

## 4.12 Unavoidable Adverse Effects

This section identifies unavoidable adverse effects that may occur as a result of implementing the Proposed Action or one of its alternatives. The conveyance of lands into trust would not result in significant direct or indirect effects to the physical environment since no ground disturbance would occur and there is no proposed change in land use. Therefore, resource categories related to the physical environment, such as soils, groundwater, air, noise, wildlife, vegetation, wetlands and others would not be subjected to unavoidable adverse effects. On the other hand, the various scenarios associated with the respective alternatives could have unavoidable adverse effects on New York State, the local communities, or the Nation. These potential consequences comprise the majority of the effects addressed in this section.

### ***Regulatory Jurisdiction***

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

These lands, once in trust, would continue to be regulated by federal laws that apply to tribal land and to the extent that these laws would be enforced in a manner consistent with New York State laws, would provide environmental protection. In addition, the land would be regulated by Nation laws and ordinances, many of which have been in place for nearly 10 years, covering building construction, land use, public safety, and environmental protection. Through those policies, the Nation is committed to environmental protection and conservation consistent with or equivalent to local and state laws and regulations. This consistency in the application of environmental and land use standards on lands held in trust could avoid or minimize the potential unavoidable adverse effects to regulatory jurisdiction that are contended by the State and local governments.

### ***Land Use Planning and Zoning***

The State and local governments have asserted that lands conveyed into trust would have unavoidable adverse effects on some municipalities if the local government is unable to effectively implement consistent community planning and the enforcement of zoning, land use, or other regulations. In all alternatives, except Alternative G - No Action, portions of Nation trust lands would be interspersed with non-Nation lands. Local governments would have no jurisdictional control over these lands and have stated that this would have an adverse effect on their ability to cohesively plan and to uniformly enforce their zoning and land use regulations. The extent of this potential effect would partially depend on the

different amounts of land entering trust in the various alternatives and in which municipalities. Generally, the potential for this effect is greatest for towns that have a greater number of parcels or percentage of land area entering trust compared to towns with only a few parcels or little total acreage held in trust. This is more fully discussed in Sections 4.2.4 Land Use and 4.8.6 Land Use Plans and Zoning. Predominantly, there is at present general consistency in uses of Nation and non-Nation lands. Once in trust, lands would be regulated under the Oneida Indian Nation Land Use Ordinance that requires development to be compatible with adjoining uses. This consistency in the application of land use plans and regulations on lands held in trust could avoid or minimize the potential unavoidable adverse effects to zoning and planning that are contended by the State and local governments. If there are changes in the future land use planning or zoning regulations by either the Nation or local governments, resulting affects on land uses could be resolved through cooperative planning efforts.

### **Employment**

Losses of jobs would be unavoidable in certain alternatives and their scenarios. In Alternative E, overall Nation employment would decrease from 4,611 to 3,940 and 177 jobs would be lost from local non-Nation businesses. In Alternatives C, D, E, and F under the **Property Taxes Not Paid – Foreclosure** scenario, jobs would be lost due to the alienation or foreclosure of the excluded lands, most notably in Alternative D where there is a loss of 301 jobs and in Alternative E with a loss of 942 jobs.

Under the Alternative G - **No Action Casino Closes - All Enterprises Close or Property Taxes Not Paid – Foreclosure** scenarios, there would be a significant drop in employment including the loss of all 3,779 jobs at the Turning Stone Resort & Casino, losses in other Nation enterprises and its government, and a loss of 946 jobs in local non-Nation businesses. Overall, 5,773 jobs would be eliminated, affecting 4,992 residents of Madison or Oneida Counties.

### **Housing and Real Estate**

Under the **Property Taxes Not Paid – Foreclosure or Casino Closes - All Enterprises Close** scenarios, concerning lands excluded from trust in Alternatives D, E or G, there would be the significant adverse consequences to the Nation due to alienation or foreclosure of lands containing most or all current member residences and not constructing planned residences for 66 additional families.

In the **Property Taxes Not Paid – Foreclosure or Casino Closes - All Enterprises Close** scenarios, there would be large amounts of Nation properties foreclosed or alienated and entering the real estate market in Alternative C (7,467 acres), Alternative D (13,942 acres), Alternative E (17,145 acres), Alternative F (5,384 acres), and Alternative G (17,370 acres). This could cause an unavoidable reduction in property values in Madison and Oneida Counties as laid-off employees may leave the region or default on their taxes.

**Taxes**

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

The loss of jobs in the **Property Taxes Not Paid – Foreclosure or Casino Closes - All Enterprises Close** scenarios of Alternatives D, E, and G would unavoidably reduce income and other tax revenue. In Alternative G - No Action this would be a loss of \$3.3 million of income taxes and a drop in the multiplier effect on sales taxes of \$300,000.

**Traffic**

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

**Agriculture**

Loss of the Nation’s use of agricultural lands and related commercial assets under the **Property Taxes Not Paid – Foreclosure or Casino Closes - All Enterprises Close** scenarios in Alternatives C through G could result in an unavoidable adverse effect to the Nation both economically and culturally. This would include the potential loss of a revenue source to the Nation, the inability to recuperate its capital investments in the development of its agricultural enterprises, and prevention of the Nation from cultivating traditional crops using traditional methods on lands within its aboriginal homeland.

**Historic, Cultural and Archaeological Resources**

Alternative C would exclude important cultural, historic, and archaeological assets located in Group 3 lands, the most important of which are located in the Towns of Stockbridge, Fenner, Lincoln, and Smithfield in Madison County. Alternative D and Alternative E

convey virtually none of the Nation's important cultural, historic, and religious properties into trust. Alternative D would convey only six and Alternative E would convey none of the Nation's important archaeological sites into trust. Alternative F would include some of the Nation's important cultural and archaeological sites but would exclude some other sites. In Alternatives C - F there would be an unavoidable adverse effect to the Nation in the **Property Taxes Not Paid – Foreclosure** scenario where omitted lands containing cultural or archaeological resources would be lost due to alienation or foreclosure.

The potential adverse indirect effects on the Nation's cultural and archaeological resources would be far more significant under Alternative G than for the other alternatives. Under the **No Action Casino Closes - All Enterprises Close** scenario, the Turning Stone Resort & Casino would close and lands containing archaeological and cultural resources would be alienated or foreclosed as the Nation would lose its most significant source of the revenue which enables the Nation to maintain cultural and archaeological assets and programs. The **Casino Closes - All Enterprises Close** scenario would have a significant unavoidable adverse effect on the Nation's archaeological resources and culture.

Under Alternatives C through G, lands not conveyed into trust and archaeological resources contained there would not have the protection under ARPA and NAGPRA. This would have an unavoidable adverse effect on the Nation's culture if, under the **Property Taxes Not Paid – Foreclosure** or **Casino Closes - All Enterprises Close** scenarios, these lands are alienated or foreclosed and the properties or cultural assets are impacted by others. Under Alternative G, none of the Nation's archaeological sites would receive protection under ARPA and NAGPRA.

#### **Government Services**

In the **Property Taxes Not Paid – Foreclosure** or **Casino Closes- All Enterprises Close** scenarios of Alternatives D, E or G all the Nation's government programs would be severely curtailed or cease altogether as they are located in facilities on lands that would be alienated or foreclosed. This would be a significant unavoidable adverse effect on the Nation. To remain viable these programs would have to rely heavily on federal funding.

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

In the past, the Nation has supported the expansion of these services over time by providing funding to the local municipalities in a variety of ways. The Nation continues to send most of their children to local public schools for their education, utilize existing healthcare facilities, cooperate with local police departments regarding law enforcement, and rely on municipalities for emergency response and fire protection. Under Alternatives A through F and the **Property Taxes Paid** or **Property Taxes Not Paid - Dispute Continues** scenarios, the Nation service agreements related to the provision of community services would be maintained. However, under the **No Action Casino Closes - All Enterprises Close** or the **Property Taxes Not Paid – Foreclosure** scenarios in Alternatives C through G where Nation lands are alienated or foreclosed, the service agreements would be reduced in extent or terminated.

### ***Hunting and Fishing Lands***

Alternative F would secure 78 percent of the Nation’s hunting and fishing lands. Alternatives D, E, and G would convey none of the Nation’s hunting and fishing lands into trust, representing a direct unavoidable adverse effect on the Nation. Under Alternatives C through G, where all or some variable portion of Nation lands used for hunting and fishing would not be conveyed into trust they would become subject to foreclosure or alienation in the **Property Taxes Not Paid – Foreclosure** or **Casino Closes - All Enterprises Close** scenarios. This would be an unavoidable adverse effect on the Nation and its culture.

### ***Lifestyles and Cultural Values***

The projects and programs implemented by the Nation that focus on culture, language, ceremonies, and community are critical and necessary for the Nation to retain the unique Oneida lifestyle attributes, cultural values, and philosophy. Alternatives D and E both would exclude all the key lands with respective cultural facilities owned by the Oneida such as the Shako: wi Cultural Center, Ray Elm Children & Elders Center, Village of White Pines, Festival Sites, traditional croplands plus cultural service departments. Both alternatives, under the **Property Taxes Not Paid – Foreclosure** scenario where these lands would be alienated or foreclosed, would have the same direct significant unavoidable adverse effect on the Nation. Alternative G would convey no lands into trust and would also have a significant unavoidable adverse effect on the Nation. This would especially be the case in either the **Casino Closes - All Enterprises Close** or the **Property Taxes Not Paid – Foreclosure** scenarios where the lands supporting all of the Oneida cultural foundation would be alienated or foreclosed.

### ***Environmental Justice***

The substantial land areas in Alternatives C, D, E, and F that would be omitted from trust would not have the added protection of ARPA and NAGPRA, an unavoidably adverse effect on the archaeological resources of the Nation. In addition, under the **Property Taxes Not Paid – Foreclosure** scenario for these four alternatives Nation member residences may be alienated or foreclosed with most or all residences affected in Alternatives D or E; this

would be a significant unavoidable adverse impact on the Oneida and Native Americans. Also in Alternatives D and E revenue generating properties would be shut down, diminishing the Nation's ability to provide the same level of services and programs to its people. Alternatives C or F would have similar but less significant unavoidable adverse effects.

In Alternative G, under the **Casino Closes - All Enterprises Close or Property Taxes Not Paid – Foreclosure** scenarios, the closure of income producing enterprises, the alienation or foreclosure of all Nation lands and member housing, and the limiting or eliminating of the Nation's social, cultural, and health programs would constitute a significantly unavoidable adverse effect on the Oneida.