

## 5. Mitigation

---

### 5.1 Introduction

The CEQ NEPA regulations require that mitigation measures be developed for all adverse effects of a proposed action where it is feasible to do so (CEQ 46 Federal Regulation 18026, 19a; 40 C.F.R. Sections 1502.14(f) and 1502.16 (h)). Correspondingly, the identification of mitigation measures is discussed in the BIA NEPA Handbook (Part 6) and in the DOI NEPA Manual (Part 516 DM 4). The NEPA regulations define mitigation as “avoiding the impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating, or restoring the affected environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, compensating for the impact by replacing or providing substitute resources or environments” (40 C.F.R. 1508.20). Accordingly, in this section mitigation measures have been identified where feasible to address specific potential adverse effects.

As described elsewhere in this document, the conveyance of lands into trust is an action where title to the Nation’s existing lands would be transferred to the Federal government with no change in their uses. The majority of the resource categories (e.g., the physical, cultural, and natural environment) evaluated in the Draft EIS would not be directly affected by the Proposed Action because neither it nor any of the alternatives involve ground disturbance of the environment or a change in land use. In instances where there may be indirect or cumulative effects on these resources, mitigation measures are discussed below, as appropriate.

Lands taken into trust are not subject to state or local taxation or regulatory jurisdiction. In a recent report by the Government Accountability Office to the U.S. Congress regarding the Trust Land program, it was noted that the most common negative comments on Trust Land Applications come from state or local jurisdictions concerned about the loss of tax revenues and regulatory controls (General Accountability Office, 2006). Accordingly, this Draft EIS has identified potential socioeconomic effects, in particular those related to fiscal and regulatory matters. To the extent that adverse effects exist or are perceived as existing in these areas, this section discusses their mitigation as well.

## 5.2 Mitigation Measures

Regarding potential socioeconomic effects of the Proposed Action, the Nation's relationships with the surrounding communities over more than a decade demonstrate a preexisting pattern and practice of mitigating the types of potential effects that have been identified. On the fiscal side, as discussed in detail in Section 3.7 Socioeconomic Conditions and Section 4.7 Socioeconomics, the Nation has made various payments to local governments. In addition, the positive economic effects from the Nation's activities — the employment of nearly 5,000 workers, the Nation's purchases and other spending in the region, and the overall beneficial effect of the Nation's enterprises particularly the Turning Stone Resort & Casino — also serve to mitigate the adverse fiscal effects that have been identified by various concerned parties and the public. Overall, the revenues generated for the New York State and local governments by the Nation's enterprises exceed the amounts that would be received in taxes without those revenues (further details are presented in Section 3.7 Socioeconomic Conditions and Section 4.7 Socioeconomics).

With respect to potential regulatory effects, the past ten years similarly serve as a guide for how they can be avoided or mitigated to be less than significant. The Nation has implemented and administered its own regulatory scheme, which covers a broad spectrum of environmental and related issues. Moreover, Nation lands have been (and would remain) subject to Federal environmental laws and regulations, and the Nation anticipates that its long standing relationship with the USEPA will continue in the future. The Nation has consulted with New York State and local jurisdictions informally or on a government-to-government basis on matters of mutual concern. The Nation has managed, and continues to manage, activities affecting its neighbors through the resolution of environmental, social, cultural and economic issues.

As described in other sections of the Draft EIS, the Nation's actions in this regard, among other things, have also included:

- The establishment of ordinances, codes and regulations to preserve and protect environmental, historic and cultural resources in a manner that is consistent with Federal, New York State, and local laws;
- The adoption and application of a Oneida Indian Nation Land Use Ordinance and related ordinances to enhance the compatibility of Nation and non-Nation properties and to protect public safety and human welfare;
- Entering service agreements with local communities or paying user-based charges and fees with respect to water, sewer, public safety and fire protection; and a demonstrated willingness to cooperate and collaborate with New York State and local governments to successfully resolve issues of concern and promote an atmosphere of mutual assistance and support.

The Nation is committed to the continuance of these policies, programs and cooperative dialogue and agreements in the broad sense of mitigating potential adverse effects resulting from the Proposed Action.

**5.2.1 Taxes**

The estimated property tax effects for lands proposed for trust are discussed in Section 3.7 Socioeconomic Conditions and Section 4.7 Socioeconomics. Nation lands placed in trust would be exempt from property tax as follows under the various alternatives identified in Section 2.0 Alternatives:

Alternative	Land Area (Acres)	Property Taxes
Alternative A	17,370	\$2.7 million
Alternative B	35,000	\$5.4 million
Alternative C	9,903	\$2.4 million
Alternative D	3,248	\$1.0 million
Alternative E	225	\$200 thousand
Alternative F	11,986	\$2.5 million

In the future, these foregone taxes would be considered an adverse effect on the local government revenues. These figures do not include taxes assessed against the casino gaming floor tax lot, as the Nation is disputing that assessment. The amount of the property tax claimed based on that disputed assessment is almost \$11 million.

Taxation effects have been and could continue to be offset by service agreements and the property, sales, and income taxes directly and indirectly generated by the Nation and its employees. These offsets include the following:

- The Nation has made direct payments to local governments of \$38.5 million since 1995 in several categories of spending (i.e., Silver Covenant Payments, Municipal Service Agreements, Other Utility/Water Sewer Payments, and Infrastructure). This amount includes payments in the fall of 2005 and the spring of 2006 to the City of Sherrill and the City of Oneida, respectively, as well as \$7.7 million in Silver Covenant payments to local governments that may be discontinued in the future. It is expected that the Nation will continue to pay local governments for services provided.
- Nation employees paid an estimated \$5.6 million in local property taxes in 2005.
- The Nation withheld and remitted \$3.4 million in New York State income taxes from its employees in 2005.
- Nation vendor and employee spending stimulated \$7.3 million in New York State tax payments for personal income, business, and sales taxes in 2005 and \$1.16 million in local sales tax revenues for Madison and Oneida Counties and the Study Area municipalities.
- The Nation paid \$2.2 million and \$2.8 million, respectively, to the New York State Police and the New York State Racing and Wagering Board for their services

to the Turning Stone Resort & Casino which would be expected to continue in the future.

Section 3.7 Socioeconomic Conditions and Section 4.7 Socioeconomics discusses the above information in detail. Table 5.2-1 shows a summary of the annual 2005 costs attributable to the Nation in comparison to the direct payments it made for services and the taxes generated by Nation employees and through multiplier effects on other businesses. Overall, the total revenues produced by the Nation agreements and associated employee and multiplier taxes in 2005 was about \$24.2 million while its costs were around \$6 million, which resulted in a beneficial net effect to the New York State and local governments of over \$18 million. A similar comparison for the Proposed Action in 2011 is outlined in Table 2.5-2 where the estimated beneficial effect to the New York State and local governments increases to a little over \$19 million.

### **5.2.2 Regulatory Jurisdiction**

New York State and local governments have taken the position that lands transferred into trust would have an adverse effect by precluding their authority to regulate uses and activities on the Nation's trust lands. New York State has asserted that the separation of lands from New York State and local regulatory jurisdiction affects the regulatory scheme as a whole because of the difficulty in applying environmental laws uniformly and equitably over an entire geographic area.

If the Proposed Action were to be adopted, the trust lands would continue to be regulated by Federal laws including environmental laws. For all other alternatives where lands are conveyed into trust, the USEPA would have primacy for environmental regulations and oversight. The USEPA may delegate programs to states and tribes where the USEPA determines that they meet or exceed Federal requirements, and has done so with respect to the State of New York. Therefore, New York State has primacy over unrestricted-fee lands. Based on the most recent Federal district court decision concerning lands within the Oneida reservation, the land is restricted-fee. The USEPA therefore has primacy over the lands unless it delegates its authority to the Nation. The Nation has not sought or received delegation of authority from the USEPA. Primacy over regulatory jurisdiction could change if a court determines that the Nation's land is unrestricted-fee and the lands not placed into trust.

**Table 5.2-1  
Nation Payments and Associated Tax Payments  
Compared to Costs of the Proposed Action in 2005  
(\$ in Millions)**

Nation Payments <sup>1,2</sup>	New York State	Madison County and Study Area Municipalities	Oneida County and Study Area Municipalities	School Districts	Total
New York State Racing and Wagering Board	2.8				2.8
New York State Police	2.2				2.2
Municipal Service Agreements <sup>7</sup>			0.57		0.57
Other Utility/Water/Sewer Payments		0.03	0.6		0.63
Infrastructure Payments		0.25	0.21		0.46
Subtotal	5	0.28	1.39	0	6.66
Other Tax Revenue Payments:					
<i>Taxes Paid by Nation Employee</i>					
Income Taxes	3.38				3.38
Sales Taxes	1.66	0.32	0.6		2.59
Property Taxes <sup>3</sup>		1.29	1.45	2.89	5.63
Subtotal	5.05	1.61	2.06	2.89	11.6
<i>Taxes Paid from Multiplier Effect<sup>4</sup></i>					
Sales Tax	0.58	0.04	0.19		0.82
Personal Income and Business Tax	5.08				5.08
Subtotal	5.66	0.04	0.19	0	5.9
Total Revenues	15.71	1.93	3.63	2.89	24.17
Less: Total Costs <sup>5, 6</sup>	5.17	0.21	0.41	0.21	6
<i>Net Effect</i>	<i>10.54</i>	<i>1.72</i>	<i>3.22</i>	<i>2.68</i>	<i>18.17</i>

Notes: <sup>1</sup>All direct payments made by the Nation in 2005, with exception of infrastructure payments which are estimated as 1/20th of the total infrastructure payments made between 1995 and 2005 in recognition of useful life of investment in assets.

<sup>2</sup>Excludes one-time payments made by Nation in settlements of existing outstanding property tax bills levied by communities.

<sup>3</sup>Estimate of Nation employee-paid property tax estimated by multiplying per capita assessed value with current tax rate, controlling for number of Nation employee household members (employee and other household members) without exemptions.

<sup>4</sup>Does not include estimate of off-site visitor spending tax collections for gas, food, and lodging.

<sup>5</sup>Total costs for New York State include Nation reimbursement payments and estimated O&M costs attributable to the Nation for transportation. Other potential New York State costs attributed to the Nation for its activities on or related to its lands (e.g., New York State Police, inspections) are not included.

<sup>6</sup>Total costs for local governments and school districts do not include the induced costs of Nation employees in their residences.

<sup>7</sup>Service agreements for the Town of Verona including water, sewer, and fire district.

**Table 5.2-2  
Nation Payments and Associated Tax Payments  
Compared to Costs of the Proposed Action in 2011  
(\$ in Millions)**

Nation Payments <sup>1,2</sup>	New York State	Madison County and Study Area Municipalities	Oneida County and Study Area Municipalities	School Districts	Total
New York State Racing and Wagering Board	2.80				2.80
New York State Police	2.20				2.20
Municipal Service Agreements <sup>7</sup>			0.57		0.57
Other Utility/Water/Sewer Payments		0.03	0.60		0.63
Infrastructure Payments		0.25	0.21		0.46
Subtotal	5.00	0.28	1.39	0.00	6.66
Other Payments:					
<i>Taxes Paid by Nation Employee</i>					
Income Taxes	3.57		0.00		3.57
Sales Taxes	1.76	0.34	0.64		2.73
Property Taxes <sup>3</sup>	0.00	1.37	1.54	3.06	5.96
Subtotal	5.33	1.70	2.18	3.06	12.27
<i>Taxes Paid from Multiplier Effect<sup>4</sup></i>					
Sales Tax	0.61	0.05	0.20		0.86
Personal Income and Business Tax	5.37		0.00		5.37
Subtotal	5.99	0.05	0.20	0.00	6.23
Total Revenues	16.32	2.03	3.76	3.06	25.17
Less: Total Costs <sup>5,6</sup>	5.17	0.27	0.43	0.34	6.03
<i>Net effect</i>	11.14	1.76	3.33	2.72	19.14

Notes: <sup>1</sup>All direct payments made by the Nation in 2005, with exception of infrastructure payments which are estimated as 1/20th of the total infrastructure payments made between 1995 and 2005 in recognition of useful life of investment in assets.

<sup>2</sup>Excludes one-time payments made by the Nation in settlements of existing outstanding property tax bills levied by communities.

<sup>3</sup>Estimate of Nation employee-paid property tax estimated by multiplying per capita assessed value with current tax rate, controlling for number of Nation employee household members (employee and other household members) without exemptions.

<sup>4</sup>Does not include estimate of off-site visitor spending tax collections for gas, food, and lodging.

<sup>5</sup>Total Costs for New York State include Nation reimbursement payments and estimated O&M costs attributable to the Nation for transportation. Other potential New York State costs attributed to the Nation for its activities on or related to its lands (e.g., New York State Police, inspections) are not included.

<sup>6</sup>Total Costs for local governments and school districts do not include the induced costs of Nation employees in their residences.

<sup>7</sup>Service agreements for the Town of Verona including water, sewer, and fire district.

In addition, the land would continue to be regulated by Nation laws and ordinances, many of which have been in place for more than 10 years, covering building construction, land use, public safety, hunting and fishing, historic preservation, and environmental protection (For details on the Nation's laws and ordinances refer to Section 3.9.5 Regulatory Programs). Through those policies, the Nation remains committed to standards of environmental protection, conservation, and public health and safety. The Nation has further demonstrated this commitment in past collaborative actions with New York State and local municipalities involving, for example, the protection of species, the CWD program, permitting of the reclaimed water pipeline, a cooperative agreement with the SHPO, the creation of the 75-acre wetlands bank, following the intent of New York State and local air and noise standards, and the preservation of the Rome Sands Plain. The government-to-government service agreements that the Nation has entered with respect to water, sewer, public safety and fire protection have served as a jurisdictional bridge. The combination of Federal and Nation regulatory oversight and the ongoing practice of consultation and coordination between the Nation and Federal, New York State, and local agencies could serve as a mechanism to mitigate effects on the environmental, cultural and socioeconomic environment stemming from lands held in trust status.

### **5.2.3 Land Use Planning, and Zoning**

Similarly, the New York State and local governments have contended that transferring lands into trust would have adverse effects where the local government is unable to effectively implement community planning and its zoning, land use, and other regulations. In all alternatives, except Alternative G - No Action, portions of Nation trust lands would be interspersed with non-Nation lands. Local governments would have no jurisdiction over the trust lands and have asserted that this would have an adverse effect on their ability to cohesively plan and to uniformly enforce their zoning and land use regulations.

The extent of this effect would be different in each alternative. In many cases, Nation lands comprise a very small percentage of the entire area of the community, which minimizes the geographic extent of the effect. In most areas, the Nation's current land uses are consistent with local zoning and land use plans in the surrounding communities. The Nation is not planning any development that would be inconsistent with existing uses or local zoning. In addition, the Nation has adopted and followed an Oneida Indian Nation Land Use Ordinance and other ordinances to protect and preserve public safety and human welfare. The Oneida Indian Nation Land Use Ordinance mandates that no existing land uses can be substantially changed or altered unless a Land Use Permit is obtained after the Nation considers compatibility, location and environmental effect. This and the Nation's history of cooperation with and support of local community infrastructure and programs could provide the basis for effective collaborative land use planning for establishing consistency across non-Nation and Nation lands (refer to Section 3.2 Land Resources and Section 4.2 Land Resources for further details). A continuation

of these practices could serve to mitigate the potential effects expressed by the New York State and local governments.

#### **5.2.4 Surface Water**

Under Alternative E, PTNP- F and the CC-AEC and PTNP-F scenarios under Alternative G - No Action, the Nation's golf courses would cease operations. Surface water quality may deteriorate when storm water control measures fall into disrepair. The golf course irrigation water would no longer be reclaimed from the City of Oneida Sewage Treatment Plant and would instead be discharged to Oneida Creek, increasing its nutrient load. However, the most likely mitigation, which would be the responsibility of the new owner, would be to close the reuse system and process the wastewater through the City of Oneida Sewage Treatment Plant which has the treatment capacity to accommodate the additional load.

Under alternatives and scenarios whereby the Turning Stone Resort & Casino and its attendant facilities grow due to increased visitors, there would be a less than significant effect on the water supply and wastewater (refer to Section 4.3 Water Resources for further discussion).

Under the Proposed Action, surface water would continue to be regulated by Federal law and wastewater treatment plant effluent limits would continue to be set by permits issued by NYSDEC and USEPA. In the past the Nation has demonstrated its support and commitment to surface water protection by funding the expansion of the wastewater treatment plant, requiring that contractors for the Nation's construction projects adhere to the conditions of the NYSDEC State Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Construction Activities, funding studies in cooperation with local governments to locate new sources of water, and funding 100 percent of a new water and sewer line and a water tower in the Town of Verona (more details are provided in Section 3.3 Water Resources and Section 4.3 Water Resources). In addition the Nation has implemented water conservation measures that have significantly reduced water consumption at Turning Stone Resort & Casino, thereby mitigating the effect of the resort's growth on local water resources. This includes the installation of state-of-the-art on-line water treatment systems on the cooling towers of the cogeneration facility, allowing the Nation to use reclaimed water from the City of Oneida Sewage Treatment Plant—a practice that saves approximately 40,000 gallons of water per day. The Nation has also installed a water treatment system at its Villages at Turning Stone RV Park that has reduced water use by approximately 15,000 gallons per day during camping season. Additional conservation measures include shutting off outside hose bibs to prevent unauthorized use of domestic water, installing water meters on all water feed lines into the resort and monitoring these meters daily, running sprinkler flow tests for shorter durations, and running boilers at higher cycles of concentration. All of these examples are

ongoing measures the Nation is employing now to avoid or mitigate the effects to surface water quality and quantity.

### **5.2.5 Employment**

Losses of jobs would be unavoidable under certain alternatives and their scenarios (Specific details are presented in Section 3.7 Socioeconomic Conditions and Section 4.7 Socioeconomics). In Alternatives D and E, overall Nation employment would decrease and there would be a loss of jobs at local non-Nation businesses. Under the Alternative G - No Action CC-AEC or PTNP-F scenarios, there would be a significant loss of 5,451 jobs (compared to Alternative A) affecting the 86 percent of workers (or 4,714 residents) of Madison or Oneida Counties who are directly employed or indirectly supported by the Nation's economic activity. Mitigation of these effects in the form of unemployment compensation and support would become the responsibility of New York State and local governments.

### **5.2.6 Traffic**

Under Alternatives A through F, as a result of additional visitors to the Turning Stone Resort & Casino, traffic is projected to increase to 2,174 trips during the evening peak in 2011. Due to Nation-funded mitigation to area roadways in 1997 (in the vicinity of the casino resort) this increase in vehicle trips could be accommodated. However, a drop in the level of service and associated delays may occur during peak periods at the intersection of NYS Route 365 and I-90 Exit 33. Possible improvements have been identified which include: reduction of speed limits on NYS Route 365; an additional lane exiting I-90 at NYS Route 365; and increasing the capacity at the I-90 toll booths. Please refer to Section 3.8.5 Transportation and Section 4.8.5 Transportation for further details.

### **5.2.7 Historic, Cultural, and Archaeological Resources**

Under different alternatives, various amounts of land would enter trust containing the Nation's important cultural and archaeological sites. The NHPA would still continue to apply to lands in trust and those lands would receive added Federal protection under the ARPA and the NAGPRA. The Nation has enacted its own Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance and has a Nation Historian and a Historic Preservation Committee to oversee all activities related to the preservation of the Nation's historic and archaeological resources. Since taking possession of some of their cultural assets, the Nation has implemented a program to preserve and protect those sites as well as to archive important artifacts and data recorded from those sites. Prior to their acquisition by the Nation, these sites had been damaged and looted by amateur artifact seekers.

The Nation has worked with the New York State Office of Parks, Recreation and Historic Preservation and signed a cooperative agreement on March 18, 2004 with the SHPO to

share archeological site file information. For detailed information on historic, cultural and archaeological resources refer to Section 3.6 Cultural Resources and 4.6 Cultural Resources.

A combination of the New York State, Federal, and Nation protective regulations; the Nation's proactive program to preserve its archaeological sites; and a continuation of the cooperation between the Nation and New York State agencies could serve to mitigate potential regulatory effects and sustain resource protective programs.

### **5.2.8 Government Services**

In the PTNP-F or CC-AEC scenarios of Alternatives D, E or G all the Nation's government programs would be severely curtailed or cease altogether because they are located in facilities on lands that would be alienated or foreclosed. Other than trust land conveyance, substantial Federal funding and support would become necessary and might not be sufficient to mitigate significant adverse effects on the Nation and its members.

The Nation's demand for healthcare, emergency medical services, fire protection and other community supplied services would increase with incremental growth in the community and potentially with more visitors going to the Turning Stone Resort & Casino. This would have a less than significant effect on the resources of the local governments to meet the increased service needs. Over the next five years, there would be only a 0.1 percent increase in the two-county population due to additional employment and only a five percent increase in school-aged children. The increase in visitors at the Turning Stone Resort & Casino would only incrementally affect the community supporting infrastructure already in place (see Section 4.7.8 Community Infrastructure for more details). The anticipated growth would not increase the demand enough to result in the construction of new facilities or infrastructure or in physical alterations to existing facilities. The increased demand would not be large enough to affect current response times for emergency services. There may be need for some change in equipment needs and deployment for select government services. Local and New York State Police have criminal jurisdiction and enforcement power on all Nation lands regardless of whether they are in trust or not, although the Oneida Indian Nation Police Department responds to service calls on Nation lands, which reduces the level of resource commitments of other local policing jurisdictions.

In the past, the Nation has supported the expansion of these services by providing funding to the local municipalities in a variety of ways. The Nation continues to send most of its children to local public schools for their education, utilize existing healthcare facilities, cooperate with local police departments regarding law enforcement, and rely on municipalities for emergency response and fire protection. Current and ongoing service agreements and cooperative service efforts, such as the Mutual Aid Plan, would be expected to continue. More detailed discussions of government services are presented in

Section 3.7.4 Nation Government and Programs, Section 4.7.4 Nation Government Programs and Services, Section 3.7.8 Community Infrastructure, and Section 4.7.8 Community Infrastructure.

With regard to mitigating the effect of adding Native American students to local schools, there are three types of dedicated financial assistance that are available to public school systems to offset the effects of the tax-exempt status of Indian lands that may have relevance in New York:

- Federal Effect Aid Program -- Effect Aid, now Title VIII of the Elementary and Secondary Education Act of 1965, consists of four parts dealing with: loss of Federal property, basic support payments for Federally-connected children, disabled Federally-connected children, and construction grants for school systems that serve large numbers of Federally-connected children. In excess of 90 percent of the annual allotments are distributions for the basic support payments to Federally- connected children, meaning students from families that live or work on military or Federally- recognized Indian lands that do not make tax payments that reach local school systems. Records have indicated that no school district in New York State accepted Effect Aid funds due to Indian student enrollment in 2005, the most recent year for which data were available.
- Indian Education Act - The Indian Education Act of 1972 (IEA) is administered by the U.S. Department of Education. The IEA provides grants based on the average amount spent on each child in the state containing the applying school system and the number of Native American students in the school district. It is designed to focus on programs not capital construction or repairs/maintenance of facilities. The Madison and Oneida schools meeting or exceeding the 10 student or 25 percent Native American enrollment criteria are eligible to receive IEA funding.
- New York State Indian Aid for Public Schools -- New York State, through its Office of Native American Education, offers financial assistance directly to public schools that have students from Indian families living on tribal lands. Only services provided to students living on Indian Nation lands can be counted towards a reimbursement. At this point in time and for the recent past, of all the school systems in Madison and Oneida Counties, only the Stockbridge Valley Central School System in Oneida County has received reimbursements through this program.

In addition, the maintenance of service agreements and their modification if necessary to accommodate growth along with a continuation of cooperation between the Nation and the municipal service providers would further mitigate an increase in demand for community services.

### **5.2.9 Lifestyle and Cultural Values**

The BIA has not identified additional impacts to the lifestyle and cultural values of the Nation or surrounding communities not already discussed in Section 4.7 Socioeconomics, Section 4.8 Resource Use Patterns, and Section 4.9 Other Values. The effects on the surrounding community can be found in these sections. Accordingly, the BIA has not

identified mitigation measures specific to the lifestyle and cultural values of the Nation or the surrounding community.