative F

Under Alternative F, all Group 1 lands and the majority of Group 2 lands would be conveyed into trust along with some Group 3 lands. The Group 2 lands comprising this alternative would include two significant Oneida archaeological resources (Parcels 138, 139, 140, 142, and 150 in the Town of Verona and the Village of Sylvan Beach; Parcel 297 in the Town of Vernon or the site known as Oneida Castle). However, a significant archaeological resource property (Parcel 57) in the Town of Cazenovia, Madison County, containing multiple resource components (e.g., Late Woodland, burial, Protohistoric Oneida village) would not be included. In addition, Alternative F includes two parcels located on Group 3 lands (Parcel 255; Parcel 314) containing Oneida archaeological resources. These sites are two of the most significant archaeological properties for the Nation and they also have significant importance to the State of New York. These sites are more fully described in Section 3.6.3 Historic, Cultural, and Religious Properties and in Appendix D. Once in trust, these cultural assets would be afforded the additional protection of the ARPA and the NAGPRA. Some of the archaeological resources important to the Nation and located on Group 3 lands would not be conveyed into trust under this alternative and, therefore, are not afforded the additional protection of the ARPA and the NAGPRA. Four of the Nation's most significant archaeological resource properties (Parcels 136, 171, 282, and 310) are located on Group 3 lands within the Town of Stockbridge. The same direct effects on the Nation described under Alternative C would apply to these sites. The direct effects asserted by New York State on their jurisdiction over cultural resources for lands conveyed into trust would not seem to apply given the

cooperative agreement in place and the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance. New York State would assert its jurisdiction over cultural properties contained on Group 1, 2, and 3 lands not conveyed into trust. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust.

Alternative G

Under Alternative G, none of the lands containing archaeological resources are conveyed into trust. There are no direct physical adverse effects on cultural resources. However, there is an effect on the Nation in that they would not attain control over lands containing archaeological resources (including burial grounds, possible interments, village sites, camp sites, and associated artifacts). Under the No Action Alternative, cultural resources would not be provided the additional protection under the ARPA and the NAGPRA. The ARPA and the NAGPRA laws only apply to Federal public properties and Indian lands.

Applicable New York State laws and regulations would apply to lands not in trust (SHPA, Article 14 ECL, Sections 3.09 and 14.09 of New York State Parks, Recreation and Historic Preservation Law, 9 NYCRR Part 428) under most taxation and jurisdiction scenarios. The No Action Alternative would potentially allow New York State to assert jurisdiction over archaeological resources. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 & 36 C.F.R. Part 800) would still apply under the No Action Alternative as with any of the other trust alternatives.

There are three taxation-jurisdiction scenarios which apply to alternatives where some lands (Alternatives C through F) or no lands (Alternative G) are conveyed into trust. The No Action Alternative, (Alternative G) also has the additional CC-AEC scenario. These scenarios only apply to those alternatives that exclude lands from conveyance into trust (Alternatives C through G).

The Nation would retain title to the lands not in trust but would submit to regulation of archaeological resources under applicable New York State laws under the PTP scenario. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 & 36 C.F.R. Part 800) would apply. The Nation would not assert sovereign control over archaeological resources. Archaeological resources would not be afforded additional protection under the ARPA and the NAGPRA.

The PTNP-F scenario would have the same adverse effects on the Nation as the PTP scenario but with the added adverse effect that properties containing archaeological resources might be foreclosed or alienated away from the Nation.

Under the PTNP-DC scenario, the Nation would retain title to the lands and apply control of archaeological resources but absent the additional protection afforded under the ARPA and the NAGPRA. The Nation would continue to apply the Oneida Indian Nation

Cultural, Historical or Archeological Resources Ordinance and manage the properties as it has in the past. New York State regulation of archaeological resources would remain in dispute.

Under the CC-AEC scenario, the Turning Stone Resort & Casino would close and lands containing archaeological resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The CC-AEC scenario would have a significant adverse effect on the Nation and their rights to govern and protect resources important to their culture.

Summary of Direct Effects

There are no direct physical adverse effects on archaeological resources resulting from the implementation of the Proposed Action (Alternative A), any of trust alternatives (Alternatives B through F) or the No Action Alternative, (Alternative G). The various trust action alternatives (Alternatives A through F), however, do involve different land groupings and Nation parcels. As a result, different Nation and non-Nation archaeological resources would be involved in each. Different alternatives would involve different Nation properties with archaeological resources, within 1,000 feet of other sites with archaeological resources or within areas determined by the OPRHP to be generally sensitive for archaeological resources (refer to Figures 3.6.14 through 3.6.33). Regardless of the alternative, Federal laws and regulations still apply to all lands not conveyed into trust with the exception of the ARPA and the NAGPRA. Federal law applies to lands in trust with the additional protection of the ARPA and the NAGPRA.

Alternatives affording greater trust protection and sovereign control over Nation archaeological resources would have a greater beneficial direct effect to the Nation than those affording less protection and less control. These alternatives could be viewed as best fulfilling the Nation's purpose and need for placing lands into trust with the BIA. In this regard, the implementation of Alternative A would be superior to the implementation of Alternative F and both (Alternatives A and F) would be superior to Alternative C. Implementation of Alternatives D and E would be the least desirable as Group 2 and 3 lands contain the archaeological resources that are most important to the Nation. Implementation of Alternative B could potentially accommodate the most Oneida archaeological resources since both identified and yet to be identified Oneida sites (not yet owned by the Nation) containing cultural assets (e.g., villages, burial grounds, and camp sites) including some which might contain interments, would be purchased by the Nation over time. These sites, located within the Oneida reservation and aboriginal homeland, would be conveyed into trust at some point. Once in trust, these cultural assets would be afforded the additional protection of the ARPA and the NAGPRA. Implementation of Alternative G results in none of their cultural resources and properties conveyed into trust. As a result, Alternative G fails to support the purpose and need expressed by the Nation.

4.6.2.2 Indirect Effects

As defined in Section 4.1 Introduction, indirect effects can be caused by an action but occur later in time or farther removed in distance from the action and are still reasonably foreseeable. Potential adverse indirect effects on archaeological resources on Nation lands may occur under alternatives where lands are not afforded trust protection. In addition, there is also a potential indirect effect on the Nation's culture if archaeological resources are not afforded trust protection. There are no identified indirect effects to the New York State regulation of archaeological resources.

Alternatives acquiring fewer Nation cultural resources that are not afforded protection under the ARPA and the NAGPRA potentially have a greater indirect effect on archaeological resources contained there. Absent trust status, the protection afforded by the ARPA and the NAGPRA would not apply. Lands and the historical artifacts and human remains contained there would not be afforded this more comprehensive protection. Several Nation lands contain identified archaeological resources critical to the history of the Oneida as a distinct Indian tribe. The Nation acquired (through purchase) these previously alienated lands within their aboriginal homeland specifically to preserve their artifacts, culture, and heritage. Part of the need for conveying lands into trust is the preservation and protection of cultural materials and tribal heritage. The NHPA, Section 106 requires consultation with Indian tribes to protect cultural assets. Historic artifacts and human remains, however, are afforded an additional level of protection when occurring on Federal public lands or Indian lands.

Under Alternatives A and Alternative B, all Nation lands are conveyed into trust. All archaeological resources contained on these properties would be afforded additional Federal protection including the restriction from future alienation. Thus, implementation of Alternatives A and B would not result in indirect adverse effects to archaeological resources or to the Nation's culture.

Implementation of Alternative C would exclude important archaeological resources located on Group 3 lands, the most important of which are in the Towns of Stockbridge, Fenner, Lincoln, and Smithfield in Madison County. Implementation of Alternative D and Alternative E convey none of the Nation's important cultural, historic, and religious properties into trust. Alternative F contains some of the Nation's important archaeological resources but excludes sites located on Group 2 and 3 lands.

Under Alternatives C through G, lands not conveyed into trust and archaeological resources contained there would not be afforded protection under the ARPA and the NAGPRA. Absent these protections, there could be an indirect adverse effect on both the physical resources and the Nation's culture if these lands are foreclosed and the properties or cultural assets are affected by others. Under Alternative G, none of the Nation's cultural assets would receive protection under the ARPA and the NAGPRA. The potential

adverse indirect effects on the Nation's cultural properties, assets, and culture are far more significant under Alternative G than under the other alternatives.

There are three taxation-jurisdiction scenarios that apply to alternatives where some lands (Alternatives C through F) or no lands (Alternative G) are conveyed into trust. The No Action Alternative (Alternative G) also has the additional CC-AEC scenario. These scenarios only apply to those alternatives that exclude lands from conveyance into trust (Alternatives C through G).

Under the PTP scenario, the Nation would retain title to the lands not in trust but would submit to regulation of archaeological resources under applicable New York State laws. The New York SHPA (SHPA, Article 14 ECL, Sections 3.09 and 14.09 of New York State Parks, Recreation and Historic Preservation Law, 9 NYCRR Part 428) and Section 106 of the National Historic Preservation Act (16 U.S.C. 470 & 36 C.F.R. Part 800) would apply. The Nation would not assert sovereign control over its archaeological resources. Archaeological resources would not be afforded additional protection under the ARPA and the NAGPRA.

The PTNP-F scenario would have the same adverse cultural effects on the Nation as the PTP scenario, but with the added adverse effect that properties containing cultural, historic and religious resources could be foreclosed or alienated away from the Nation. Loss of these properties could result in an indirect effect on cultural assets if the properties are affected by future development activities on these lands by others.

Under the PTNP-DC scenario, the Nation would retain title to the lands and control archaeological resources on the lands but absent the additional protection afforded under the ARPA and the NAGPRA. The Nation would continue to apply the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance and manage the properties as it has in the past. New York State regulation of cultural resources would remain in dispute.

Under the CC-AEC scenario, the Turning Stone Resort & Casino would close and lands containing archaeological resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The CC-AEC scenario would have a significant adverse indirect effect to the Nation's archaeological resources and culture.

There are no indirect adverse effects on non-Nation archaeological resources from any of the alternatives. None of the alternatives involve the physical disturbance to archaeological resources. None of the alternatives involve the construction of new buildings or facilities on Nation lands that could indirectly affect the integrity, setting, perception or association of archaeological resources on adjacent non-Nation lands.

4.6.2.3 Cumulative Effects

Cumulative effects include effects beyond those solely attributable to the implementation of the Proposed Action or alternatives that result from the incremental effect of the action when added together with other past, present, and reasonably foreseeable future actions.

There are several points worth considering when assessing whether cumulative effects on archaeological resources could potentially occur. First, whether the resources may be especially vulnerable to incremental effects under any of the alternatives and second, whether these effects have been historically significant for this resource. The same points can be stated for cumulative effects on the Nation and Oneida culture.

Therefore, there are two broad categories of potential cumulative effects to archaeological resources that are:

- Cumulative effects resulting from lands held in trust by the U.S. government and
- Cumulative effects resulting from lands not held in trust by the U.S. government

The former category results in more comprehensive Federal protection, tribal sovereignty, and restriction from foreclosure or alienation of archaeological resources while the latter category does not.

Past historical actions adversely affecting the Oneida and archaeological sites and materials include the alienation of their reservation and aboriginal homeland and the loss and destruction of cultural materials contained there. Many Oneida sites, as recorded by the Nation's Historian, have (prior to purchase by the Nation) been disturbed by amateur archaeologists and artifact seekers. The pattern of disturbance goes back decades and physical evidence can still be seen on some parcels (e.g., pits, trenches, stakes, and mesh screens for sieving artifacts). Some of these disturbances have involved grave sites and interments. Since taking possession of some of their cultural assets, the Nation has implemented a program to preserve and protect the sites on those parcels as well as to archive important artifacts and data recorded from those sites. These sites are now part of important Nation programs regarding cultural, historic, and religious education to both Nation members and non-Nation members alike.

Those alternatives acquiring fewer Oneida archaeological sites that are not afforded protection under the ARPA and the NAGRPA potentially have a greater indirect effect on materials contained there and on the Nation's culture. Absent trust status, archaeological resources would not have the protection afforded by the ARPA and the NAGRPA. This potentially subjects these resources to future effects by others. Foreclosure or alienation of these lands again could make these resources vulnerable to additional future actions and exacerbate historical damage to Oneida cultural assets, which include village sites, camp sites, and burial grounds. Potential future damages to archaeological sites not held in trust could affect a resource that has yielded or may likely yield

information and artifacts important to the prehistory or history of the Nation, New York State, Madison and Oneida Counties or the U.S.