

## 2. Alternatives

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### 2.1 Introduction

This section describes the alternatives considered in the preparation of the Draft EIS. The provisions of NEPA regulation 40 CFR 1500.14, the USDOJ Departmental Handbook 516 DM 4.10, and the BIA NEPA Handbook (Part 6) collectively require the study and comparative presentation of the effects of the Proposed Action, the No Action Alternative, and all reasonable alternatives. In this case the Proposed Action is to convey 17,370 acres of Nation owned land to the U.S. government to be held in trust. The No Action Alternative would convey none of these lands into trust. These two alternatives are evaluated in the Draft EIS along with five other alternatives which would have varying amounts of land entering trust status. The number of theoretically possible alternatives is very large, with numerous permutations. If every possible combination of the 437 individual parcels comprising the 17,370 acres were analyzed, it would obscure, rather than identify, useful information. The resulting EIS would be unwieldy and would not serve to assist reviewers, decision makers or the public.

The BIA has reviewed the public scoping meeting transcripts and written comments, including comments and prior submissions by the Nation as well as comments by the State of New York, local governments and officials, and the general public to identify alternatives for analysis in the Draft EIS. In addition, this section also discusses alternatives that were identified through the scoping process and subsequently eliminated from further consideration. The relative effects of each of the alternatives being evaluated in this Draft EIS are compared in tabular form and in accompanying narratives. A detailed assessment of potential environmental effects for each alternative considered in the Draft EIS is presented in Section 4.0 Environmental Consequences.

### 2.2 History of Land Reacquisition

The name Oneida (Onyotaa:ka) means the People of the Standing Stone. The Oneida are one of the original nations of the Iroquois Confederacy along with the Mohawk, Onondaga, Cayuga, and the Seneca. The Oneida aboriginal homeland is comprised of some six million acres located in central New York State. Oneida villages thrived in and around what are the present day Town of Stockbridge, Village of Oneida Castle, Village of Canastota, and the City of Oneida, and elsewhere in what are now Oneida and Madison Counties, New York. The Oneida sided with the American colonists against the British during the Revolutionary War. In recognition of the Oneida's sacrifices and loyalty as

allies in the Revolutionary War, the U.S. government offered them favorable treatment in subsequent treaties.

In 1788, the State of New York and the Nation entered into the Treaty of Fort Schuyler in which the Oneida reserved approximately 300,000 acres of land protected by the federal treaty and part of the Oneida aboriginal homeland in central New York State. Thereafter, in 1790 the first U.S. Congress passed the Indian Trade and Intercourse Act also known as the Non-Intercourse Act, now codified in 25 USC § 177, to protect Indian lands from transfer to states or others without federal participation and approval in the manner specified in this piece of legislation. In 1794, the federal government concluded the Treaty of Canandaigua, which acknowledged the 300,000-acre Nation reservation and reaffirmed both the Nation's sovereignty and its rights with respect to its reservation lands. The 17,370 acres of land proposed for conveyance into trust are all located within the boundaries of the 300,000 acres that were reserved in the 1788 treaty with New York State, protected by the Non-Intercourse Act, and acknowledged by the 1794 federal treaty.

Commencing in 1795 and continuing through 1846, the State of New York purchased or caused the transfer of Nation lands in a series of transactions conducted almost without exception in violation of the Non-Intercourse Act's requirement of federal participation and approval. By the late 1840's, the transactions between New York State and the Nation left the Nation with possession of only a small fraction of its 300,000-acre reservation.

By 1920, the land held by the Nation had been further reduced to a 32-acre parcel located in Madison County, New York. This parcel itself was the subject of New York State foreclosure proceedings, which resulted in the Nation's loss of possession of this parcel in 1909. In 1916, however, the federal government brought suit on behalf of the Nation to recover these lands that were then restored to the Nation pursuant to federal law and court order. The Nation was confined to this 32-acre parcel until 1987, when, with revenues from a bingo operation started in 1975, the Nation reacquired ancestral lands within its reservation boundaries. By 1995, the Nation had reacquired over 3,000 acres of their ancestral lands and by 2005 the Nation had reacquired a total of 17,370 acres. Revenues from its enterprises enabled the Nation to finance significant improvements in the quality of life for its members by building essential economic, social, and cultural programs critical to their self-governance, self-sufficiency, economic independence, and cultural expression as a distinct Indian tribe.

The lands subject to the proposed trust land acquisition are all currently owned by the Nation. All of these lands were purchased by the Nation on the open real estate market from willing sellers between 1987 and 2005.

## 2.3 Ongoing and Planned Nation Development Projects and Activities

In addressing potential environmental consequences it is necessary to identify reasonably foreseeable future actions by the applicant (the Nation) or others. This provides the basis for an assessment of cumulative effects of past, present and future actions. With regard to the latter, the BIA has selected a five-year planning horizon. The proposed land trust conveyance involves the transfer of title to Nation lands to the Federal government with no change in use of the subject properties or any ground-disturbing activities. The Nation's reasonably foreseeable future projects, as well as, projects that are currently ongoing are unrelated to this Federal action and do not require that lands be conveyed into trust. The Nation has indicated by way of formal letters (June 22 and August 18, 2006) to the BIA that it does have current improvements and activities in various stages of completion or slated for construction in the near future, mainly related to Turning Stone Resort & Casino amenities and member housing. These are described below but as noted above, these projects and activities are not directly related to the Trust Application as they would be carried out in any event:

- Turning Stone Resort & Casino – The present physical structure, features, and footprint of the Turning Stone Resort & Casino are the result of completing the implementation of a nearly decade-long Master Plan by the Nation. The overarching development objective has been to establish and sustain a “Premier Destination Resort”, making positive enhancements to meet that goal. The business is now servicing a debt of over \$300 million for the investments in creating what is now the Turning Stone Resort & Casino. Projects underway or slated for near term construction include:
  - A 15-18,000 square-foot Nightclub addition to the existing casino building ( underway - anticipated completion spring 2007);
  - Redecorating of the casino interior;
  - A new comfort station at the Atunyote golf course (scheduled to begin in fall 2006 - anticipated completion late fall 2006 or early spring 2007);
  - Three new indoor tennis courts located within a dome and three outdoor tennis courts with lighting (scheduled to begin summer 2006 - anticipated completion spring 2007);
  - A 12,000 square-foot clubhouse connecting the existing golf dome with a new tennis dome to house racquet and squash courts (scheduled to begin in summer 2006 - anticipated completion spring 2007);
  - A Native American “sweat lodge” behind the spa building (underway - anticipated completion October 2006);
  - A 60 x 60-ft grass helicopter pad (no fueling station or storage and lighting only activated by pilot upon take-off/landing) adjacent to an existing

“Team Member” parking lot at the Turning Stone Resort & Casino (underway - anticipated completion fall 2006); and

- Installation of three to four underground grease interceptor tanks designed to reduce biochemical oxygen demand in the wastewater sent to the municipal wastewater treatment system (completed July 2006).
- Other Nation business enterprises – The Nation would maintain its current enterprises and has no plans to open new business operations or to expand the existing ones onto undeveloped lands.
- Nation government services and affairs – All of these services and affairs would continue to be provided and their respective localities would be maintained.
- Nation member housing – The 98 existing member residences located throughout the 17,370 acres would continue to be maintained. The Nation has identified a total of 15 proposed sites for construction of member housing in the reasonably foreseeable future. This housing would be located in the communities of Lenox, Lincoln, Stockbridge, and Sullivan in Madison County and in Vernon and Verona in Oneida County. In addition, there are 66 member families on the waiting list for future residences. Locations for these future residences have not been determined at this time.
- Deteriorated structures – The Nation has identified 58 tax lots where demolition of unsafe or unsound structures is to occur. As of August 2006, deteriorated structures (e.g., non historic or architecturally unique homes, barns, silos, sheds, and mobile homes) on nine properties have been demolished and the rest are pending. Prior to removing any of these structures, the Nation conducts an evaluation of each including a cultural value assessment and eligibility determination for listing of the National Register of Historic Places. As stated earlier, the demolition program is not related to the trust action and will be completed before the end of 2006.
- Cultural and historic resources – The current cultural and historic resources presently identified throughout the 17,370 acres would be maintained and preserved.
- Hunting and fishing, wetlands mitigation, and conservation buffer areas – All of these current uses would be maintained in the future.
- Active and inactive pasture and agriculture – Current rentals and cropping patterns are expected to remain essentially the same in future years. There may be a slight increase in the Black Angus herd and crop production on some presently unused parcels that are suitable for agriculture. Increased crop production would be dependent on market conditions
- Other improvements in the foreseeable future would include routine upgrades and maintenance as needed on existing Nation lands.

Overall, the future uses planned for Nation lands are, in essence, similar to their existing usages. All present utility and related service easements and respective access would remain in place resulting in no interruption to necessary maintenance by a utility. The

lands in question would be regulated in the future under the Nation's policies; ordinances for environmental protection, health and safety, land use, zoning, and cultural, historic or archaeological resources; and codes for housing, vehicles, and traffic. In the future, lands held in trust by the BIA would continue to be regulated under applicable Federal laws and regulations.

## 2.4 Description of Alternatives

This section contains descriptions of the alternatives that are being assessed in the Draft EIS. A preferred alternative has not been identified by the BIA at this stage of the environmental review process. The BIA anticipates that a preferred alternative will be identified not later than the Final EIS.

There are a total of seven alternatives being evaluated for this project. The selection of these alternatives reflects the public comments received during the scoping process and NEPA requirements in general. For reference purposes, these alternatives have been designated as Alternatives A through G. There are varying amounts of land proposed for trust transfer among the alternatives and the disposition of the corresponding lands that would be omitted from trust status presents several taxation and jurisdiction scenarios for consideration. Under both Alternative A - Proposed Action and Alternative B - Phased Acquisition of 35,000 Acres, the entire 17,370 acres of land currently owned by the Nation is proposed for conveyance into trust. However, under Alternative C - Group 1 and 2 Lands, Alternative D - Group 1 Lands Only, Alternative E - Turning Stone Casino Gaming Floor Tax Lot, and Alternative F - Alternate Trust Land Grouping, the lands proposed for trust conveyance occupy less than the total of 17,370 acres. The lands that would be conveyed into trust in any of these alternatives would be under the sovereign control and regulatory jurisdiction of the Nation and they would not be subject to taxation. On the other hand, in these four alternatives (Alternatives C through F) and in alternative G there are lands that would be omitted from trust status and the effects on those omitted lands are being evaluated within the following potential taxation/jurisdictional scenarios:

- **Property Taxes Paid (PTP)** – In this scenario, the taxes relevant to the lands omitted from trust would be paid by the Nation and those lands would be under the regulatory jurisdiction of the New York State and local governments.
- **Property Taxes Not Paid and Foreclosure (PTNP-F)** – In this scenario, the taxes relevant to the lands omitted from trust would not be paid by the Nation and regulatory jurisdiction of those lands would be under the New York State and local governments. These properties would be foreclosed upon by local governments or alienated by the Nation in advance of such foreclosures.
- **Property Taxes Not Paid and Dispute Continues (PTNP-DC)** – This scenario reflects essentially the current situation in that taxes relevant to lands omitted from trust would not be paid by the Nation although the position of the New York State

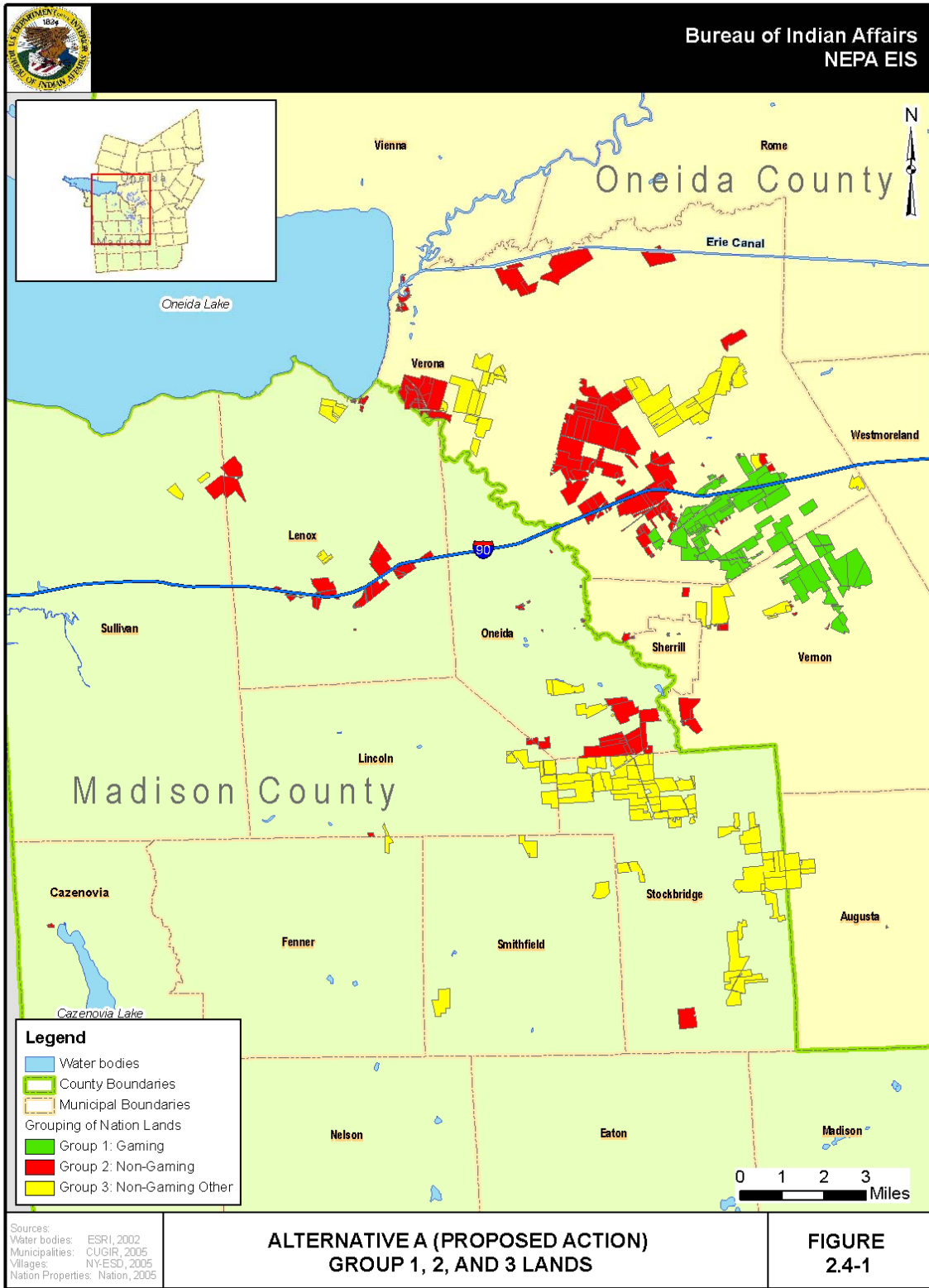
and local governments have been that tax payments would be obligatory. Similarly, the Nation would continue exercising jurisdiction on these lands while the New York State and local governments would dispute this regulatory control.

- **Casino Closes and All Enterprises Close (CC-AEC)** - Under Alternative G- No Action none of the Nation owned lands would be taken into trust, the Turning Stone Resort & Casino would be assumed to be an illegal gaming operation in New York State and it along with all SavOn gas stations and other enterprises which would be subjected to full taxation would cease operations. The Nation would not have sovereignty over any of its reacquired lands. It is the Nation's position that in this scenario it would not have revenue to pay taxes and all of the 17,370 acres would be alienated or foreclosed.

#### **2.4.1 Alternative A (Proposed Action) - Group 1, 2, and 3 Lands (17,370 Acres)**

The Proposed Action (Alternative A) is the conveyance of 17,370 acres of land owned by the Nation in Oneida and Madison Counties, New York (Figure 2.4-1) to the U.S. government to be held in trust. All of this land has been reacquired in market transactions by the Nation and is located within the Nation reservation boundary acknowledged by the 1794 Treaty of Canandaigua. This Nation land consists of 330 parcels comprising 440 tax lots. For clarification, as the Nation purchased properties it formed a classification system which enumerated each acquisition as a designated parcel. Some of these parcels contained more than one tax lot within them. Thus, there a total of 330 parcels and 440 tax lots involved. In the text throughout this document this distinction is maintained between Nation-owned parcels and the local government records of tax lots. The term properties is used here in a generic sense.

In the preparation of the Nation's Trust Application, the BIA requested that the Nation group its lands according to use. The Nation divided its lands into three groups designated as Groups 1, 2, and 3 (the Groupings). Group 1 lands are generally associated with the Turning Stone Resort & Casino, the Nation's tribal gaming casino. Group 2 lands are generally associated with the Nation's government and cultural facilities, housing, health, education, and hunting as well as lands currently being used for Nation enterprises such as convenience stores, service stations, newspaper operations, marinas, and agriculture. Group 3 lands are generally undeveloped, active and inactive agriculture, and lands that are subject to a competing claim of sovereignty by the Stockbridge-Munsee Community of Wisconsin, an Indian tribe located in the State of Wisconsin. It should be noted that these land groupings are not reflective of the value to the lands to the Nation but rather groupings of a functional nature. Figure 2.4-1 illustrates the location of the Groupings that constitute the 17,370 acres of lands proposed for trust conveyance under Alternative A.



A summary of the Groupings by acreage and use is as follows:

Group 1 lands – The Gaming and Resort Group comprises a total of approximately 3,428 acres or 20 percent of the proposed land to be placed into trust and contains:

- Gaming area at the Turning Stone Resort & Casino including over 2,400 cashless multi-game machines, over 100 table games, Bingo Hall, and Poker Room; Lodging on-site including the Lodge at Turning Stone (98 suites), Tower at Turning Stone (287 rooms and suites), Inn at Turning Stone (62 rooms), and Hotel at Turning Stone (258 rooms); Day Spa & Salon; Event Center; Conference Center; 11 dining facilities; a food court; storage area; an indoor swimming pool; and an indoor promenade adjacent to Poker Room;
- Five golf courses, golf dome, and club houses - Atunyote, Kaluhyat, Shenendoah, Pleasant Knolls, and Sandstone Hollow Golf Courses; the Shenendoah Golf Course contains 6,000 square feet of meeting space and a 400-seat banquet room;
- Related casino resort and golf course maintenance, parking, and warehouse facilities;
- Bus, employee, and patron parking areas;
- Co-generation electric station;
- RV campground – Villages at Turning Stone RV Park (175 paved sites) and Peaceful Pines Campground;
- One SavOn gas station and convenience store;
- Associated with six identified archaeological sites and 33 archaeological sensitive properties;
- Nation member housing (two total residences); and
- Open space lands contiguous and integral to the active gaming and resort properties.

Group 2 lands – The Non-Gaming Group comprises a total of approximately 6,475 acres or 37 percent of the proposed land to be placed into trust and contains:

- Nation government services and affairs - family and legal services; health care services; administration offices; child care and elders services (the Ray Elm Children & Elders Center); recreation, telecommunication and information services; media relations; and security;
- Other business enterprises - Four Directions Production, 12 SavOn gas stations and convenience stores; Standing Stone Gaming, Retail Outlet, and wholesale distribution, and warehouse facilities; sand and gravel quarry; public access marinas (Marion Manor, Snug Harbour, and Marinar's Landing); CNY Fiberglass and Boat Repair; and crop rental on some agricultural land holdings;
- Cultural and historic resources - burial grounds, festival sites, historic sites, living history reenactment sites, and agricultural lands for production of traditional crops;



- Associated with 94 identified archaeological sites and 116 archaeological sensitive properties;
- Nation member housing - Village of the White Pines and individual residences (total of 83 residences);
- Internship housing for Nation employees in training;
- Active and inactive pasture and agriculture;
- Wetlands mitigation site; and
- Hunting and fishing, and conservation buffer areas.

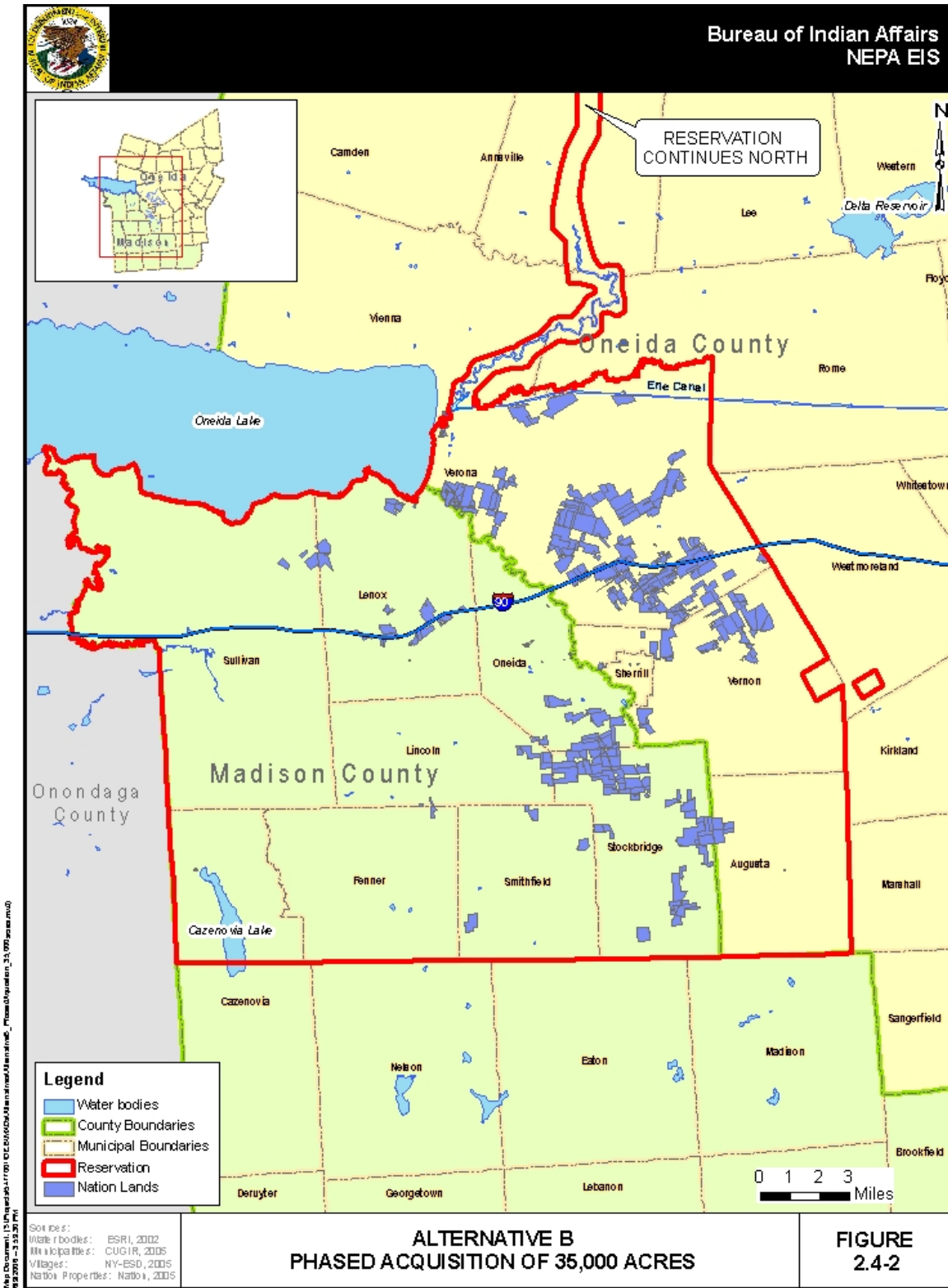
Group 3 lands – The Non-Gaming Other Group comprises approximately 7,467 acres or 43 percent of the proposed land to be placed into trust and contains:

- Nation member housing (13 total residences);
- Cultural and historic resources - longhouse village sites, burial grounds, historic sites, and agricultural lands for production of traditional crops;
- Associated with 57 identified archaeological sites and 43 archaeological sensitive properties;
- Active and inactive pasture and agriculture - crop rental, silage operation, and Black Angus Beef farm (over 600 head of cattle); and
- Hunting and fishing, and conservation buffer areas.

The Groupings consist of 440 individual tax lots. The land comprising the Groupings occupies 6,594 acres or 1.5 percent of the total area of Madison County (432,152 acres) and 10,776 acres or 1.3 percent of the total area of Oneida County (814,934 acres). Alternative A would represent 1.4 percent of the area of both counties.

#### **2.4.2 Alternative B - Phased Acquisition of 35,000 Acres**

Alternative B involves the conveyance of 35,000 acres of land by the Nation in Oneida and Madison Counties, New York to the U.S. government to be held in trust. All of the land beyond the 17,370 acres now owned would be reacquired by the Nation within its reservation boundaries from willing sellers. Alternative B would include the presently owned 17,370 acres described above under Alternative A and up to 17,630 additional acres that would be purchased by the Nation in the future. The number or location of properties comprising the 17,630 acres has not been identified (Figure 2.4-2).



In February 2002, New York State announced that it, the Nation, and Madison and Oneida Counties had agreed on the framework of a land claim settlement that included 35,000 acres to be held and governed by the Nation. To date, no settlement has been reached. However, an alternative that includes the potential acquisition of 35,000 acres in trust would be consistent with this settlement framework and could also be responsive to comments received during the scoping process that stressed the importance of a contiguous group of Nation lands that share a unified border or boundary, and others that expressed concerns over jurisdictional issues that could arise from interspersed Nation and non-Nation lands. Properly located, the acquisition of additional lands can further the compactness of the Nation's land base.

Under Alternative B, the BIA would consider and examine the potential to form a 35,000-acre group of land that maximizes compactness and congruity to the greatest possible extent. Under this alternative, the BIA would accept 17,370 acres into trust as under Alternative A. Future requests by the Nation for the acquisition of additional lands in trust consistent with the 35,000-acre settlement framework would be subjected to the appropriate NEPA review; the current NEPA review is intended to be an analysis of potential impacts for all potential trust acquisitions within the designated acquisition area in the next five years, but each trust acquisition beyond the 17,370 acres would be reviewed individually under its own application to determine if any additional impact analyses are needed.

The present land use of the 17,370 acres already owned by the Nation is described above under Alternative A. The remaining lands to be purchased within the Nation reservation boundaries have not been specifically identified, although those lands would be located in Oneida and Madison Counties and very near or directly adjacent to existing Nation lands, which make it practicable to analyze acquisition impacts. Combined, the 35,000 acres would represent approximately 2.8 percent of the total area of both counties

Overall, the uses planned for the land proposed under Alternative B for conveyance into trust would expect to be generally similar to their existing uses. All present utility and related service easements and respective access would remain in place. The currently owned lands (17,370 acres) that would comprise a portion of the land under Alternative B would be regulated in the future under the Nation's policies; ordinances for environmental protection, health and safety, land use, zoning, and cultural, historic or archaeological resources; codes for housing, vehicles, and traffic; and under federal law as applicable. The newly acquired properties that would make up the balance of the Alternative B trust acquisition would be subject to these Nation policies, ordinances, and codes, as well as applicable federal laws and regulations.

### **2.4.3 Alternative C - Group 1 and 2 Lands**

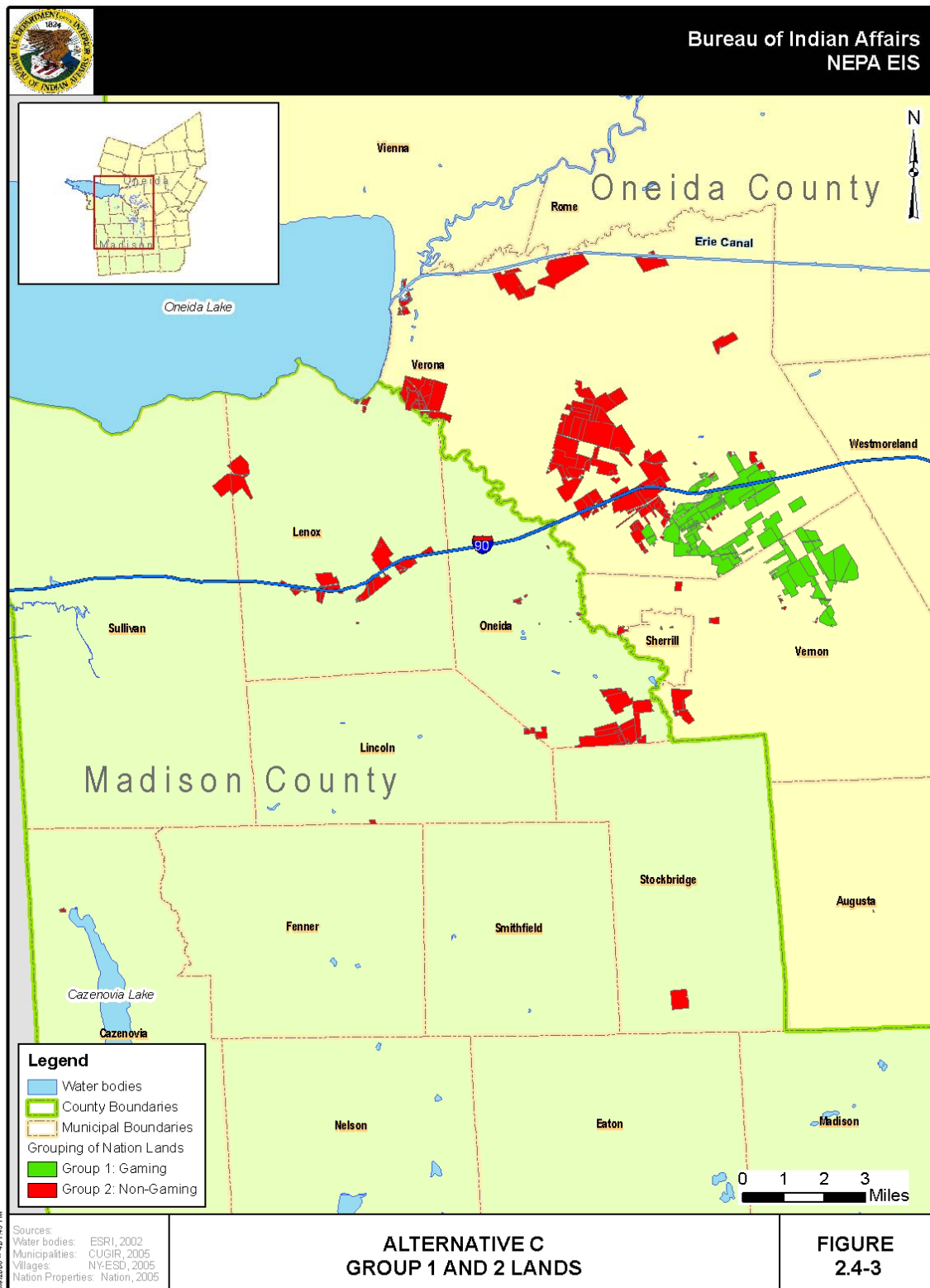
Alternative C would involve the initial conveyance into trust of only Group 1 and 2 lands (Figure 2.4-3). Group 3 lands are generally not as developed as the lands in Groups 1 and 2; further, some Group 3 lands are subject to a competing tribal sovereignty claim. With this alternative, Group 1 and 2 lands (approximately 9,903 acres) would be conveyed into trust, while Group 3 lands would possibly be subject to a separate future trust acquisition and environmental review process. All of this land is located within the Nation reservation boundaries acknowledged by the 1794 Treaty of Canandaigua.

#### **2.4.3.1 Alternative C Lands Entering Trust**

Alternative C includes the prioritized Group 1 and Group 2 lands. Group 1 consists generally of lands associated with the Turning Stone Resort & Casino. Group 2 is comprised of lands associated with the Nation's government and member services, member housing, health and education centers, and hunting and fishing lands, as well as lands in current use for other Nation enterprises such as convenience stores, service stations, newspaper operations, marinas, and agriculture. The present uses of Group 1 and 2 lands are described above in Section 2.4.1 Alternative A (Proposed Action).

Collectively, the trust lands of Alternative C would include the Turning Stone Resort & Casino, as well as lands associated with all the Nation's government and member services, 85 member residences, health and education centers, 5,409 acres of agriculture, 2,235 acres of hunting and fishing lands, 2,263 acres of wetlands and lands in current use for other Nation enterprises such as convenience stores, 13 SavOn gas stations and convenience stores, newspaper operations, and marinas. The proposed trust lands would also contain a large number of historic and cultural resources including 100 of the identified archaeological sites.

Alternative C is comprised of 9,903 acres on 336 tax lots; the 96 tax lots on Group 1 lands are all located within the boundaries of Oneida County and the 240 tax lots on Group 2 lands are located within both Oneida and Madison Counties. Alternative C lands comprise 7,986 acres or 1.0 percent of the area of Oneida County and 1,917 acres or 0.4 percent of the area of Madison County. Collectively, the 9,903 acres represents 0.8 percent of the total area of both counties.



### **2.4.3.2 Lands Omitted from Trust in Alternative C**

The lands omitted from trust under Alternative C would be those that make up Group 3 as described above. Group 3 lands comprise 104 tax lots encompassing 7,467 acres, which is 0.6 percent of the total area of Madison and Oneida Counties. These Group 3 lands contain 13 Nation member residences and are associated with a large number of culturally-important localities including 57 identified archaeological sites and 43 sensitive archaeological properties. By acreage, the current use of these lands is predominately active and inactive agriculture, which includes the Black Angus beef farm, along with hunting and fishing areas. The disposition of these lands omitted from trust is evaluated under the following taxation/jurisdiction scenarios.

#### ***Property Taxes Paid***

Under the **Property Taxes Paid (PTP)** scenario, the property taxes relevant to the 7,467 acres contained within 104 tax lots omitted from trust would be paid and those lands would be under the regulatory jurisdiction of the State of New York and local governments. The Nation would retain ownership of these lands in conjunction with the 9,903 acres of land that would be transferred into trust under Alternative C. The Nation would have sovereignty over the trust lands but not over the omitted lands. Similarly, taxes would not be paid on the lands in trust but would be paid on the omitted lands. Accordingly, New York State and local governments would have regulatory jurisdiction over the 13 Nation member residences, cultural and archaeological localities, and the Black Angus beef farm. The Turning Stone Resort & Casino and a majority of the other Nation enterprises including 13 SavOn gas stations and convenience stores and the marinas would continue to operate on the trust land. The Nation's government services and member programs would be maintained on trust lands.

#### ***Property Taxes Not Paid and Foreclosure***

Under the **Property Taxes Not Paid and Foreclosure (PTNP-F)** scenario, the taxes relevant to the 7,467 acres omitted from trust would not be paid and regulatory jurisdiction of those lands would be under the New York State and local governments. Similar to the PTP scenario discussed above, the Nation would have sovereignty over the trust status lands under Alternative C but not over the omitted lands. The Turning Stone Resort & Casino and a majority of the other Nation enterprises including 13 SavOn gas stations and convenience stores and the marinas would continue to operate on the trust land. The Nation's government services and member programs would be maintained on the lands held in trust. However, since taxes would not be paid on the omitted lands, these 7,467 acres would be foreclosed or alienated.

#### ***Property Taxes Not Paid and Dispute Continues***

The **Property Taxes Not Paid and Dispute Continues (PTNP-DC)** scenario reflects essentially the current situation in that taxes relevant to the 7,467 acres omitted from trust would not be paid and that these lands would continue to be regulated by the Nation.

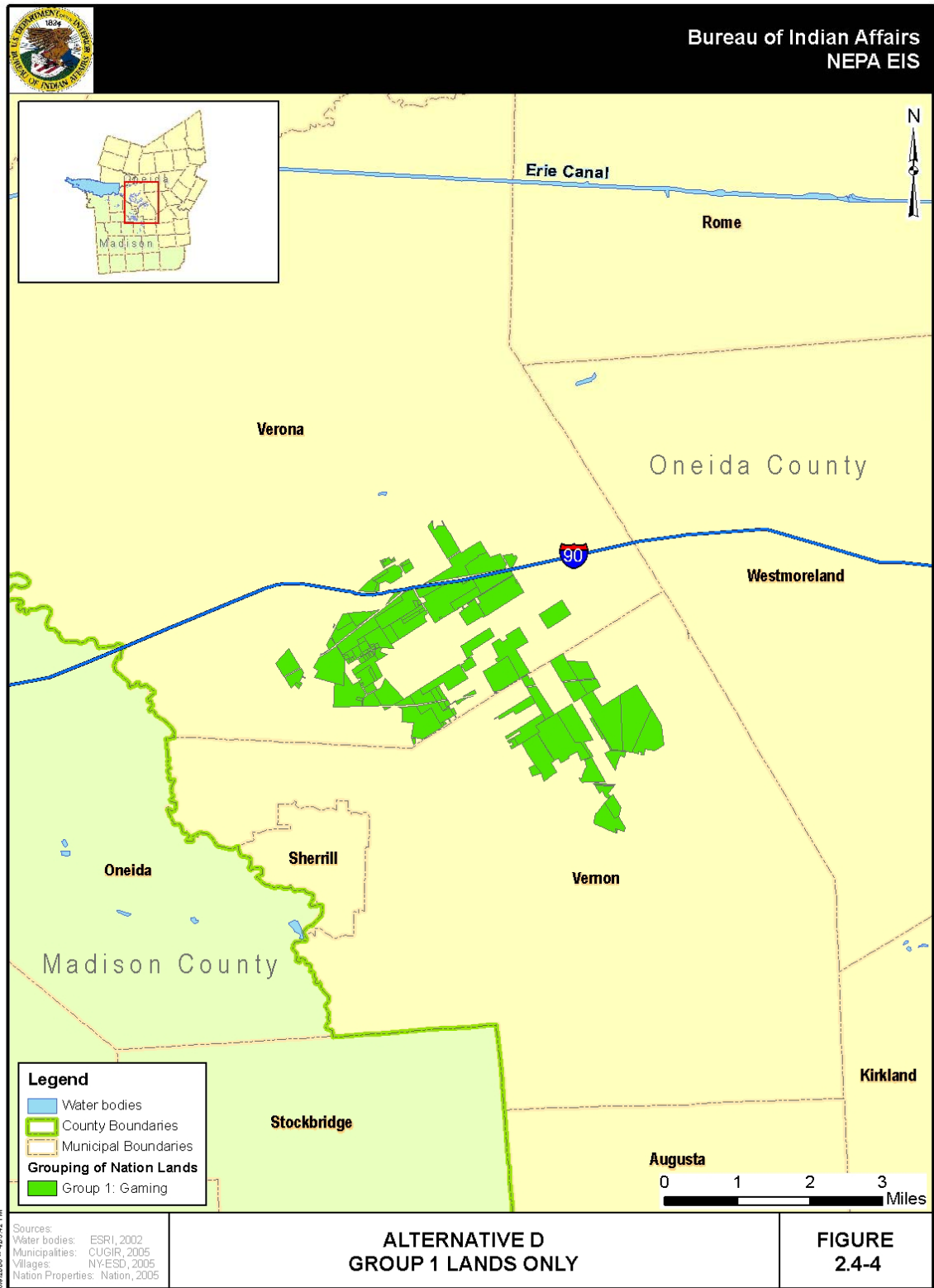
Thus, the Nation would retain ownership of these lands and regulate them in conjunction with the 9,903 acres of land that would be transferred into trust under Alternative C. The Turning Stone Resort & Casino and all of the other Nation enterprises would continue to operate on the trust lands or omitted lands. The Nation's government services and member programs, all cultural and historic sites, and all Nation member housing would be maintained on lands regulated by the Nation. However, the position of the New York State and local governments has been that they have the authority to regulate the lands omitted from trust and that the decision in *City of Sherrill v. Oneida Nation*, 544 U.S. 197 (2005) subjects these lands to taxation. On the other hand, decisions in *Oneida Nation v. Madison County*, 401 F. Supp. 2<sup>nd</sup> 219 (N.D.N.Y. 2005) and in *Oneida Indian Nation v. Oneida County*, --- F.Supp.2<sup>nd</sup>---, 2006 WL 1517522 (N.D.N.Y. June 02, 2006) hold that the New York State and local governments may not collect taxes nor foreclose on Nation lands for non-payment of property taxes without U.S. Congressional approval. Under this scenario, the dispute over the taxation and jurisdiction of the lands omitted from trust would persist.

#### **2.4.4 Alternative D - Group 1 Lands Only**

Alternative D includes only the lands that are part of Group 1, i.e., the lands that comprise the Turning Stone Resort & Casino (Figure 2.4-4). This alternative was developed in response to comments made during the scoping process to limit lands acquired in trust to the resort-casino complex and associated lands. Under this alternative, 3,428 acres would be conveyed into trust. All of this land has been reacquired by the Nation within the boundaries of its reservation acknowledged by the 1794 Treaty of Canandaigua.

##### **2.4.4.1 Alternative D Lands Entering Trust**

The present uses of the land under Alternative D - Group 1 lands are described above in Section 2.4.1 Alternative A (Proposed Action). Alternative D includes two member residences, the Turning Stone Resort & Casino, one SavOn gas station and convenience store, 1,549 acres of agriculture, 843 acres of wetlands, and six identified archeological sites. The land under Alternative D consists of 96 tax lots located within the boundaries of Oneida County. Alternative D comprises 3,428 acres or 0.4 percent of Oneida County.





#### **2.4.4.2 Lands Omitted from Trust in Alternative D**

The lands omitted from trust under Alternative D would be Groups 2 and 3 lands as described above in Section 2.4.1 Alternative A (Proposed Action). Collectively these lands comprise 344 tax lots encompassing 13,942 acres, which is 1.1 percent of the total area of Madison and Oneida Counties. The current uses of these lands include all of the Nation's government services and affairs; all of the member program centers; and all of the Nation enterprises that are not directly linked to the Turning Stone Resort & Casino including 12 SavOn gas stations and convenience stores and the public access marinas. Other land uses are predominately active and inactive agriculture, which includes the Black Angus beef farm, hunting and fishing areas and the wetlands mitigation site. This land includes 96 of the total 98 Nation member residences and is associated with a large number of culturally important localities including 157 identified archaeological sites and 159 sensitive archaeological properties. The disposition of the lands omitted from trust is evaluated under the following taxation/jurisdiction scenarios.

##### ***Property Taxes Paid***

Under the PTP scenario, the taxes relevant to the 13,942 acres within 344 tax lots not entering trust would be paid and those lands would be under the regulatory jurisdiction of the New York State and local governments. The Nation would retain ownership of these lands in conjunction with the 3,428 acres of land that would be transferred into trust in Alternative D. The Nation would have sovereignty over the trust lands but not over the omitted lands. Similarly, taxes would not be paid on the lands in trust but would be paid on the omitted lands along with any applicable sales and excise taxes related to Nation enterprises located there. Accordingly, the New York State and local governments would have regulatory jurisdiction over the 96 member residences, cultural and archaeological sites, wetlands mitigation site, Black Angus Beef farm, 12 SavOn gas stations and convenience stores, public marinas, and all of the land where facilities housing the Nation's government services and member programs are located. The Nation would not have sovereign control over any of these lands. The Turning Stone Resort & Casino and one SavOn gas station and convenience store would continue operations on trust land.

##### ***Property Taxes Not Paid and Foreclosure***

Under the PTNP-F scenario, the taxes relevant to the 13,942 acres not entering trust would not be paid and regulatory jurisdiction of those lands would be under the New York State and local governments. Similar to the PTP scenario described above, the Nation would have sovereign control over the trust status lands under Alternative D but not over the omitted lands. The Turning Stone Resort & Casino and one SavOn gas station and convenience store would continue operations on trust land. However, since taxes would not be paid on the omitted lands these 13,942 acres would be alienated or foreclosed.

### **Property Taxes Not Paid and Dispute Continues**

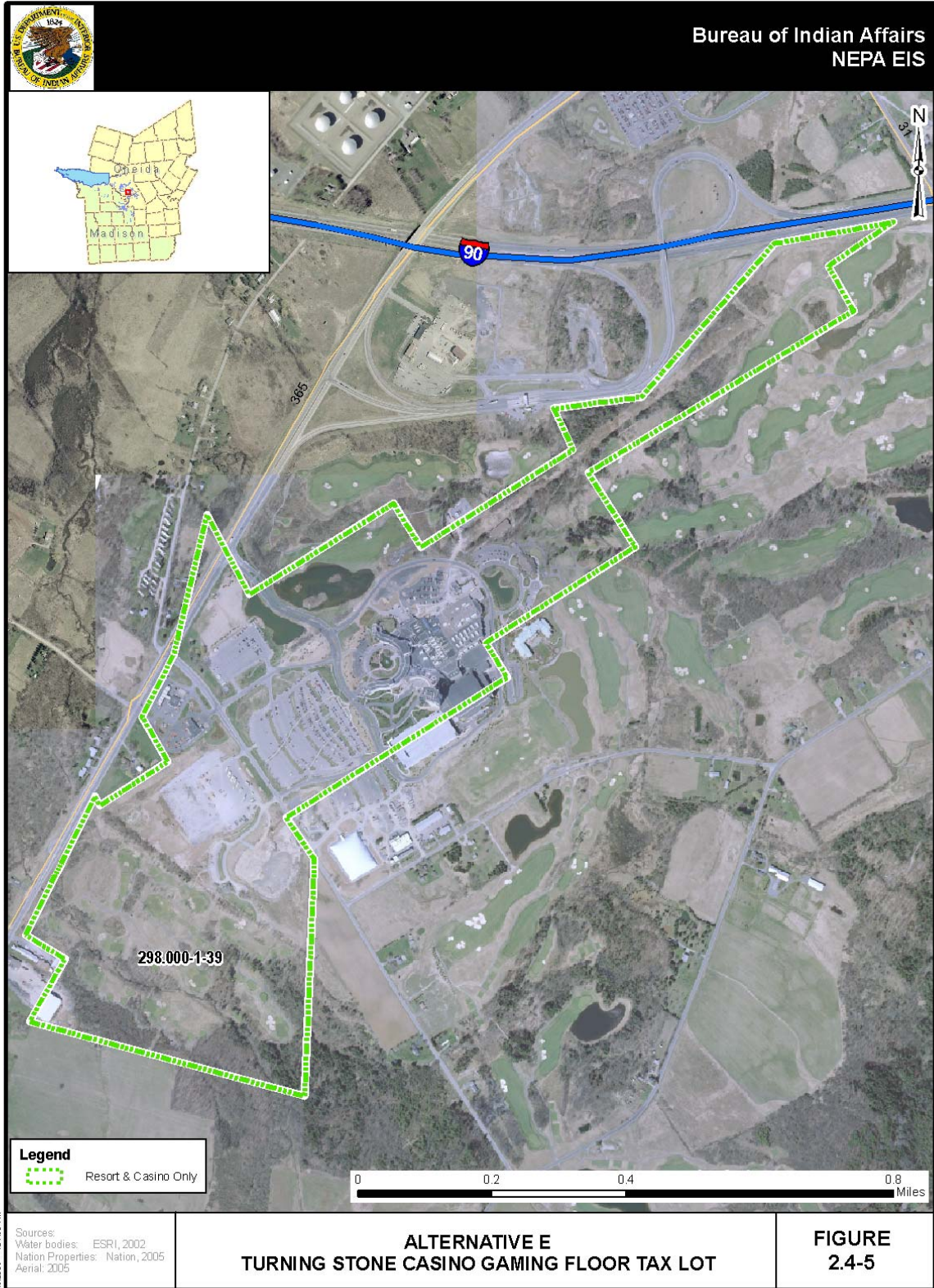
The PTNP-DC scenario reflects essentially the current situation in that taxes relevant to the 13,942 acres omitted from trust would not be paid and that these lands would continue to be regulated by the Nation. Thus, the Nation would retain ownership of these lands and regulate them in conjunction with the 3,428 acres of land that enters trust status under Alternative D. The Turning Stone Resort & Casino and all of the other Nation enterprises would continue operations on the trust land or omitted lands. The Nation's government services and member programs, all cultural and historic sites, and all Nation member housing would be maintained on lands regulated by the Nation. However, the position of the New York and local governments has been that they have the authority to regulate the lands omitted from trust and that the decision in *City of Sherrill v. Oneida Nation*, 544 U.S. 197 (2005) subjects these lands to taxation. On the other hand, decisions in *Oneida Nation v. Madison County*, 401 F. Supp. 2<sup>nd</sup> 219 (N.D.N.Y. 2005) and in *Oneida Indian Nation v. Oneida County*, --- F.Supp.2<sup>nd</sup>---, 2006 WL 1517522 (N.D.N.Y. June 02, 2006) hold that New York State and the local governments may not collect taxes nor foreclose on Nation lands for non-payment of property taxes without approval from the U.S. Congress. Under this scenario, the dispute over the taxation and jurisdiction of the lands omitted from trust would persist.

### **2.4.5 Alternative E -Turning Stone Casino Gaming Floor Tax Lot**

Alternative E was created in response to suggestions presented in the scoping comments to place only the lands comprising the Turning Stone Resort & Casino proper into trust (Figure 2.4-5). The Turning Stone Resort & Casino gaming floor is located on one tax lot in the Town of Verona, New York within Oneida County. Taken together with land and the facilities beyond the casino gaming floor, the tax lot consists of two parcels totaling approximately 225 acres. This land has been reacquired by the Nation within its reservation boundaries.

#### **2.4.5.1 Alternative E Land Entering Trust**

The present uses of the land under Alternative E comprises the operation of the Turning Stone Resort & Casino gaming area including over 2,400 cashless multi-game machines, over 100 table games, Bingo Hall, and Poker Room; Lodging on site including the Lodge at Turning Stone (98 suites), Tower at Turning Stone (287 rooms and suites), and the Hotel at Turning Stone (258 rooms); Day Spa & Salon; Event Center; Conference Center; dining facilities; an indoor swimming pool; an indoor promenade adjacent to the Poker Room; part of two golf courses (Shenendoah and Sandstone Hollow Golf Courses); related casino resort and golf course maintenance, parking, and warehouse facilities; parking areas; and one SavOn gas station and convenience store. Alternative E comprises approximately 225 acres or 0.03 percent of Oneida County.



#### **2.4.5.2 Lands Omitted from Trust in Alternative E**

The lands omitted from trust under Alternative E are those lands that make up the majority of Group 1 and all of Groups 2 and 3 lands as described above in Section 2.4.1 Alternative A (Proposed Action). Collectively, these lands comprise 439 tax lots and cover 17,145 acres, which is 1.4 percent of the total area of Madison and Oneida Counties. The current uses of these lands include all of the Nation's government services and affairs; all of the member program centers; and all of the Nation enterprises that are not directly linked to the Turning Stone Resort & Casino including 12 SavOn gas stations and convenience stores and the public access marinas. Other land uses are predominately active and inactive agriculture, which includes the Black Angus beef farm, hunting and fishing areas and the wetlands mitigation site. The lands omitted from trust here actually would include a number of the Turning Stone Resort & Casino facilities such as portions of the golf courses, lodging, and parking lots. This land contains all 98 Nation member residences and is associated with all of the culturally important localities in the area including 157 identified archaeological sites and 192 sensitive archaeological properties. The disposition of the lands omitted from trust is being evaluated under the following taxation/jurisdiction scenarios.

##### ***Property Taxes Paid***

Under the PTP scenario, the taxes relevant to the 17,145 acres within 439 tax lots not entering trust would be paid and those lands would be under the regulatory jurisdiction of the New York State and local governments. The Nation would retain ownership of these lands in conjunction with the 225 acres of land that would be transferred into trust under Alternative E. The Nation would have sovereign control over the trust land but not over the omitted lands. Similarly, taxes would not be paid on the land in trust but would be paid on the omitted lands. Accordingly, New York State and the local governments would have regulatory jurisdiction over all 98 Nation member residences, cultural and archaeological localities, wetlands mitigation site, Black Angus Beef farm, 12 SavOn gas stations and convenience stores, public marinas, portions of the Turning Stone Resort & Casino, and all the land where facilities housing the Nation's government services and member programs are located. The Nation would not have sovereign control over any of these lands. The Turning Stone Resort & Casino gaming floor and some attendant facilities would continue operations on the trust land.

##### ***Property Taxes Not Paid and Foreclosure***

Under the PTNP-F scenario, the taxes relevant to the 17,145 acres not entering trust would not be paid and regulatory jurisdiction of those lands would be under New York State and the local governments. Similar to the PTP scenario described above, the Nation would have sovereign control over the trust status land in Alternative E but not over the omitted lands. The Turning Stone Resort & Casino gaming floor and some attendant facilities would continue operations on the trust land. However, since taxes would not be paid on the omitted lands, the 17,145 acres would be alienated or foreclosed.

### **Property Taxes Not Paid and Dispute Continues**

The PTNP-DC scenario reflects essentially the current situation in that taxes relevant to the 17,145 acres omitted from trust would not be paid and that these lands would continue to be regulated by the Nation. Thus, the Nation would retain ownership of these lands and regulate them in conjunction with the 225 acres of land that enters trust status in Alternative E. The Turning Stone Resort & Casino and all of the other Nation enterprises would continue operations on the trust land or omitted lands. The Nation's government services and member programs, all cultural and historic sites, and all Nation member housing would be maintained on lands regulated by the Nation. However, the position of New York State and the local governments has been that they have the authority to regulate the lands omitted from trust and that the decision in *City of Sherrill v. Oneida Nation*, 544 U.S. 197 (2005) subjects these lands to taxation. On the other hand, decisions in *Oneida Nation v. Madison County*, 401 F. Supp. 2<sup>nd</sup> 219 (N.D.N.Y. 2005) and in *Oneida Indian Nation v. Oneida County*, --- F.Supp.2<sup>nd</sup>---, 2006 WL 1517522 (N.D.N.Y. June 02, 2006) hold that the New York State and local governments may not collect taxes nor foreclose on Nation lands for non-payment of property taxes without approval of the U.S. Congress. Under this scenario, the dispute over the taxation and jurisdiction of the lands omitted from trust would persist.

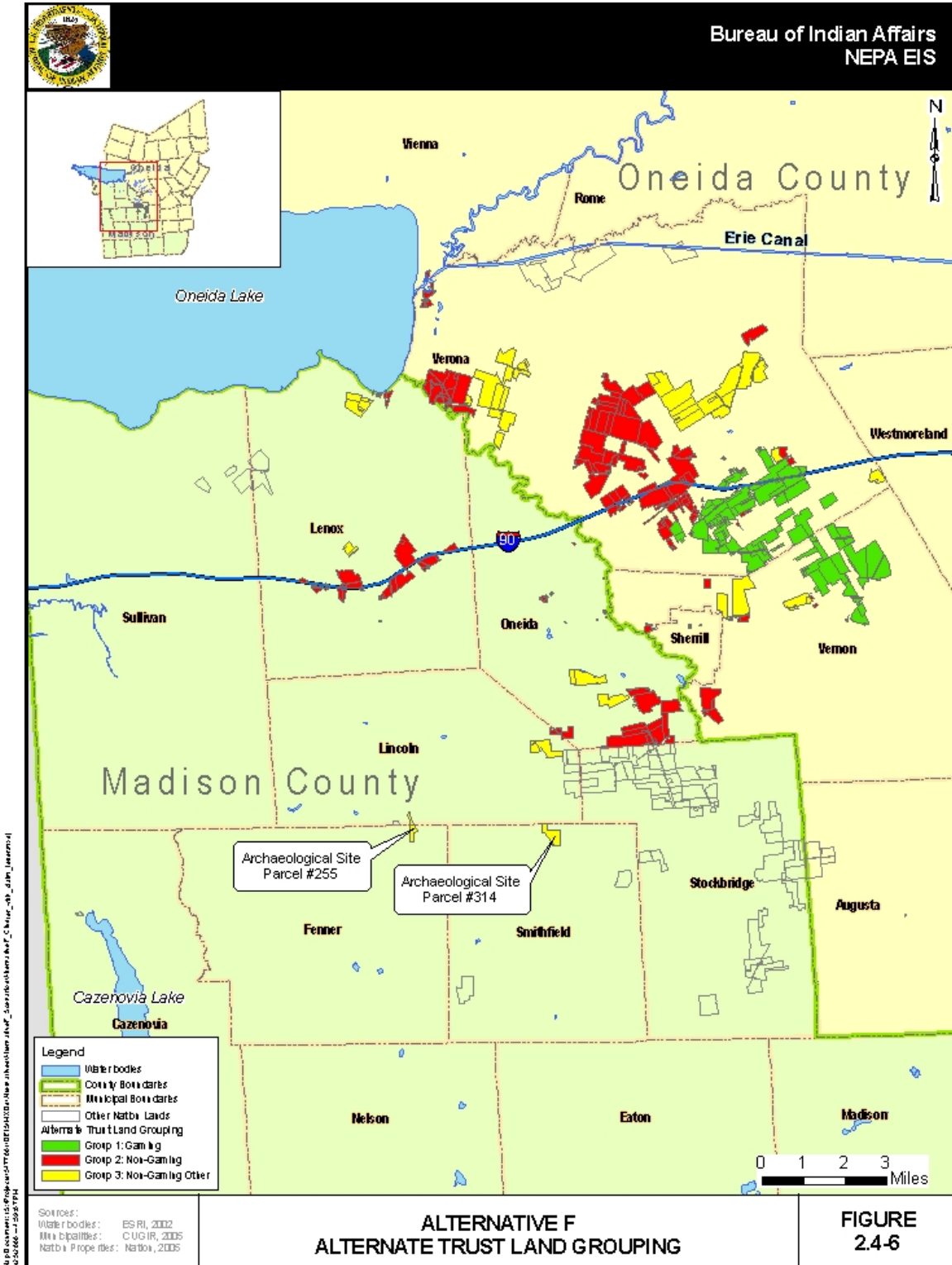
### **2.4.6 Alternative F - Alternate Trust Land Grouping**

Alternative F is based upon combining all of the parcels contained in Group 1 lands with additional parcels from Group 2 and 3 lands to facilitate the formation of a more compact and contiguous group of trust lands. This alternative responds, in particular, to statements from local governments suggesting that a more compact and contiguous trust land grouping than the Proposed Action (Alternative A) should be considered. With this alternative, parcels derived from Group 1, 2 and 3 lands have been identified and assembled into a more consolidated alternative group for conveyance into trust by the BIA (see Figure 2.4-6).

#### **2.4.6.1 Criteria for Selecting the Alternative F Trust Land Grouping**

There are two principal criteria that were identified by the BIA to form the basis for developing a condensed trust land grouping for Alternative F. The first criterion is to create a more compact and contiguous physical property association than provided by the Proposed Action. The other criterion is to meet the Nation's purpose and need for the Proposed Action.





It is recognized that the Nation has been attempting to re-assemble a land base and homeland from alienated properties. To accomplish this, the Nation has had to reacquire properties that have been divided or subdivided over the years by non-Indians. As the Nation purchased parcels to re-create its homeland, it has never had control over all of the specific properties that it may have wished to reacquire. The result is that some of the parcels currently owned by the Nation are directly adjacent to one another while others are physically separated from each other.

The Oneida have chosen to purchase property only located within their historic homeland, is completely located within their reservation boundaries, and currently occupies an area of roughly 20 by 20 miles. The latter in itself can be viewed as a compact land assemblage. The Oneida have pursued a deliberate reacquisition strategy that has focused on their ancestral lands and has resulted in re-establishing their culture on parcels that are spatially concentrated and, where feasible, directly contiguous to one another. There has been a concerted effort by the Oneida to create a compact and contiguous land base to the extent practicable given that these parcels could only be acquired from willing sellers. Other sellers have been approached by the Oneida in the past to further unify their land base, but these owners have been unwilling to sell or only to sell at exorbitant prices.

The other criterion is that this land grouping must meet the purpose and need for the Proposed Action. The purpose and need is to protect and promote the Nation's cultural and social preservation, expression, and identity; political self-determination; self-sufficiency; and economic growth by providing and preserving a tribal land base and homeland that is secure from future alienation.

#### **2.4.6.2 Identified Grouping for Alternative F**

The selected configuration of parcels that comprises Alternative F is depicted in Figure 2.4-6. Note that the especially valued Simpson and Vaillancourt archaeological sites are included in Alternative F even though they fall slightly outside of the main aggregation of lands. Alternative F encompasses 11,986 acres on an area of about 10 by 14 miles; in comparison, Alternative A encompasses 17,370 acres that is located over a 20 by 20 mile area. Thus, while Alternative F occupies 69 percent of the Alternative A land acreage, it is arrayed across a region that is only 35 percent of that of the Proposed Action.

The lands comprising Alternative F are entirely contained within a single watershed and reflect both historic and current cultural attributes of the Oneida. There is a nexus of key prior and present transportation routes in the approximate center of the lands comprising Alternative F where I-90 and the Seneca Turnpike (NYS Route 5) intersect Oneida Creek. These transportation routes provided a critical, easily accessible east-west trade route dating back hundreds of years. While the Oneida hunting grounds extended traditionally north to the St. Lawrence River and south to the Susquehanna River, the population became more and more concentrated to the southeast of Oneida Lake through the

sixteenth century. This area was the location of the principal Oneida villages from 1635 to 1850 as they developed along Oneida Creek including major villages documented at the Sterling site and at Kanonwalohale (Oneida Castle), which is the home of the Oneida stone. These are among the many significant Oneida archaeological sites that were considered to be an important cultural compactness factor in formulating Alternative F.

Functionally, Alternative F includes the majority of Nation member housing, most of the Nation's enterprises, all the Nation's government facilities, and all of the properties containing member services. The parcels within Alternative F are for the most part located within a reasonably short driving time of around 15 minutes from each other.

Complete contiguousness of the Alternative F parcels is neither practical nor reasonable considering the process of reacquisition that the Oneida had to pursue. However, of the total 289 Nation owned parcels under Alternative F, 228 or 79 percent are located directly adjacent to another parcel and many others are separated by only a roadway or a few non-Nation owned properties. Overall, the lands under Alternative F are more compact and contiguous than under Alternative A - Proposed Action. The focused nature and intent of the Nation's reacquisition process in the very restricted geographic area of portions of two counties is evidence of a dedicated effort to recreate a very compact and contiguous land base encompassing all of the presently owned Nation parcels.

#### 2.4.6.3 Alternative F Lands Entering Trust

In combination, the present uses of the Alternative F lands include the following:

- Gaming area at the Turning Stone Resort & Casino including over 2,400 cashless multi-game machines, over 100 table games, Bingo Hall, and Poker Room; Lodging on-site including the Lodge at Turning Stone (98 suites), Tower at Turning Stone (287 rooms and suites), Inn at Turning Stone (62 rooms), and Hotel at Turning Stone (258 rooms); Day Spa & Salon; Event Center; Conference Center; 11 dining facilities; a food court; a storage area; an indoor swimming pool; and an indoor promenade adjacent to the Poker Room;
- Five golf courses, golf dome, and club houses - Atunyote, Kaluhyat, Shenendoah, Pleasant Knolls, and Sandstone Hollow Golf Courses; the Shenendoah Golf Course contains 6,000 square feet of meeting space and a 400 seat banquet room;
- Related casino resort and golf course maintenance, parking, and warehouse facilities;
- Bus, employee, and patron parking areas;
- Co-generation electric station;
- RV campground – Villages at Turning Stone RV Park (175 paved sites) and Peaceful Pines Campground;
- Open space lands contiguous and integral to active gaming and resort properties; s



- Nation government services and affairs - family and legal services; health care services; administration offices; child care and elders services (Ray Elm Children & Elders Center); recreation; telecommunication and information services; media relations; and security;
- Other business enterprises - Four Directions Production, 13 SavOn gas stations and convenience stores; Standing Stone Gaming, Retail Outlet, wholesale distribution and warehouse facilities; public access marinas (Marion Manor, Snug Harbour, Marinar's Landing); CNY Fiberglass and Boat Repair; and crop rental on some agricultural land holdings;
- Cultural and historic resources - burial grounds; historic sites; living history reenactment sites; land for reforestation of black ash used in traditional basket making; and archaeological sites including Simpson (Nichols Pond), Vaillancourt, Sterling, Kanonwalohale (Oneida Castle);
- Associated with a total of 111 identified archaeological sites and 160 sensitive archaeological properties;
- Nation member housing - Village of the White Pines and individual residences; total of 80 residences;
- Internship housing for Nation employees in training;
- Active and inactive pasture and agriculture;
- Wetlands mitigation site; and
- Hunting and fishing, and conservation buffer areas.

Alternative F comprises 373 tax lots that encompass 11,986 acres; 274 tax lots are located within Oneida County while 99 tax lots are located within Madison County. Alternative F covers approximately 9,834 acres or 1.2 percent of the area of Oneida County and approximately 2,152 acres or 0.5 percent of the area of Madison County. Collectively, the 11,986 acres represent about 1.0 percent of the total area of both counties.

#### **2.4.6.4 Lands Omitted from Trust in Alternative F**

The lands omitted from trust in Alternative F comprise 67 tax lots that encompass 5,384 acres, which is 0.4 percent of the total area of Madison and Oneida Counties. This land contains 18 Nation member residences and is associated with culturally important localities including 46 identified archaeological sites and 32 sensitive archaeological properties. By acreage, the current land use is predominately active and inactive agriculture that includes the Black Angus Beef farm along with some hunting and fishing areas. The disposition of these lands omitted from trust being evaluated under the following taxation/jurisdiction scenarios.

#### ***Property Taxes Paid***

Under the PTP scenario, the taxes relevant to the 5,384 acres within 67 tax lots not entering trust would be paid and those lands would be under the regulatory jurisdiction of the New York State and local governments. The Nation would retain ownership these

lands in conjunction with the 11,986 acres of land that would be transferred into trust in Alternative F. The Nation would have sovereign control over the trust lands, but not over the omitted lands. Similarly, taxes would not be paid on the lands in trust but would be paid on the omitted lands. Accordingly, New York State and the local governments would have regulatory jurisdiction over the 18 member residences, cultural and archaeological localities, Black Angus Beef farm, and some hunting and fishing lands. The Turning Stone Resort & Casino and a majority of the other Nation enterprises, including all 13 SavOn gas stations and convenience stores and the public marinas, would continue operations on the trust land. The Nation's government services and member programs would also be maintained on trust lands.

**Property Taxes Not Paid and Foreclosure**

Under the PTNP-F scenario, the taxes relevant to the 5,384 acres not entering trust would not be paid and regulatory jurisdiction of those lands would be under the New York State and local governments. Similar to the PTP scenario above, the Nation would have sovereignty over the trust status lands in Alternative F but not over the omitted lands. The Turning Stone Resort & Casino and a majority of the other Nation enterprises including all 13 SavOn gas stations and convenience stores and public marinas, would continue operations on the trust land. The Nation's government services and member programs would also be maintained on trust lands. However, since taxes would not be paid on the omitted lands, these 5,384 acres would be alienated or foreclosed.

**Property Taxes Not Paid and Dispute Continues**

The PTNP-DC scenario reflects essentially the current situation in that taxes relevant to the 5,384 acres omitted from trust would not be paid and that these lands would continue to be regulated by the Nation. Thus, the Nation would retain of these lands and regulate them in conjunction with the 11,986 acres of land that enters trust status in Alternative F. The Turning Stone Resort & Casino and all of the other Nation enterprises would continue operations on the trust land or omitted lands. The Nation's government services and member programs, all cultural and historic sites, and all Nation member housing would be maintained on lands regulated by the Nation. However, the position of the New York State and local governments has been that they have the authority to regulate the lands omitted from trust and that the decision in *City of Sherrill v. Oneida Nation*, 544 U.S. 197 (2005) subjects these lands to taxation. On the other hand, decisions in *Oneida Nation v. Madison County*, 401 F. Supp. 2<sup>nd</sup> 219 (N.D.N.Y. 2005) and in *Oneida Indian Nation v. Oneida County*, --- F.Supp.2<sup>nd</sup>---, 2006 WL 1517522 (N.D.N.Y. June 02, 2006) hold that the New York State and local governments may not collect taxes nor foreclose on Nation lands for non-payment of property taxes without approval from the U.S. Congress. In this scenario, the dispute over the taxation and jurisdiction of the lands omitted from trust would persist.

### 2.4.7 Alternative G - No Action

Under the No Action Alternative, the federal government would not acquire any lands from the Nation to be held in trust. There are four taxation/jurisdiction scenarios considered within the No Action Alternative that are described below.

#### **Casino Closes and All Enterprises Close**

Following the U.S. Supreme Court's decision in *City of Sherrill v. Oneida Indian Nation* in 2005, issues have been raised regarding the current status of the Nation's reacquired lands and whether they can be used for tribal business such as gaming, tobacco, and fuel sales. For example, in a letter dated September 16, 2005 from the Counsel to the Governor of New York State to the NIGC, the Governor's Office contended that the current gaming activity at the Turning Stone Resort & Casino is illegal. The letter maintained, among other assertions, that the land upon which the Turning Stone Resort & Casino sits is not a reservation and, therefore, is not operating lawfully under the Indian Gaming Regulatory Act, 25 U.S.C §§ 2701-2721.

One possible outcome is that New York State's position on the validity of the casino could prevail. As a result, the Nation's gaming business would be shut down. This **Casino Closes and All Enterprises Close (CC-AEC)** scenario of the No Action Alternative evaluates the potential effects of the closure of the Nation enterprises, and the regulatory jurisdiction over the Nation's reacquired lands being under the New York State and local governments.

The existing uses of the lands under Alternative G are identical to those described above for Alternative A. Collectively, these lands comprise 440 tax lots that encompass 17,370 acres, which is 1.4 percent of the total area of Madison and Oneida Counties. The current use of these lands is that they comprise all of the Nation's active and inactive agriculture including the Black Angus Beef farm; hunting and fishing areas; the wetlands mitigation site; all of the Nation's government services and affairs; all of the member program centers; the Turning Stone Resort & Casino; and all of the other Nation enterprises including all 13 SavOn gas stations and convenience stores and the public access marinas. This land contains all 98 Nation member residences and is associated with all of the Oneida's culturally important localities including 157 identified archaeological sites and 192 sensitive archaeological properties. The disposition of these lands under this CC-AEC scenario of the No Action Alternative would be as follows:

- Turning Stone Resort & Casino – The Turning Stone Resort & Casino would cease operations. The associated Turning Stone Resort & Casino lodging and other related supporting resort facilities would also close and the \$300 million-plus debt service would create a debilitating financial burden that would bankrupt the Nation. Attempts could be made to find other uses for the various structures within the resort-casino complex, although some would undoubtedly fall into neglect and disrepair as the facilities are planned and designed for uses that accommodate casino gambling and resort entertainment.

- Other Nation business enterprises – The majority of the other Nation enterprises are currently not viable business operations and with the added property, sales, and excise taxes would all be closed. The combination of tax and debt service burdens would significantly reduce the Nation’s revenues resulting in a future reliance on federal funding to support the various Nation services and programs.
- Nation government services and affairs – The respective localities for all of these services would not be under the Nation’s sovereign control and the Nation would not be able to fund them. As a result, many of the Nation’s functions and services would be discontinued or severely limited. The Nation’s health, family services, recreation, and cultural enrichment programs would rely heavily on federal funding to sustain themselves.
- Employment – An estimated 5,773 jobs would be lost at the Turning Stone Resort & Casino, the other Nation enterprises, the Nation’s government services, and at associated non-Nation businesses.
- Nation member housing – The Nation’s housing program would rely primarily on federal funding to sustain it. Lands upon which Nation member residences are located would not be under the Nation’s sovereign control.
- Cultural and historic resources – The Nation’s current cultural, historic, and archaeological resources would not be under the Nation’s sovereign control and its corresponding protection. Some of these lands were purchased by the Nation specifically because they are part of their homeland and for the purpose of cultural preservation. The Nation, in both its land acquisition decisions and internal environmental policies, recognizes that cultural, historic, and archaeological resources are invaluable and irreplaceable. The Nation has been active in preserving, protecting, and revitalizing tribal culture through cultural education, site protection, and creation of a comprehensive repository for materials that have historic importance to the Nation. Through these programs, the Nation has not only provided a higher level of cultural preservation for current Nation members but has also created a continued legacy for generations to come.
- Hunting and fishing, wetlands mitigation, and conservation buffer areas – Hunting and fishing lands, wetlands mitigation lands, and the conservation buffer areas would not be under the Nation’s sovereign control.
- Active and inactive pasture and agriculture – All of the Nation’s active and inactive agricultural lands would not be under the Nation’s sovereign control.

Overall, in this CC-AEC scenario under the No Action Alternative, the Nation’s means of economic self-reliance and financial support of its services and programs would be eliminated. All of the Nation’s 17,370 acres of land would not be regulated under its policies or its ordinances for environmental protection, health and safety, land use, zoning, and cultural, historic or archaeological resources; or its codes for housing, vehicles, and traffic. Instead, these lands would be under the jurisdiction and regulation of local and New York State authorities. Since the Nation would be bankrupt and generating little revenue, it could not continue to meet its tax obligations and eventually the 17,370 acres would be alienated or foreclosed. If this were to occur, the Nation’s governance, services,

and programs would discontinue in their current form and function relying completely upon federal funding. The Nation's land base would be eliminated.

**Property Taxes Paid**

Under the PTP scenario, the taxes relevant to the 17,370 acres would be paid and those lands would be under the regulatory jurisdiction of New York State and local governments. The Nation would retain ownership of these lands. The Turning Stone Resort & Casino would continue to operate and all other Nation enterprises including the SavOn gas stations and convenience stores and public marinas would continue functioning. The New York State and local governments would have regulatory jurisdiction over all 98 member residences, all of the Oneida cultural and archaeological localities, wetlands mitigation site, Black Angus Beef farm, all SavOn gas stations and convenience stores, public marinas, Turning Stone Resort & Casino, and all the land where facilities housing the Nation's government services and member programs are located. The Nation would not have sovereign control over any of its lands, although it may continue to support its services and programs with revenues generated from its enterprises.

**Property Taxes Not Paid and Foreclosure**

Under the PTNP-F scenario, the taxes relevant to the 17,370 acres not entering trust would not be paid and regulatory jurisdiction of those lands would be under the New York State and local governments. The Nation would not have sovereign control over any of its lands, although the Turning Stone Resort & Casino and other Nation enterprises could continue operation. However, since taxes would not be paid on any of these lands, they would all be eventually alienated or foreclosed. As this occurs, all Nation enterprises would be shut down, and its government services and programs would cease in their current form and function relying completely upon federal funding. The Nation's land base would be eliminated.

**Property Taxes Not Paid and Dispute Continues**

The PTNP-DC scenario reflects essentially the current situation in that taxes relevant to the 17,370 acres would not be paid and that these lands would continue to be actively regulated by the Nation. Thus, the Nation would retain ownership of these lands and regulate them under the Nation's policies, codes, and ordinances. The Turning Stone Resort & Casino and all of the other Nation enterprises would continue operations. The Nation's government services and member programs, all cultural and historic sites, and all Nation member housing would be maintained on lands regulated by the Nation. However, the position of New York State and the local governments has been that they have the authority to regulate the lands omitted from trust and that the decision in *City of Sherrill v. Oneida Nation*, 544 U.S. 197 (2005) subjects these lands to taxation. On the other hand, decisions in *Oneida Nation v. Madison County*, 401F.Supp.2<sup>nd</sup> 219 (N.D.N.Y. 2005) and in *Oneida Indian Nation v. Oneida County*, --- F.Supp.2<sup>nd</sup> ---, 2006 WL 1517522 (N.D.N.Y. June 02, 2006) hold that the New York State and local governments

may not collect taxes nor foreclose on Nation lands for non-payment of property taxes without approval from the U.S. Congress. In this scenario, the dispute over the taxation and jurisdiction of the lands omitted from trust would persist.

## **2.5 Alternatives Eliminated From Further Study**

NEPA regulation 40 CFR1502.14 (a) states that agencies shall “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” The alternatives to be analyzed in the Draft EIS are listed above in Section 2.4 Description of Alternatives. This section discusses the alternatives identified in scoping or from other sources that were eliminated from further evaluation.

### **2.5.1 Negotiated Settlement Alternative**

Under this alternative, the various interested parties (i.e., New York State, the Nation, Madison and Oneida Counties, other local governments, and citizen groups) would reach an agreement on the specific lands to be taken into trust. In other words, this alternative would take no action on the Nation’s Trust Application without the agreement of all interested parties, which means, under the circumstances it is simply a form of the No Action Alternative. As a practical matter, this alternative is not reasonable because of the number of parties involved and the divergent, conflicting positions that the parties have taken on the trust land issue. Even if just the views of the Nation and the government parties were considered, given the number of government agencies and their expressed categorical opposition to any trust land acquisition the negotiated settlement alternative is at best speculative and more realistically, impossible. Years of discussion of similar issues in the land claim context failed. Finally, the parties remain free to reach an agreement while the BIA considers the Nation’s Trust Application and before any decision is made by the U.S. Secretary of the Interior.

### **2.5.2 Resolution of Land Claim Alternative**

Under this alternative, no land would be taken into trust without resolution of all of the issues involved in the Nation’s land claim including, for example, damages. Such a resolution would involve the agreement of the Nation, New York State, Oneida and Madison Counties, and also in all likelihood the federal government. Under the circumstances, this is just another consequence of the No Action Alternative. The Nation’s land claim has been pending in the courts since 1970 and settlement talks have been on-going for decades. Mediators have been appointed, but the mediations have been terminated by the courts as futile, most recently during the past year (2005). The BIA has been involved in the settlement process. Based on the history of that process, it has been determined that deferring a trust decision until such time, if ever, that there is a land claim settlement is not reasonable. Reaching a land claim settlement that includes the trust land issue is even more speculative and improbable than resolving the trust land issues by

agreement alone. Not only would this require a multi-party agreement on additional issues such as damages, but it would also require the agreement of completely separate Indian tribes in the State of Wisconsin and in Canada. In the wake of the appellate decision in the Cayuga land claim, the prospect of settlement interest on the part of state and local governments, who seek dismissal of all land claims, is even more remote.

### **2.5.3 Legislative Solution Alternative**

Under this alternative, no land would be taken into trust under the U.S. Secretary of the Interior's existing authority and the trust decision would be deferred pending the passage of federal legislation addressing the trust issue. This alternative has been determined not to be reasonable. No such legislation has been passed in the BIA's experience absent the agreement, at a minimum, of the affected governments including the federal government and the tribe. The prospects for any such agreement are speculative at best, as are the prospects for the passage of congressional legislation. No legislation is pending.

### **2.5.4 Land Conveyance in Fee Status Alternative**

Under this alternative, some or all of the land would be conveyed to the federal government to be held in fee status and would be subject to New York State taxation and regulation. This is contrary to the trust statute (25 USC § 465) that expressly provides that land taken into trust is exempt from state and local taxation. Moreover, fee status presumably contemplates that state and local governments could enforce taxes by foreclosure, which would be contrary to the federal government's sovereign immunity. Finally, there is no authorized authority for the proposed fee status alternative, neither in the trust statute nor elsewhere in federal law. Thus, the alternative has been determined not to be reasonable.

### **2.5.5 Creation of a New York State Reservation or Trust Alternative**

Under this alternative, the lands held by the Nation would be placed in a reservation created by New York State or held in trust by New York State and governed by New York State law. The U.S. Constitution confers exclusive authority over Indian commerce, which encompasses the whole of governmental relations with Indian tribes, on the federal government and has not delegated any of this authority to create Indian reservations or trust lands to the states. Although a state may grant exemptions from its own tax laws and regulations, states have no power to create Indian reservations. Denial of the Nation's Trust Application in the hope that New York State would enact legislation or take other action to create such a state reservation or state trust status would not be a reasonable alternative. Such legislation or action would have the effect of conferring immunity from real property taxation (see, i.e., New York Indian Law §6), a result that New York State and other local governments adamantly oppose. Under the circumstances, this alternative is both the equivalent of the No Action Alternative and unreasonable as well.

## 2.6 Comparison of Alternatives

This section presents a comparison of all of the alternatives under consideration and begins with a brief discussion of the various physical features that distinguish Alternatives A, B, C, D, E, F, and G from one another. The effects of the alternatives on the resource categories are then summarized with reference to how various consequences compare among the alternatives. Note that throughout this section the following abbreviations are used with respect to the scenarios involving the disposition of the lands omitted from trust: PTP; PTNP-F; PTNP-DC; and CC-AEC.

### 2.6.1 Comparative Features Among the Alternatives

The physical features that characterize the seven alternatives and that were described in detail in the preceding sections are summarized in Table 2.6-1; Alternative G - No Action is not included in this table since it tabulates information only related to the lands that would be taken into trust under the different alternatives. The amount of proposed land for trust conveyance ranges from 225 acres in Alternative E to 35,000 acres in Alternative B; these figures correspond to 0.03 and 2.8 percent, respectively, of the total combined area of Madison and Oneida Counties. In each of the trust alternatives (not including Alternative G - No Action), more acreage and tax lots would be involved for lands located within Oneida County that would be conveyed into trust as compared to Madison County. All Nation lands (17,370 acres) would enter trust under Alternatives A or B, with the next largest transfer of 69 percent of these lands under Alternative F, Alternative C is next at 57 percent of Nation lands, with Alternative D at about 20 percent, and Alternative E at only 1.3 percent. Nation lands would not be omitted from trust transfer in Alternatives A or B, while all of these lands would be omitted from trust under Alternative G - No Action. The largest area of Nation lands that would be omitted among the other trust alternatives would be the 17,145 acres in Alternative E, followed by 13,942 acres in Alternative D, 7,467 acres in Alternative C, and 5,384 acres in Alternative F.

Alternative E is the only alternative with a single tax lot and a single category of land use, that being 225 acres of commercial land associated with the Turning Stone Resort & Casino. In all of the other alternatives, the dominate land use is agricultural followed by both recreation/entertainment and residential. The largest number of identified and sensitive archaeological sites associated with an alternative is under Alternatives A and B, followed by Alternative F, then Alternative C, and then Alternative D; there are no archaeological sites associated with Alternative E. The greatest number of Nation member residences is under Alternatives A and B, followed by Alternatives C, F, D, and E. Finally the localities occupied by the Nation's government services and member programs are all found in Alternatives A, B, C, and F; the Nation's government services and member programs are not included in Alternatives D or E.



## 2.6.2 Comparison of Potential Consequences of the Alternatives

In Section 4.0 Environmental Consequences, the potential effects of implementing the Proposed Action or any of the trust action alternatives are analyzed in detail. In this section the significant, notable, and/or most salient consequences of all of the alternatives are highlighted in a comparative fashion. Table 2.6-2 depicts these consequences in a tabular format enabling an overview of the respective effects of each alternative on the resources under investigation. It should be noted that not all of the resource categories are included in this comparison because a number of them would exhibit no effect or only a less than significant effect from the implementation of any of the alternatives. In the conveyance of lands into trust status there are no direct effects to the physical environment since no ground disturbance occurs. The resource categories that would not be significantly impacted by any alternative include topography, soils, geology, surface water, groundwater, wetlands, air quality, wildlife, vegetation, ecosystems/biological communities, agriculture, some broader social conditions, mining, recreation, transportation, wilderness, noise, light, visual, public health and safety, and growth inducement. On the other hand, the various proposed trust transfers within the respective alternatives may have more significant effects on New York State, the local communities or the Nation. These consequences are most evident in the resource or value categories that include land use planning and zoning, historic and archaeological resources, cultural values, local community and Nation government services, employment and income, housing and demographics, taxation, hunting and fishing resources, regulatory jurisdiction, and environmental justice.

Under Alternative A, the largest area of currently-owned Nation lands of 17,370 acres would be conveyed into trust in comparison to all the other alternatives except Alternative B. In Alternative B, the same amount of existing Nation lands would enter trust along with an additional unidentified 17,630 acres. Correspondingly, Alternatives A and B are the only alternatives containing the most proposed trust land area in all use categories, including all 98 Nation member residences, all government services, the Turning Stone Resort & Casino and all business enterprises, 11,451 acres of agriculture, 4,227 acres for hunting and fishing, and 3,106 acres of wetlands. Alternatives A and B are also the only ones that would accommodate in trust all Nation lands containing social, cultural, and religious facilities as well as all historical and archaeological resources (all 157 identified archaeological sites). Cultural and historic properties located on all 17,370 acres would be provided added federal protection under the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA), and would all remain under Oneida stewardship. It is likely that under Alternative B there would be an increase in all the above land uses as the additional 17,630 acres is conveyed into trust. Alternatives A and B would include in trust every significant cultural facility owned by the Oneida such as the Shako: wi Cultural Center, Ray Elm Children & Elders Center, Village of White Pines, Festival Sites, traditional croplands, and cultural service departments.

Under Alternative F the third largest area (11,986 acres) behind Alternatives B and A of currently-owned Nation lands would be conveyed into trust. Alternative F contains 80 Nation member residences, all government services, the Turning Stone Resort & Casino and all business enterprises, 7,168 acres of agriculture, 3,294 acres for hunting and fishing, and 2,537 acres of wetlands. Alternative F would accommodate in trust a great majority of Nation lands that contain social, cultural, and religious facilities as well as historical and archaeological resources (111 or 71 percent of the identified archaeological sites). Cultural and historic properties in the trust lands of Alternative F, as in Alternatives C, D and E, would be provided the added protection under the ARPA and the NAGPRA, and remain under Oneida stewardship. Alternative F includes most of significant cultural assets and facilities owned by the Nation including the Shako: wi Cultural Center, Ray Elm Children & Elders Center, Village of White Pines, Festival Sites, plus cultural service departments.

Under Alternative C the fourth largest area (9,903 acres) of lands would be conveyed into trust. Alternative C contains 85 Nation member residences, all government services, the Turning Stone Resort & Casino and all business enterprises, 5,409 acres of agriculture, 2,235 acres for hunting and fishing, and 2,263 acres of wetlands. Alternative C would accommodate in trust a relatively large part of Nation lands that contain social, cultural, and religious practices as well as historical and archaeological resources (100 or 64 percent of the identified archaeological sites). Alternative C includes the majority of significant Oneida cultural assets and facilities.

Under Alternative D the fifth largest area (3,428 acres) would be conveyed into trust. Alternative D contains two Nation member residences, no government services, the Turning Stone Resort & Casino and all business enterprises, 1,549 acres of agriculture lands, no hunting and fishing lands, and 843 acres of wetlands. Alternative D would not accommodate in trust any of the Nation lands that contain social, cultural, and religious facilities and only a few archaeological resources (six or four percent of the identified archaeological sites). Alternative D would include none of the significant Oneida cultural assets and facilities.

Under Alternative E, the least amount (225 acres) of currently owned Nation lands would be conveyed into trust. Alternative E contains no member residences, no government services, part of the Turning Stone Resort & Casino, one SavOn gas station and convenience store, no other Nation business enterprises, no agricultural land, no hunting and fishing lands, and no wetlands. Alternative E would not accommodate in trust any of the Nation lands that contain social, cultural, and religious practices or archaeological resources. Alternative E includes none of the significant cultural facilities.

Under Alternative G, none of the Nation's lands would be conveyed into trust. Under the CC-AEC scenario, it is assumed that the Turning Stone Resort & Casino would be

declared illegal and it along with the rest of the Nation enterprises would cease operations. This would bankrupt the Nation. No Nation member residences, no government services, the Turning Stone Resort & Casino nor all other Nation business enterprises, no agricultural land, no hunting and fishing lands, and no wetlands would be transferred into trust. Alternative G would not accommodate in trust any of the Nation lands that contain social, cultural, and religious practices or archaeological resources. None of the significant Oneida cultural facilities would be placed into trust.

In Alternatives A and B none of the Nation's lands are excluded from trust. In Alternative C, 7,467 acres, and in Alternative F, 5,384 acres, including important agricultural and archaeological lands are omitted from trust. In Alternatives D and E, 13, 942 and 17,145 acres, respectively, are excluded from trust that contain nearly all member residences, all government services, important agricultural lands, and the great majority of Oneida cultural and archaeological sites. All Nation lands would be omitted from trust in Alternative G. All the omitted lands would be alienated or foreclosed under the PTNP-F or CC-AEC scenarios, a significant adverse effect on the Nation.

In all alternatives except Alternative G - No Action, portions of Nation trust lands would be interspersed with non-Nation lands. The State and local governments have asserted that this would have an adverse effect on their ability to cohesively plan and to uniformly enforce their zoning, land use or environmental regulations. The extent of this potential effect would partially depend on the different amounts of land entering trust in the various alternatives and in which municipalities. In most areas there is general consistency in uses of Nation and non-Nation lands, and trust lands would be regulated under the Oneida Indian Nation Land Use Ordinance that requires development to be compatible with adjoining uses and under Nation policies to protect environmental resources. However, the New York State and local governments would not have regulatory control over all lands in the region. If there are changes in the future land use planning or zoning regulations by either the Nation or local governments consistent application could be affected. In the CC-AEC scenario of Alternative G New York State and local governments would have regulatory jurisdiction over all Nation and non-Nation lands.

In the next five years, the total Nation employment in Alternative A or B would grow from 4,611 jobs to 4,882 jobs. In Alternative C the growth would be to 4,874 jobs and similarly in Alternative F to 4,872 jobs. In these four alternatives, there would also a net increase in jobs at non-Nation local businesses from 912 (\$31.9 million in earnings) to 961 (\$33.6 million) in Alternatives A and B, to 960 in C and 959 in F due to multiplier spending by the Nation and its employees plus added jobs and earnings from off-site visitor spending. There would a decrease of jobs in Alternative D from 4,611 to 4,581 and to 3,940 in Alternative E; both of these alternatives would result in losses of non-Nation business jobs as well. Under Alternatives A, B, C, and F there would be no significant change of employee in-migration in next five years (estimated increase of 261

persons into Madison and Oneida Counties) due to limited employment growth and the high proportion of local hiring. There would be out-migration in Alternatives D, E or G. In the CC-AEC scenario of Alternative G an estimated 5,773 Nation and non-Nation jobs would be lost; 4,992 would be residents of Madison and Oneida Counties, and this would cause related unemployment impacts there.

Under Alternative A as in Alternatives B, C, and F, all current government programs and services would be maintained including health, education, housing, recreation and cultural activities, day care, and public safety.

Trust lands would be exempt from property taxes, which would have an adverse effect on local government revenues. The annual property tax on these lands is estimated for Alternative A at \$2.7 million (2005); Alternative B at \$5.4 million; Alternative C at \$2.4 million; Alternative D at \$1.0 million; uncertain on the 225 acres of Alternative E because of the contested assessment of the Turning Stone Resort & Casino; and Alternative F at \$2.5 million. The Nation has paid taxes to the Cities of Oneida and Sherrill and grants and payments to local governments for a total of \$38.5 million since 1995 although these latter may not be continued in the future. It is expected that the Nation would continue to pay local governments for services provided. Nation employees paid an estimated \$5.6 million in local property taxes in 2005 and the Nation withheld and remitted \$3.3 million in New York State income taxes from its employees in 2005. In addition, the multiplier effect of the Nation and employee spending stimulated \$7.3 million of New York State personal income, business, and sales taxes and another \$1.2 million in local sales taxes. Finally, 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 that would continue in the future. Overall, in 2005 the revenues from Nation payments and associated employee and multiplier taxes was about \$24.2 million while its costs were \$6.0 million, resulting in a beneficial net effect to the state and local governments of over \$18 million. In Alternatives A-F, the employee and related multiplier taxes would be expected to continue except in Alternatives D and E where they would decrease due to employment reduction and in the CC-AEC scenario of Alternative G where the Nation businesses would cease operations and significant job loss would occur.

Under Alternatives A through F there would be no direct physical adverse effects on community facilities and services related to police protection, fire protection, school or medical care/emergency services. No significant increase in the demand for police or fire protection or emergency medical assistance would be expected due to the increase in Turning Stone Resort & Casino visitors and Nation population. All current and ongoing service agreements and cooperative service efforts, such as the Mutual Aid Plan, would be expected to continue. The Vernon Fire Department has contested the adequacy of its service agreement with the Nation and this issue remains unresolved. Local and New

York State Police have complete jurisdiction enforcement power on all Nation lands regardless of whether they are in trust or not.

Implementation of any alternative would have no disproportionate adverse effect on any low-income or clearly identified minority community. However, there could be potential effects on the resources of the Oneida Nation which as a local Native American community is subject to an environmental justice assessment. Conveying Nation lands into trust under Alternatives A – F would be a beneficial effect on the Nation allowing for its self-governance and control of lands considered by the Oneida as ancestral homeland and within their reservation. This would involve a relatively small portion of the Nation's reacquired lands in Alternative D and a minor fraction of them in Alternative E (only 225 acres). Lands omitted from trust in Alternatives C through F would not be provided the archaeological protection of the ARPA and the NAGPRA. The alienation or foreclosure of these lands (under the PTNP-F scenario) including the loss of Nation member residences as well as the loss of government services and programs, hunting and fishing lands, agriculture, and cultural resources would be an impact predominately borne by Native American populations and the Oneida Nation. This impact would be highly significant in Alternatives D and E and much less significant in Alternatives C and F.

Under the CC-AEC or PTNP-F scenario, no Nation lands would be conveyed into trust and the Nation would not exercise self-governance and control of any its reacquired lands considered by the Oneida as ancestral homeland and within their reservation. There would be a significant adverse effect on the Nation limiting its income producing capability and impacting the viability of its social, health, and cultural programs. All 17,370 acres of land omitted from trust would not have the archaeological protection of the ARPA and the NAGPRA. The alienation of the 17,145 acres (under the PTNP-F scenario) including the potential loss of 98 Nation member residences, government services and programs, hunting and fishing lands, agriculture, and all cultural resources would be an impact predominately borne by Native American populations and the Oneida Nation.

Overall, Alternative A- Proposed Action, would secure a land base in trust status for implementing the Nation's expressed purpose and need. Alternative B would secure a larger land base in anticipation of the needs of future generations. Alternative C would secure a smaller land base than the Proposed Action, and Alternatives D and E would secure an insufficient land base for fulfilling the Nation's expressed purpose and need. Alternative F would secure a more compact land base than the Proposed Action for implementing the Nation's expressed purpose and need. Alternative G would not secure any land base with federal trust status for fulfilling the Nation's expressed purpose and need.