

## 3.9 Other Values

### 3.9.1 Wilderness

This section presents information on land areas that are subject to the federal Wilderness Act and New York State lands that are under the jurisdiction of the Division of Lands and Forests. The following section describes the regulatory framework for the designation of such lands, the locations of such lands within the Study Area (Madison and Oneida Counties), and their proximity to the Nation's lands that are proposed for conveyance into trust.

#### 3.9.1.1 Federal Wilderness Areas

The federal Wilderness Act (Wilderness Act) was signed by President Lyndon Johnson on September 3, 1964. 16 CFR Title 16, Chapter 23, Part 1131 defines wilderness as, “in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of underdeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which

- Generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;
- Has outstanding opportunities for solitude or a primitive and unconfined type of recreation;
- Has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and
- May also contain ecological, geological, or other features of scientific, educational, scenic or historical value.”

The Wilderness Act established the National Wilderness Preservation System within existing federal agencies and comprised of existing public lands. The original lands in the system were U.S. Department of Agriculture Forest Service Areas (USFSA). When enacted, the Wilderness Act also required the National Park Service and the U.S. Fish and Wildlife Service, two federal agencies in the U.S. Department of Interior, to survey their lands for areas that meet the criteria to be designated as wilderness. In later legislation, the U.S. Bureau of Land Management was also mandated to survey lands for possible wilderness designation. These four agencies presently manage more than 600 areas that make up the National Wilderness Preservation System and fall into various classifications such as Refuges, Forests, Grasslands, Scenic Areas, Recreation Areas and Tall Grass Prairies (U. S. National Park Service, 2006).

Within Oneida and Madison Counties, there are no USFWS National Wildlife Refuges, USFSA National Forests, Grasslands, Scenic Areas, Recreation Areas, or Tall Grass Prairies. Moreover, there are no NPS National Scenic Trails, National Scenic Rivers, National Historic Sites, National Memorials, or National Seashores in Oneida or Madison Counties. There is a NPS National Monument in Oneida County located in the City of Rome. The Fort Stanwix National Monument is the site of an American stand in August, 1777 against a British invasion from Canada and the location of the signing of treaties with the Iroquois (Treaties with The Six Nations) on November 5, 1768 and October 22, 1784.

None of the previously listed federal land resources are located on or adjacent to the Nation's lands.

### **3.9.1.2 Land Classifications**

The NYSDEC Division of Lands and Forests manages public lands in New York State and provides leadership in forestry and forestry management. The NYSDEC manages about four million acres of New York State-owned land, an area equal to approximately 13 percent of the total land area of New York State (New York State Department of Environmental Conservation, 2006a). The NYSDEC classifies its lands using eight categories: Forest Preserves, State Forests, Reforestation Areas, Multiple Use Areas/Lands, Unique Areas, State Nature and Historic Preserves, Conservation Easements, and Wildlife Management Areas (WMAs). With the exception of WMAs, the Division of Lands and Forests is responsible for managing lands in these categories. Wildlife Management Areas are lands owned by New York State that are managed by the NYSDEC Division of Fish, Wildlife, and Marine Resources. WMAs have been acquired primarily for the production and use of wildlife.

#### ***Wildlife Management Areas***

Three WMAs including Oriskany Flats, Rome State, and Utica Marsh are located in Oneida County. Only the Tioughnioga State WMA is located in Madison County. None of the Nation's lands is located in these WMAs. Moreover, there are no WMAs found in any of the towns where the Nation's lands are located.

#### ***Forest Preserve***

A Forest Preserve consists of all New York State-owned lands within the Adirondack and Catskill Parks. Forest Preserve lands are divided into categories based on their capacity to withstand use. They are classified as wilderness, wild forest, canoe, primitive, intensive use, wild and scenic rivers, travel corridors, historic, or state administrative. These categories are defined in the Adirondack Park State Land Master Plan and the Catskill Park State Land Master Plan.

The 300,000 acre Catskill Forest Preserve does not include any land located in Oneida or Madison Counties. The Adirondack Park is approximately 5.8 million acres in size, of

which approximately 2.6 million acres are owned and managed by New York State as Forest Preserve. Approximately 16,500 acres of the Adirondack Park lie within Oneida County (New York State Adirondack Park Agency, 2003). In addition, the Black River Wild Forest and Lehigh Valley Trail are located in Oneida and Madison Counties, respectively. None of the Nation's lands is located within the Adirondack Park, Black River Wild Forest, or Lehigh Valley Trail. Moreover, there are no Forest Preserves found in any of the towns where the Nation's lands are located.

### **State Forests**

State Forest is a generic term which encompasses many legally defined classifications of lands outside the Forest Preserves. It was originally confined to Reforestation Areas, but has been expanded to include land parcels acquired under several Bond Acts as well as Conservation Easements. A 1988 revised draft Master Plan for State Forests defines this classification as the nearly 600,000 acres classified as Reforestation Areas and the approximately 100,000 acres classified as Multiple Use Lands (New York State Department of Environmental Conservation, 2006b). In summary, State Forests are lands that have been acquired by New York State, in areas outside the Adirondack and Catskill Parks, on which Multiple Use Area management practices may be conducted.

There are 25 State Forests located in Oneida County and 12 State Forests located in Madison County (New York State Department of Environmental Conservation, 2006c; 2006d). Table 3.9-1 lists the State Forests located in Madison and Oneida Counties. None of the Nation's lands is located within any of these 37 State Forests. Moreover, there are no State Forests found in any of the municipalities where the Nation's lands are located.

**Table 3.9-1  
State Forests of Oneida and Madison Counties**

Oneida County State Forests	Madison County State Forests
Big Brook	Beaver Creek
Buck Hill	Brookfield Railroad
Canada Creek	Charles E Baker
Clark Hill	Deruyter
Cobb Brook	Earlville
Fall Brook	Gorton Lake
Fish Creek	Lebanon
Florence Hill	Morrow Mountain
Furnace Creek	Muller Hill
Gorton Lake	Stoney Pond
Hogsback	Texas Hill
Jackson Hill	Three Springs
Mad River	
Mount Hunger	
Penn Mountain	
Point Rock	
Popple Pond	
South Hill	
Stone barn	
Swancott Hill	
Tassell Hill	
Tri-County	
Webster Hill	
West Branch	
Woodhull	

Source: New York State Department of Environmental Conservation, 2006c; 2006d

**Reforestation Area**

Environmental Conservation Law (ECL) Section 9-0501 provides the legal mechanism for the acquisition of lands which are suitable for reforestation and the establishment and maintenance of forests outside of the Adirondack and Catskill Parks. These forests are managed for a variety of uses including watershed protection, production of timber and other forest products, and recreation. The NYSDEC may acquire in the name of New York State, by gift, purchase or appropriation, Reforestation Areas at least 500 contiguous acres in size which shall forever be devoted to the planting, growth, and harvesting of such forests. In accordance with ECL Section 9-0501, a Reforestation Area may be divided only by a highway, railroad, utility line right-of-way, canal, or stream.

This classification is included under State Forests and, as described above, none of the Nation’s lands are located on State Forest land. Therefore, none of the Nation’s lands is located in Reforestation Areas. Moreover, there are no Reforestation Areas found in any of the towns where the Nation’s lands are located.

**Multiple Use Areas/Lands**

Multiple Use Areas/Lands are defined as parcels of land owned by New York State that were acquired for outdoor recreation, including public camping, fishing, hunting, boating,

winter sports and, wherever possible, also to serve multiple purposes involving the conservation and development of natural resources. These natural resources include the preservation of scenic areas, watershed protection, forestry, and reforestation. The funds received by New York State from the sale of bonds sold pursuant to the Park and Recreation Land Acquisition Bond Acts of 1960 and 1962 are used for this purpose.

This classification is covered under State Forests and none of the Nation's lands located on or adjacent to State Forest land. Therefore, none of the Nation's lands is located in Multiple Use Areas/Lands. Moreover, there are no Multiple Use Areas/Lands found in any of the towns where the Nation's lands are located.

#### **Unique Areas**

Unique Areas are defined as parcels of land owned by New York State that were acquired due to their special natural beauty, wilderness character, or for their geological, ecological, or historical significance to New York State. The Rome Sand Plains State Unique Area is located in Oneida County and the Nelson Swamp State Unique Area is located in Madison County. None of the Nation's lands is located in or adjacent to either of these Unique Areas. Moreover, there are no Unique Areas found in any of the towns where the Nation's lands are located.

#### **State Nature and Historic Preserve**

A State Nature and Historic Preserve is defined as a parcel of land owned by New York State that was acquired to protect the biological diversity of plants, animals, and natural communities and may provide a field laboratory for the observation and education in these relationships. These areas may also provide for the protection of places of historic or natural interest, as well as for passive recreational pursuits by the public.

The NYSDEC does not use the term Historic Preserve in their listing of New York State lands for any of the NYSDEC-designated regions. The terms used with respect to historic areas, include site, area, heritage, and primitive. Within Madison and Oneida Counties, the only lands that would fall within this classification are the Oriskany Battlefield State Historic Site and Von Steuben Memorial Historic Site, located in Oneida County, and the Lorenzo National Register Historic Site located in Madison County. The Oriskany Battlefield Site is particularly significant to the Nation as it serves as reminder of the contributions, including the lives of Oneida warriors, and promises the Oneidas made to the U.S. in defeating the British and contributing to the success of the fledgling U.S. government.

None of the Nation's lands is located within or adjacent to these Historic Sites. Moreover, there is no New York State Nature and Historic Preserves found in any of the towns where the Nation's lands are located.

### **Conservation Easements**

A Conservation Easement is defined as a parcel of land under management of New York State which has an easement, covenant, restriction, or other interest in real property which limits or restricts its development, management, or use. The purpose of these easements is to preserve or maintain the scenic, open, historic, archaeological, architectural, or natural condition, character, significance, or amenities of the real property. There are no Conservation Easements located in Madison or Oneida Counties. Therefore, the Nation's lands are not located on or adjacent to a Conservation Easement.

## **3.9.2 Noise and Light**

### **3.9.2.1 Noise**

#### ***Introduction***

This section presents ambient noise conditions characteristic of the Nation's lands. A noise monitoring program was implemented to measure ambient noise conditions in the vicinity of the Nation's lands. Noise monitoring locations were selected to represent general areas where Nation lands are located. The monitoring locations were not selected or intended to represent specific land uses within a land Grouping. In some cases, parcels from different land Groupings (and with different land uses in some cases) are located adjacent to each other and share very similar ambient noise characteristics. The principal land uses found on the Nation's lands include residential, retail/commercial, agricultural/farming, governmental, gaming recreation, and undeveloped properties situated in urban, suburban, and rural landscapes.

#### ***Characteristics of Noise***

##### *Perception of Noise*

Noise is defined as any loud, discordant, disagreeable, or unwanted sound or sounds. Numerous environmental factors determine the level or perceptibility of sound. These factors include the distance from the source of sound to receptor, surrounding terrain, ambient sound level, time of day, wind direction, temperature gradient, and relative humidity. Characteristics of a sound are also important in determining the perception of sound as noise. The amplitude (loudness), frequency (pitch), impulse patterns, and duration of sound all affect the potential for a sound to be perceived as a noise. The combination of sound characteristics, environmental factors, and the physical and mental sensitivity of a receptor to a sound determine whether or not a sound will be perceived as a noise. Noise levels are measured in units called decibels. These measurements are adjusted or weighted to correspond to the frequency response of the human ear. The A-weighted sound level, or dBA, is used in view of its widespread recognition and its close correlation with human perception of noise.

The average ability of an individual to perceive changes in noise levels is well documented. Generally, most people cannot perceive changes in noise levels less than 2 to 3 dBA, a

change of 5 dBA is readily noticeable to the average person, a change in 10 dBA is normally perceived as doubling (or halving) of loudness, and a change of 20 dBA is a dramatic change in sound (Bolt, Breakneck, Newman, Inc., 1973). These noise level increments permit a direct estimation of an individual's probable perception of noise. These noise level changes also can serve as a criteria or threshold for determining whether noise levels may create a potentially significant impact or not

### Noise Metrics

In order to describe fluctuating noise levels over a specific period of time, various statistical noise descriptors are used. The  $L_{eq}$  is the equivalent steady-state noise level that, in a stated period of time, contains the same acoustic energy as the time-varying sound level during the same time period. It also accounts for both the duration and the magnitude of a noise. The 1-hour  $L_{eq}$  or  $L_{Leq(1)}$ , is commonly used to evaluate noise concerns by municipal and regulatory agencies since it can be used to identify peak and non-peak hours of noise generating activities. For this discussion, the  $L_{Leq(1)}$  will be designated as  $L_{eq}$ .

The Day-Night Sound Level (DNL), or  $L_{dn}$ , is a 24-hour average sound level, or  $L_{Leq(24)}$  expressed with a 10 decibel penalty for sound levels which occur at night between 10 P.M. and 7 A.M. The penalty is added to reflect increased sensitivity to noises during night hours when interference with sleep is of greatest concern. Typically, the  $L_{dn}$  applies to residential uses or other land uses where nighttime sensitivity is a concern.

The  $L_{dn}$  and the maximum daytime hourly  $L_{eq}$ , generally have similar values (as a result of the 10 dBA penalty). For a typical noise environment, the daytime or early evening  $L_{eq}$  can be used for evaluating noise impacts where nighttime sensitivity is not a factor. For this proposed action, both the one-hour average sound level,  $L_{eq}$ , and the day-night sound level,  $L_{dn}$ , are reported.

### **Regulatory Framework**

#### Federal

The U.S. Department of Housing and Urban Development (HUD) revised its noise regulations (24 CFR Part 51B) in 1979. The regulation establishes standards, assigns implementation responsibilities, describes review and approval procedures, and identifies special situations which may warrant waivers of procedures and standards.

For community noise, HUD views transportation sources such as highways, railroads and airports as the most pervasive source of noise. Additionally, at any given site, construction noise sources can also add to community noise problems. Community noise problems (impacts) vary from location to location and typically are a function of what type of activity is taking place at the receiver, whether the receiver is indoors or outdoors, and what type of building the receiver is in if indoors.

As a result, HUD has established noise limits based on land use types, as shown in Table 3.9-3. For this Proposed Action, land use categories include residential, transient lodging, schools, office buildings, commercial, public right-of-ways, and livestock farming.

#### New York State

The NYSDEC adopted the Assessing and Mitigating Noise Impacts Program Policy for performing environmental noise impact assessments for new projects in October, 2000 (later amended in June, 2003). The noise policy presents noise impact assessment methods, examines the circumstances under which sound creates significant noise impacts, and identifies avoidance and impact reducing measures to lessen or eliminate noise impacts in the environment.

The noise policy provides impact thresholds for evaluating projects in non-industrial and industrial/commercial areas. For non-industrial settings (i.e. residences, parks, libraries, etc.), the sound pressure level (SPL) should not raise the ambient noise level above a maximum of 65 dBA. This is considered the upper end limit since 65 dBA allows for undisturbed speech at a distance of three feet between people. Ambient noise SPLs in industrial/commercial areas may exceed 65 dBA with a high end of approximately 79 dBA. NYSDEC noise limits for land use categories found on or near the Nation's lands are presented in Table 3.9-2.

#### Local

The Nation's lands are located in 18 different municipalities throughout Madison and Oneida Counties. These municipalities primarily consist of rural and suburban landscapes where ambient noise levels are traditionally low. As such, many of these municipalities have not enacted noise ordinances as part of their local law. For several of the municipalities with more urban landscapes (i.e., City of Oneida, Town of Canastota, etc.) local noise ordinances exist. These noise ordinances are typically non-specific in nature (without established noise limits in some cases) and focus on regulating nuisance community noise such as loud stereos, various types of vehicles (mufflers), construction activities, power equipment, animals, etc. In contrast, both the HUD and the NYSDEC noise guidelines focus on environmental planning with established noise limit criteria. Where noise limits are provided in local noise ordinances, the noise limits are typically reported for  $L_{eq}$  values, with similar noise limits provided in the NYSDEC noise guidelines.

In a letter to Malcolm Pirnie, Inc., dated July 7, 2006, the Madison County Planning Department states that the County does not regulate noise levels within communities or maintain comprehensive file of ordinances for the same. As afforded by the New York State's home-rule, noise may be regulated by the local municipalities themselves through their local land use or zoning laws. These laws are filed with the New York State Department of State.



**Noise Monitoring Methodology**

A total of 23 noise monitoring locations (NMLs) were selected to characterize ambient noise conditions surrounding representative Nation lands. These data collected at these NMLs represent the cumulative noise conditions from both community noise sources and noise sources on the Nation's lands. The NMLs were located in both developed and undeveloped areas and included locations in the City of Oneida as well as farmland/agricultural crops in the countryside. The NMLs are described below and shown in Figure 3.9-1:

- NML 1: Parcel 9 – Casino Main Entrance;
- NML 2: Parcels 9/10 - Casino Entrance on Patrick Road near Golf Dome;
- NML 3: Parcels 9/10 - Casino Valet Parking Lot/SavOn gas station and convenience store at Route 365 and Patrick Road;
- NML 4: Parcels 70/71 - SavOn gas station and convenience store at NYS Routes 365 and 31;
- NML 5: Parcel 190 - Vacant residence/farmland on NYS Route 31 near Middle School;
- NML 6: Parcel 244 - Farmland on Cooper Street;
- NML 7: Parcel 62 - Agricultural crops on Conley Road;
- NML 8: Parcel 16 - Vacant office building on Route 5;
- NML 9: Parcel 99 - Vacant residence/agricultural crops on Spring Street;
- NML 10: Parcel 199 - Vacant residence on NYS Route 31;
- NML 11: Parcel 231 - SavOn gas station and convenience store on NYS Route 5 near Plaza Mart and Hood Dairy;
- NML 12: Parcels 79/80 - SavOn gas station and convenience store gas station and convenience store on NYS Route 13 near Boxing Hall of Fame;
- NML 13: Parcel 291 - Agricultural land adjacent to North Main Street and I-90;
- NML 14: Parcel 219 - SavOn gas station and convenience store near NYS Routes 31 and 13;
- NML 15: Parcel 159 - Vacant residence/farmland on Whitelaw Road;
- NML 16: Parcels 313/327 - Snug Harbor Marina;
- NML 17: Parcel 4 - Entrance of Village of White Pines Residences;
- NML 18: Parcel 178 - Vacant residence on NYS Route 46;
- NML 19: Parcels 223/224 - Undeveloped land on Dwyer Road;
- NML 20: Parcel 235 - Vacant residence/farmland on NYS Route 31;

- NML 21: Parcel 132 - Farmland on Peterboro Road;
- NML 22: Parcel 171 - Historical Dungey site on East Hill Road; and
- NML 23: Parcel 310 - Vacant residence/farmland on Morris Road.

Ambient noise monitoring at each NML occurred for an approximate 24-hour period from May 12, 2006 to May 17, 2006. Weather conditions during this time period were typically overcast with periodic sunshine and a few short-term rain events. Wind conditions were typically calm (less than 12-15 mph) with a temperature range between 40° F and 60° F for day and night conditions. These weather conditions are typical of the region's spring season.

At some NMLs, ambient noise monitoring was less than a 24-hour period due to heavy rain. Ambient noise levels were logged (over 30 minute intervals) continuously with Bruel & Kjaer 2236/2238 Type 1 precision sound level meters. The sound level meter microphones were setup a minimum of five feet from the ground or solid surfaces (i.e., walls, buildings) that could reflect sound waves and possibly elevate the reported noise conditions. Following each measurement period, the logged data were downloaded from the sound level meters and the Leq noise levels were averaged to calculate the individual daytime and nighttime average hourly Leq sound levels; as well as the Ldn sound levels. At a minimum, each sound level meter was calibrated at the start and finish of the monitoring program.

### **Existing Conditions**

Measured ambient noise conditions within the Study Area were comprised of noise sources on the Nation's lands and the surrounding community. Noise monitoring results for the Nation's lands and the surrounding community are presented along with NYSDEC and HUD Noise limits in Table 3.9-2 and -3. During the daytime, the primary noise sources included vehicle traffic, yard work and landscaping, farming, and recreational activities. In the evening, noise sources were limited to reduced vehicle traffic and naturally derived (insects and wildlife). Although some industry is located with Madison and Oneida Counties, no significant noise was observed from these entities in the vicinity of the NMLs. The commercial rail line and I-90 are noticeable noise sources in the Study Area, both during the daytime and evening. These transportation routes provide primary east to west commuter and shipping access across central New York State. In general, the daytime average  $L_{eq}$  noise levels at the 23 measured NMLs were louder than the nighttime noise levels.

For Group 1 lands, ambient  $L_{eq}$  noise levels measured at NMLs 1 to 6 ranged from 56 to 67 dBA  $L_{eq}$  for the daytime and 51 to 64 dBA  $L_{eq}$  for the nighttime, with an  $L_{dn}$  range of 58 to 71 dBA. The daytime average  $L_{eqs}$  were typically 2 to 6 dBA higher than the nighttime average  $L_{eqs}$ . With the exception of NML 5, all ambient noise levels measured were below both the NYSDEC and HUD noise limits for their respective land uses as shown in Tables

3.9-2 and 3.9-3. At NML 5, a daytime average  $L_{eq}$  of 67 dBA was reported, 2 dBA above the NYSDEC 65 dBA  $L_{eq}$  noise limit. The corresponding  $L_{dn}$  was 69 dBA, 4 dBA above the HUD 65 dBA  $L_{dn}$  noise limit. Elevated noise levels in this area were the result of high speed travel (55 mph) along NYS Route 31 in that area. The land uses for this land grouping primarily consisted of residential, retail/commercial, gaming, golf courses, agricultural/farming, and undeveloped properties. Vehicle traffic from activities on both the Nation's lands and the surrounding community were the dominant source of noise at each NML.

Ambient noise levels near Group 2 lands (NMLs #7 to #18, #20) ranged from 57 to 68 dBA  $L_{eq}$  for the daytime and 43 to 63 dBA  $L_{eq}$  for the nighttime, with an  $L_{dn}$  range of 57 to 71 dBA. The daytime average  $L_{eqs}$  were typically 0 to 21 dBA higher than the nighttime average  $L_{eqs}$ . At NML #17, grass cutting activities at the Village of the White Pines residences between 11 a.m. and 2 p.m. resulted in elevated noise levels for that area. These activities were within five feet of the sound level meter at times and resulted in measured 30-minute  $L_{eqs}$  as high as 75 dBA. In the absence of these activities, and the ambient data normalized to typical conditions, the 30-minute  $L_{eqs}$  would have been in the 55 dBA range and would have reduced the difference between the daytime  $L_{eq}$  and the nighttime  $L_{eq}$  from 0 to 21 dBA to 0 to 12 dBA. All the measured ambient noise levels were below both the NYSDEC and HUD noise limits for their respective land uses. The land uses on Group 2 lands primarily consisted of residential, retail/commercial, gaming, agricultural/farming, public right-of-ways, and undeveloped properties. Vehicle traffic from activities on both the Nation's lands and the surrounding community were the dominant source of noise at each NML. For NML #7, noise from the commercial rail line contributed to the elevated noise levels during the nighttime hours resulting in the same average daytime and nighttime  $L_{eq}$  for this NML.

**Table 3.9-2  
Baseline Ambient Noise Monitoring Results**

Noise Monitoring Locations	Nation Lands	NYSDEC Noise Policy Land Use Classification	Daytime (7 A.M. to 10 P.M.) Average L <sub>eq</sub> (dBA)	Nighttime (10 P.M. to 7A.M.) Average L <sub>eq</sub> (dBA)	NYSDEC Noise Limit L <sub>eq</sub> (dBA)
1 - Parcel 9 – Turning Stone Resort & Casino Main Entrance	1	Industrial/commercial	66	64	80
2 – Parcels 9/10 - Turning Stone Resort & Casino Entrance on Patrick Road near Golf Dome	1	Industrial/commercial	64	63	80
3 – Parcels 9/10 - Turning Stone Resort & Casino Valet Parking Lot/SavOn gas station and convenience store at NYS Route 365 and Patrick Road	1	Industrial/commercial	61	58	80
4 – Parcels 70/71 - SavOn gas station and convenience store at NYS Routes 365 and 31	1	Industrial/commercial	67	64	80
5 - Parcel 190 - Vacant residence/farmland on NYS Route 31 near Middle School	1	Non-industrial	67	61	65
6 – Parcel 244 – Farmland on Cooper Street	1	Industrial/commercial	56	51	80
7- Parcel 62 - Agricultural crops on Conley Road	2	Industrial/commercial	62	62	80
8 - Parcel 16 - Vacant office building on NYS Route 5	2-3	Industrial/commercial	63	57	80
9 - Parcel 99 - Vacant residence/agricultural crops on Spring Street	2-3	Non-industrial	56	48	65
10 - Parcel 199 - Vacant residence on NYS Route 31	2	Non-industrial	64	60	65
11 - Parcel 231 - SavOn gas station and convenience store on NYS Route 5 near Plaza Mart and Hood Dairy	2	Industrial/commercial	64	58	80
12 - Parcels 79/80 - SavOn gas station and convenience store on NYS Route 13 near Boxing Hall of Fame	2	Industrial/commercial	62	61	80
13 - Parcel 291 - Agricultural land adjacent to North Main Street and I-90	2	Industrial/commercial	60	56	80
14 - Parcel 219 - SavOn gas station and convenience store near NYS Routes 31 and 13	2	Industrial/commercial	64	57	80
15 - Parcel 159 - Vacant residence/farmland on Whitelaw Road	2	Non-industrial	57	47	65
16 - Parcels 313/327 - Snug Harbor Marina	2	Industrial/commercial	60	53	80
17 - Parcel 4 - Entrance of Village of White Pines Residences	2	Non -industrial	64	43	65
18 - Parcel 178 - Vacant residence/farmland on NYS Route 46	2	Industrial/commercial	68	63	80
19 - Parcels 223/224 - Undeveloped land on Dwyer Road	3	Industrial/commercial	55	50	80
20 - Parcel 235 - Vacant residence/farmland on NYS Route 31	2-3	Industrial/commercial	62	56	80
21 – Parcel 132 - Farmland on Peterboro Road	3	Industrial/commercial	54	52	80
22 - Parcel 171 - Historical Dungey site on East Hill Road	3	Non-industrial	53	47	65
23 - Parcel 310 - Vacant residence/farmland on Morris Road	3	Non-industrial	52	45	65

Notes:

1. Noise Limits listed in Table 3.9-2 are based on New York State Department of Environmental Conservation's Assessing and Mitigating Noise Impacts Program Policy (2003). Noise limits are specific to each land use classification and are the same for daytime/nighttime conditions.
2. Bolded ambient noise levels represent noise conditions above the New York State Department of Environmental Conservation's noise limits.

**Table 3.9-3  
Baseline Ambient Noise Monitoring Results**

Noise Monitoring Locations	Nation Lands	HUD Noise Regulation Land Use Classification	Day-Night Sound Level L <sub>dn</sub> (dBA)	HUD L <sub>dn</sub> Noise Limit (dBA)
1 - Parcel 9 – Turning Stone Resort & Casino Main Entrance	1	Commercial	71	65-75
2 - Parcels 9/10 – Turning Stone Resort & Casino Entrance on Patrick Road near Golf Dome	1	Commercial	70	65-75
3 - Parcels 9/10 – Turning Stone Resort & Casino Valet Parking Lot/SavOn gas station and convenience store at NYS Route 365 and Patrick Road	1	Commercial	65	65-75
4 - Parcels 70/71 - SavOn gas station and convenience store at NYS Routes 365 and 31	1	Commercial	71	65-75
5 - Parcel 190 - Vacant residence/farmland on NYS Route 31 near Middle School	1	Residential	<b>69</b>	60-65
6 - Parcel 244 - Farmland on Cooper Street	1	Agricultural	58	75-95
7- Parcel 62 - Agricultural crops on Conley Road	2	Agricultural	69	75-95
8 - Parcel 16 - Vacant office building on NYS Route 5	2-3	Commercial	65	65-75
9 - Parcel 99 - Vacant residence/agricultural crops on Spring Street	2-3	Residential	57	60-65
10 - Parcel 199 - Vacant residence/agricultural crops on NYS Route 31	2	Agricultural	67	75-95
11 - Parcel 231 - SavOn gas station and convenience store on NYS Route 5 near Plaza Mart and Hood Dairy	2	Commercial	66	65-75
12 - Parcels 79/80 - SavOn gas station and convenience store on NYS Route 13 near Boxing Hall of Fame	2	Commercial	68	65-75
13 - Parcel 291 - Agricultural land adjacent to North Main Street and I-90	2	Agricultural	64	75-95
14 - Parcel 219 - SavOn gas station and convenience store near NYS Routes 31 and 13	2	Commercial	65	65-75
15 - Parcel 159 - Vacant residence/farmland on Whitelaw Road	2	Residential	57	60-65
16 – Parcels 313/327 - Snug Harbor Marina	2	Commercial	61	65-75
17 - Parcel 4 - Entrance of Village of White Pines Residences	2	Residential	62	60-65
18 - Parcel 178 - Vacant residence on NYS Route 46	2	Agricultural	71	75-95
19 - Parcels 223/224 - Undeveloped land on Dwyer Road	3	Extensive Natural Recreation Area	57	60-75
20 - Parcel 235 - Vacant residence/farmland on NYS Route 31	3	Farming	64	60-75
21 – Parcel 132 - Farmland on Peterboro Road	3	Agricultural	59	75-95
22 – Parcel 171 - Historical Dungey site on East Hill Road	3	Farming	55	60-75
23 - Parcel 310 - Vacant residence/farmland on Morris Road	3	Agricultural	54	75-95

Notes:

1. Noise Limits listed in Table 3.9-3 are based on U.S. Department of Housing and Urban Development (2004). Noise limits are specific to each land use classification and are the same for daytime/nighttime conditions.
2. Bolded ambient noise levels represent noise conditions above the U.S. Department of Housing and Urban Development's noise limits.

Ambient noise levels near Group 3 lands (NMLs #8 to #9, #19 to 23) ranged from 52 to 63 dBA  $L_{eq}$  for the daytime and 45 to 57 dBA  $L_{eq}$  for the nighttime, with an  $L_{dn}$  range of 54 to 65 dBA. The daytime average  $L_{eqs}$  were typically 2 to 7 dBA higher than the nighttime average  $L_{eqs}$ . The ambient noise levels near the Group 3 lands were typically lower than the recorded noise levels for Groups 1 and 2 lands since the Group 3 lands were predominantly undeveloped, agricultural, or farming in rural areas. All ambient noise levels measured were below both the NYSDEC and HUD noise limits for their respective land use area. Vehicle traffic from community activities were the dominant source of noise at the NMLs located near Group 3 lands.

### **Noise Characteristics of Nation Lands**

Noise monitoring results for the Nation's lands and the surrounding community are presented along with NYSDEC and HUD Noise limits in Table 3.9-2 and Table 3.9-3. In general, louder ambient noise conditions typically occurred during daytime hours at the 23 NMLs. These noise levels were primarily the result of vehicle traffic and other community activities since industrial and commercial activities are limited within the Study Area. With the exception of NML 5, the noise conditions at each NML were below the NYSDEC and HUD noise limits and are typical of rural/suburban noise conditions. At NML 5, elevated noise conditions likely occurred as a result of the high speed vehicular traffic along the long flat stretch of Route 31 where vehicle speeds easily exceed 55 mph at times. The detailed noise data recorded at each NML location is provided in Appendix H.

Ambient noise conditions on the Nation's lands reflect and are consistent with the land uses of adjacent and surrounding lands. There typically is no distinguishable difference in noise conditions between the three different Groupings of the Nation's lands as the parcels are mixed in amongst each other and often collectively contribute to the ambient conditions in a particular area with other non-Nation lands (noise sources). Parcels in more developed areas, like the Turning Stone Resort & Casino, tend to have higher ambient noise conditions due to higher traffic volumes; parcels in less developed areas reflect lower ambient noise conditions typical of an open, agricultural-rural countryside. Therefore, noise is not an issue and not a factor in discriminating one Grouping or set of parcels from another. Stated another way, ambient noise associated with the lands proposed for conveyance into trust is not a significant factor in considering which parcels or Grouping to be transferred into trust.

### **3.9.2.2 Light**

#### **Introduction**

This section discusses the visual character of outdoor light generating development in Madison and Oneida Counties, focusing on a Study Area identified as a ten-mile radius of the Turning Stone Resort & Casino. Light generating development can have potentially damaging effects on the aesthetics of an area causing adverse health effects in humans, obscuring stars, interfering with astronomical observatories, and disturbing wildlife

(Wikipedia, 2005). Generally, areas that have highly concentrated populations or are designated as industrial zones produce significant amounts of light. As the viewer leaves these areas, the amount of light diminishes. In rural settings, patterns of light are scattered and negative effects are minimized.

Light generating development in the Study Area includes residential, commercial, and industrial structures, as well as roadway lighting and associated traffic. Major roadways include I-90, which runs through the middle of the Study Area, as well as several New York State roads including NYS Route 5, NYS Route 13, NYS Route 26, NYS Route 31, NYS Route 316, and NYS Route 365. Several commercial clusters of gas stations, convenience stores, restaurants, and shopping areas exist within the Study Area near Oneida Lake, the City of Oneida, and the City of Rome.

### ***Nation Lands***

Light generating development on the Nation's lands is located on the properties of the Turning Stone Resort & Casino and at the 13 SavOn gas stations and convenience stores. The Nation installed special coatings on the first floor windows of the Turning Stone Resort & Casino buildings to reduce glare. Glare is the result of excessive contrast between bright and dark areas in the field of view.

A field reconnaissance to observe major light sources was conducted at nighttime in March, 2006. The Turning Stone Resort & Casino was observed from the intersection of NYS Route 365 and Patrick Road. The SavOn gas station and convenience store located in the Village of Canastota was observed from the intersection of NYS Routes 13 and 31 and the SavOn gas station and convenience store at Beach Mart was observed from NYS Route 13. Over illumination, the excess use of unnecessary light, was not observed at any of these properties. At the observed properties, fixtures were positioned to direct light onto important areas like parking lots and entrances. Stray light was not observed emanating from Nation lands. Both SavOn gas stations and convenience stores appeared to emit the same amount of light as other local gas stations. Based on observations of properties adjacent to the gas stations, it was determined that light was not overflowing onto these adjacent properties.

The Turning Stone Resort & Casino did not distort or obscure astronomical views from adjacent residences. While light from the Tower at Turning Stone, the 19 story hotel at the Turning Stone Resort & Casino, could be seen while driving on I-90, it did not appear to be a distraction for motorists. Rather, motorists would regard this amount of light as similar to other commercial structures in the area.

### 3.9.3 Visual

#### 3.9.3.1 Introduction

This section presents the results of an analysis of the existing visual character of lands in Madison and Oneida Counties. There is particular emphasis on visual resources and viewsheds within a 10-mile radius of the Turning Stone Resort & Casino. According to NYSDEC policy, a visual impact consists of the following components:

- The evaluation of visual and aesthetic impacts from a proposed project
- The explanation of potential views that may be affected by a proposed project
- The identification of measures to avoid, mitigate or reduce adverse impacts

In a typical visual impact assessment, an assessment is made of the likely visual impacts that would occur as a result of a proposed action. This process involves three major visual components: visual contrast, project dominance, and visual impairment. Visual contrast considers the forms, lines, colors, and textures that exist in a Study Area. Project dominance determines if a proposed action's scale and spatial relationship are consistent with an existing landscape. Visual impairment seeks to determine if a potential action will result in a blockage of higher quality visual elements (i.e. scenic vistas) by lower quality elements (i.e. smokestacks).

Each visual component can be compiled through a field review of the Study Area and consultation with planning documents. A proposed action can be classified as having low, medium, or high compatibility. A measure of low compatibility would indicate that a proposed action is inconsistent with the Study Area. High compatibility would indicate that a proposed action is consistent with the visual values in the Study Area.

This analysis differs from a traditional visual impact assessment, as it examined an existing visual environment and structures, rather than proposed new construction that would introduce a new visual element into a viewshed. No new structures or development is proposed by the Nation as part of their application to convey lands into trust. The three major visual components were considered in evaluating Nation structures versus non-Nation structures. It should be noted that visual character does not consider elements of beauty or artistic preference.

#### 3.9.3.2 Study Area

NYSDEC policy recommends a minimum five-mile radius for conducting visual impact assessments for most projects and a greater radius for large activities. Given the height and scale of the Turning Stone Resort & Casino and its location in an area of lower elevation, the Tower at Turning Stone would likely be visible beyond a standard five-mile radius. Moreover, the NYSDEC Aesthetics Handbook states that "when the action consists of very large structures, involves a substantial alteration of many acres, or occurs in very sensitive locales...ten miles is preferred." Therefore, the Study Area for the visual analysis



includes an area within a 10-mile radius of the Turning Stone Resort & Casino. As the analysis conducted for this Draft EIS includes an evaluation of existing structures, the Study Area also includes portions of the Towns of Vernon, Verona, Stockbridge, Lenox, and Westmoreland, and the Cities of Oneida, Rome, and Sherrill.

### 3.9.3.3 Regional Context

The Study Area is characterized by a mixture of commercial, residential, and agricultural lands. Portions of the Study Area feature wooded areas and mature vegetation that is greater than 100 feet in height. Ground elevations vary from 380 feet amsl near Oneida Lake to over 1,000 feet at Crescent Avenue in the City of Oneida. Topography is relatively flat in the vicinity of Oneida Lake and is characterized by numerous hills and valleys in the south and eastern portions of the Study Area in the Towns of Stockbridge and Westmoreland. The Study Area also includes the I-90, which runs through the middle of the area, as well as several New York State roads, including NYS Route 5, NYS Route 13, NYS Route 26, NYS Route 31, NYS Route 316, and NYS Route 365.

Historically, the visual character of the Study Area was primarily rural in nature with small areas of commercial and residential development. Over the past century, the overall region, including the Study Area, experienced a change in its economic base. In particular, the economic base shifted from an agricultural economy toward an industrial economy. This shift, as well as a subsequent rise in the service sector, produced a mixture of land uses and buildings throughout the landscape. Although still primarily agricultural in nature, the Study Area does feature multiple types of commercial, industrial, and residential structures. See Section 3.2 Land Resources for a discussion of land resources.

### 3.9.3.4 Nation Lands

Consistent with this changing landscape, the Nation reacquired 58 properties comprised of 55 Nation parcel designations that contained a variety of old structures with many of them in substandard condition (Appendix I). These structures ranging from mobile homes, apartments, hotels, and auto garages to sheds, log cabins, barns, and silos were found on eight Group 1, 29 Group 2, and 17 Group 3 parcels.

As decreed by the Nation, demolition procedures on their lands are initiated when substandard structures are present on properties identified as candidates for demolition (Appendix I). The Nation's Office of Safety and Public Works is required to issue a Land Use Building Permit upon completion of the Nation's pre-demolition procedures before any structure can be demolished. These pre-demolition procedures include an initial inspection by the engineering coordinator of the Nation's Construction and Design Department, historical research by the Nation's historian and archaeologist, and if demolition is required an inspection by the Nation's Project Manager and Environmental Planning Manager in order to determine if the structure contains hazardous materials.

When demolition is completed, the Nation utilizes the services of a waste hauler to remove both hazardous and non-hazardous debris to the appropriate landfill and/or waste facility. After demolition procedures have been completed at a particular property, the site is seeded and graded which prompts the Project Manager to submit a final report to the Office of Safety and Public Works. As of middle of 2006, a total of three Group 1, five Group 2, and one Group 3 parcels have completed demolition procedures while the status of the remaining 46 parcels is pending according to the Nation.

A digression in the current landscape on Nation lands includes a relatively new commercial structure and well-known visual element, the Turing Stone Resort & Casino. The Tower at Turning Stone is the tallest building between the Cities of Albany and Syracuse, standing at 253 feet, and “features an E-glass roof line with numerous curving arches and interior lines. It is designed to let in natural light and is of a neutral grey color with turquoise exterior accents” (McGraw Hill, 2005). The adjoining three-story hotel and casino, shown in Photos 1 and 2, form an S-shape.

**Photo 1**  
**Turning Stone Resort & Casino with the Tower at Turning Stone**



**Photo 2**  
**The Hotel at Turning Stone**



Both structures were designed in a contemporary style and consist primarily of stone, glass, and concrete. It is anticipated that local residents have become accustomed to the long-standing presence of the Turning Stone Resort & Casino complex, while visitors to the region will view the complex in the context of its visual setting.

In most cases, natural materials and contemporary designs are featured in the architecture of existing buildings constructed by the Nation on its properties.

The Clubhouse at the Shenendoah Golf Club that is featured in Photo 3 is typical of the Nation's newly built structures, as it has numerous windows, stone facing, manicured grounds, and a rustic contemporary style.

**Photo 3**  
**The Club House at the Shenendoah Golf Club**



**Photo 4**  
**The Club House at the Atunyote Golf Club**





**Photo 5**  
**Nation Member Residence**



Nation housing is compatible in form, line, and material usage with residential housing in Madison and Oneida Counties. There does not appear to be one dominant housing style in either county. Rather, residential homes in Oneida and Madison Counties feature architectural styles including, but not limited to, Victorian, contemporary, colonial, modern, and mid-century modern. The exteriors of these structures are comprised of various combinations of brick, stone, wood, cement, and siding. The condition of structures in Madison and Oneida Counties is also varied, as some residences are better preserved than others. In these two counties, it is typical to view several architectural styles within each community.

Nation residences include new construction, as well as refurbished structures. Photo 5 features a recently constructed bi-level residence. This residence and other member

housing is similar to other residential structures in Madison and Oneida Counties. In general, Nation housing features well maintained lawns and landscaping.

The Nation's agricultural facilities include the Heifer Hotel, a dairy facility, shown in Photo 6. The building is comprised of corrugated metal and is surrounded by grazing lands and residential homes. Farming, and structures associated with farming activities, has long been a feature of the central New York region.

**Photo 6**  
**Agricultural Facility**



The Nation's commercial facilities include the SavOn gas stations and convenience stores, which are similar in appearance to other gas stations in the Study Area. SavOn stations and convenience stores, such as the one pictured in Photo 7, are built to the same scale as similar structures and feature bright coloring to attract customers.

**Photo 7**  
**SavOn Gas Station and Convenience Store**



Over the past decade, the Nation has also renovated existing structures and improved tribal lands. For example, in 1999 Nation housing officials worked to beautify the 32-acres by improving the main road, installing a sidewalk, and planting several trees.

**Photo 8/9**  
**Nation's Marinas**



### 3.9.3.5 Visual Resource Methodology

The first step of the visual resource methodology involved establishing a ten-mile radius Study Area around the central control point. The Tower at Turning Stone located at the Turning Stone Resort & Casino was selected as the central control point because it is the tallest and most visible structure in the area. The height of this structure produces the widest geographic extent of visibility during both day and nighttime viewing.

### 3.9.3.6 Inventory of Study Area Resources

An inventory was compiled of potentially sensitive resources in this area. In developing this inventory, potential aesthetic, and visual resources within the ten-mile radius were identified using the list developed for the NYSDEC, as well as county resource data obtained from official Madison and Oneida County websites. The initial list of resources consisted of public natural resources and public lands, but did not include roadways or private property. The categories of potentially sensitive resources and those resources identified in the Study Area are as follows:

- New York State/National Register of Historic Places [16 U.S.C. § 470a et seq., Parks, Recreation, and Historic Preservation Law Section 14.07] - Mt. Hope Reservoir and Main-Broad-Grove St. Historic District;
- New York State Parks [Parks, Recreation, and Historic Preservation Law Section 3.09] - Old Erie Canal State Park and Verona Beach State Park;
- Urban Cultural Parks [Parks, Recreation, and Historic preservation Law Section 35.15] - None exist within the Study Area;
- New York State Forest Preserve [NYS Constitution Article XIV] - None exist within the Study Area;
- National Wildlife Refuges [16 U.S.C. 668dd] - None exist within the Study Area;
- New York State Game Refuges and Wildlife Management Areas [ECL 11-2105] - None exist within the Study Area;
- National Natural Landmarks [36 CFR Part 62] - None exist within the Study Area;
- National Park System, Recreation Areas, Seashores, Forests [16 U.S.C. 1c] - None exist within the Study Area;
- Rivers Designated as National or New York State Wild, Scenic or Recreational [16 U.S.C. Chapter 28, ECL 15-2701 et seq.] - None exist within the Study Area;
- Any Site, Area, Lake, Reservoir, or Highway Designated or Eligible for Designation as Scenic [ECL Article 49 or DOT equivalent and APA designated New York State Highway Roadside] - None exist within the Study Area;
- Scenic Areas of Statewide Significance [Article 42 of Executive Law] - None exist within the Study Area;
- A New York State or federally Designated Trail [16 U.S.C. Chapter 27 or equivalent] - None exist within the Study Area;
- New York State Nature and Historic Preservation Areas [Section 4 of Article XIV of the State Constitution] - None exist within the Study Area;
- Bond Act Properties Purchased Under Exceptional Scenic Beauty or Open Space Category - None exist within the Study Area;
- and Properties of Local Significance - Sunset Lake, Bakers Reservoir, and Oneida Lake near Hidden Harbor.



### 3.9.3.7 Initial Viewshed

An initial viewshed map was created, using Digital Elevation Models (DEMs) and GIS software, to identify potential views of the Tower at Turning Stone from within the Study Area. A viewshed map shows the geographic area from which a proposed action may be seen (Aesthetics Handbook). A DEM is a representation of the topography of the earth or another surface in digital format by coordinates and numerical descriptions of altitude. GIS is a system for creating and managing spatial data and associated attributes (Wikipedia, 2005). Areas, from which views of the Tower at Turning Stone may be obscured, due to existing ground elevations, were coded in gray on the viewshed map (see Figure 3.9-2); whereas points from which the Tower at Turning Stone may be visible were coded in mustard-green. The mustard-green coloring indicates a potential view of the Tower at Turning Stone.

### 3.9.3.8 Field Survey

As vegetation was not included in the initial viewshed, a field survey was conducted in March, 2006 during leaf-off conditions. Leaf-off conditions produce the widest possible viewshed because leaves are not present to obscure the view along a line-of-sight profile. Line-of-sight profiles are graphic depictions of changes in ground elevation along a straight path or line between two points.

The field survey was conducted during a three-day period with clear skies or minimal cloud cover and no precipitation. Temperatures ranged from lows of 24°F to highs of 56°F, and wind speeds were low. A Cannon Power Shot camera with 3.2 mega pixels resolution was used to take photos during the field survey. Photos were taken at eye level from approximately five feet above ground surface at Sunset Lake, Bakers Reservoir, Mt. Hope Reservoir, Main-Broad-Grove Street Historic District, Erie Canal Village at the Old Erie Canal, Oneida Lake near Hidden Harbor, and Verona Beach State Park.

Key vantage points, the spot from which photographs are taken, were determined based on the presence of formal overlooks and topography. If formal overlooks were available, photographs were taken from them. In areas where no formal overlook exists, pictures were taken from the highest ground that was readily accessible to the photographer.

### 3.9.3.9 Existing Views

Views of the Tower at Turning Stone were only evident at two of the seven points. These points, which are shown on Figure 3.9-3, are Sunset Lake and Mt. Hope Reservoir.

#### **Sunset Lake**

Sunset Lake is located in the City of Oneida near the border of Madison and Oneida Counties. It has an elevation of 510 feet amsl and is in close proximity to the Oneida Community Golf Club. The lake is surrounded by temperate deciduous vegetation. It does not border any Nation lands.

The view facing north, shown in Photo 8, reveals a small part of the Tower at Turning Stone, which is located approximately four miles away. While this structure was visible to the naked eye, it does not appear in the photograph. The Turning Stone Resort & Casino structures which are visible from Sunset Lake include the Shenendoah Golf Club clubhouse and residential properties.

**Photo 8**  
**View from Sunset Lake, Facing North Towards the Turning Stone Resort & Casino**



***Mt. Hope Reservoir***

Mt. Hope Reservoir is located between Mt. Hope Avenue and Fairview Avenue behind residential properties in the City of Oneida. In 1997, it was added to the National Register of Historic Places. Its period of significance is 1875 – 1924. Its most dominant feature is the dome that rises from the water. A buffer of evergreen trees shields the reservoir from nearby homes. Mt. Hope Reservoir does not border any Nation lands.

The view facing northeast, shown in Photo 9, reveals a small part of the Tower at Turning Stone, which is located approximately five miles away. While this structure was visible to the naked eye, it does not appear in the photograph. Visitors to the reservoir would most likely fail to notice the Turning Stone Resort & Casino.

**Photo 9**  
**View from Mt. Hope Reservoir, Facing Northeast Towards the Turning Stone Resort & Casino (note tree buffer)**



### **3.9.4 Public Health and Safety**

#### **3.9.4.1 Solid Waste Services**

Sites for the proper disposal of non-hazardous solid wastes generated in the Study Area are determined based on the county where the waste is generated. For this section, the Study Area is defined as Madison and Oneida Counties. Figure 3.9-4 provides the locations of the solid waste facilities in the Study Area, which are discussed below by county.

Information on solid waste disposal sites was obtained from searches of federal, New York State, and local environmental regulatory databases. In addition, information on evidence of historical disposal of small quantities of solid waste, or farm dumps, on the Nation's lands was obtained from site walkovers. Both environmental regulatory database searches and site walkovers were performed as part of Phase 1 Environmental Assessments (Phase 1 ESAs). Phase 1 ESAs were conducted by the Nation for each parcel included in the trust application for conveyance into trust. Database searches were conducted by Environmental Data Resources, Inc. on September 26, 2005 (Group 1 and 2 lands) and



May 19, 2006 (Group 3 lands). The reports associated with these database searches and the findings of the site walkovers are presented in C & S Engineers, Inc (2006).

### **Oneida County**

Solid waste generated in Oneida County is managed by the Oneida-Herkimer Solid Waste Management Authority. Private collection and transport companies collect waste and recyclables for residents. Currently, the non-recyclable fraction of the solid waste stream is transported outside of the Study Area to the High Acres Landfill near Rochester, New York. Approximately 250,000 tons are generated annually by Oneida and Herkimer Counties, with approximately half of that may be attributed to Oneida County (OSC, 2005).

In May, 2004, work began on a new multi-layer lined landfill that is expected to be completed and placed into service in 2007. With a design capacity of 1,000 tons per day, this landfill will provide an estimated 62 years of capacity for residential, commercial, and industrial solid waste generated in Oneida and Herkimer Counties, including construction and demolition debris, sludge, and residues from recycling, composting, incineration, or other waste processing technologies (New York State Department of Environmental Conservation, 2004). This landfill is located outside of the Study Area in the Town of Ava, which is located in northern Oneida County.

### **Madison County**

Residential and commercial solid waste generated in Madison County (including the City of Oneida) is disposed of at the Madison County West Side Expansion facility. Madison County also operates four pick-up areas and three transfer stations for use by county residents. Private collection and transport companies also collect waste and recyclables for residents. Madison County's solid waste management plan calls for initiating expansion of this landfill in the near future, as the existing landfill is reaching capacity. The Madison County Chapter of NYS Alternatives Resources and Choices, Inc. operates a Materials Recovery Facility for Madison County, which has conducted full mandatory, source-separated recycling since 1990. In 1998, Madison County Solid Waste and Sanitation received 4,851 tons of residential solid waste and recycled 6,239 tons of materials.

Madison County maintains a comprehensive solid waste management system for the disposal of non-recyclable and recyclable waste generated within its boundaries. The Comprehensive Solid Waste Management Plan (SWMP) is NYSDEC approved and is intended to manage the County's waste over a 20-year period. According to Madison County Comprehensive Solid Waste Management Plan Compliance Report for January 1, 2003 – December 31, 2004 published in May 2005, the County operates a central landfill (West Side Expansion Sanitary Landfill), three transfer stations and a convenience station with recyclables drop-off facilities at each, and composting and wood chipping sites.

Adoption of Local Law No. 3 in 2004 by the County introduced monetary penalties for violators of the law and elevated insurance requirements for commercial haulers.

The West Side Expansion Sanitary Landfill is a four phased expansion site of which Phase I was operational from 1996 to 2002. Subsequently, construction of Phase II of the landfill was completed the same year and operations commenced in 2003. The Madison County SWMP (Barton & Loguidice, 2005) calls for long-term landfill expansion adjacent to the existing landfill, expanding existing recycling programs for special wastes when feasible, continued processing of source separated recyclables at a Materials Recovery Facility operated by the Madison County Association for Retarded Citizens since 1990, continuing ongoing yard waste composting and brush chipping, and educating the public on waste reduction, reuse, and recycling. An inter-municipal contract with Oneida-Herkimer Solid Waste Authority also enables Madison County residents to utilize a household hazardous waste facility in Syracuse.

Madison County is proactive in enforcing the laws used to control the flow of solid waste within its borders. Waste and recyclables picked up in Madison County must be delivered to Madison County waste disposal and recycling facilities. This requirement is enforced under Local Law No. 4 of 2001 and Local Law No. 3 of 2004. Recycling is also mandatory and source separation of recyclables is required. The waste disposal and recycling facilities are financially self-sustaining. The County does not charge for the use of its recycling programs and services, providing a strong economic incentive to maximize recycling and reduce waste.

In 2003, Madison County generated a total of 46,048 tons of solid waste of which 9,661.15 tons (21 %) was recycled. In 2004, 22 % of the total solid waste received by the County was recycled (Madison County Annual Recycling Report, 2004).

Madison County requires that only solid waste generated in the county be disposed of in its facility. In 2003, one of the Nation's waste haulers disposed of solid waste generated in Madison County at a landfill outside of this county. Since Madison County has stricter recycling requirements than other landfills, rerouting the waste may have been an effort by the hauler to circumvent those requirements and/or save money. Once this situation was identified, the Nation required its waste haulers to strictly comply with all such requirements, and no additional incidents have occurred since that time.

There are several other active and inactive solid waste management facilities in the Study Area including:

- Madison County Sanitary Landfill – inactive municipal landfill
- Canastota Sanitary Landfill – inactive municipal landfill

- Oneida Ash Landfill – inactive County landfill for sludge, railroad ash, residential and industrial solid waste, contaminated soil, and compost
- Oneida Sanitary Landfill – inactive municipal landfill
- Sherrill T.S./Recycling – active municipal construction and demolition debris landfill
- Swoco Sanitary Landfill – inactive municipal landfill (Town of Augusta)
- Smithfield Sanitary Landfill – inactive municipal landfill

Review of the Nation's accounts with waste haulers indicates that in the 2004-2005 Fiscal Year, the Nation paid \$725,373.70 in 924 separate payments to independent waste haulers for removing and disposing of solid waste from the Nation's lands. At a disposal rate of \$75.90 per ton, this represents approximately 9,560 tons of waste in one year. A large percentage of this is likely attributed to the Group 1 lands associated with the Turning Stone Resort & Casino. These properties are located in Oneida County; therefore, the solid waste would be predominantly disposed of at the High Acres Landfill near Rochester, New York.

As part of the Phase 1 ESA for each parcel, a site walkover was conducted to identify areas or issues that may be associated with recognized environmental conditions. Recognized environmental conditions are the presence, or likely presence, of any hazardous substances or petroleum products from an existing release, past release, or threat of a release. Site walkovers were conducted from October, 2005 to June, 2006 and included exterior grounds and the interior of buildings that were present and accessible at the time of the visit. Particular attention was given to field/brush/woodland transition areas, as well as, property corners as these areas are traditionally where farm dumps can be found. It is important to note that solid waste disposal on the subject parcel or on an adjacent parcel, may or may not constitute a recognized environmental condition.

Many historical areas of solid waste accumulation or farm dumps were found on the Nation's lands. These areas often contained various construction/demolition debris, various glass, plastic, and metal containers, scrap metal, auto tires, household appliances, and other discarded materials. Twenty eight areas of solid waste accumulation were found on Group 1 lands. Forty eight areas were found on Group 2 lands. Twenty one areas were found on Group 3 lands. Of these areas of solid waste accumulation, 26 areas (13 in Group 1, 8 in Group 2, and 8 in Group 3) were concluded to be potential recognized environmental conditions in which the discarded items and debris should be removed to determine if further investigative efforts are required.

#### **3.9.4.2 Hazardous Materials**

Exposure to hazardous materials may pose a threat to human health or the environment. Locations where hazardous materials may be present in the Study Area were determined by investigating historic and current land uses, reviewing environmental reports previously

prepared by the Nation, conducting site walkovers, and reviewing federal, New York State, and local environmental regulatory databases. For this section, the Study Area is defined as the area within one mile of any of the Nation's lands.

### ***Phase 1 Environmental Site Assessments***

Concurrent with the preparation of this Draft EIS, the Nation conducted ESAs for each parcel proposed for conveyance into trust. The Phase 1 ESA for each parcel was conducted to identify areas or issues that may be associated with recognized environmental conditions. Recognized environmental conditions are the presence, or likely presence, of any hazardous substances or petroleum products from an existing release, past release, or threat of a release into structures on the property or into the ground, groundwater, or surface water of the property. The recognized environmental condition might be associated with the subject parcel or an adjacent or nearby parcel. The determination as to whether a condition or incident constitutes a recognized environmental condition is based on a number of site-specific factors, including the magnitude of the condition or incident, previous responses to the condition or incident (i.e., cleanup), and an assessment of the potential for migration of impacted media to the subject property. In addition, recommendations for further investigative or remedial actions are made for potential recognized environmental conditions.

As part of the Phase I ESAs for the Nation's lands, several databases maintained by New York State and the federal government were searched regarding the presence and status of sites associated with hazardous materials and chemical or petroleum storage. Database searches were conducted by Environmental Data Resources, Inc. for all areas within one mile of the Nation's lands on September 26, 2005 (Group 1 and 2 lands) and May 19, 2006 (Group 3 lands). The sites identified as a result of the database searches are discussed below.

### ***RCRA and CERCLA Sites***

Figure 3.9-5 provides a summary of the individual sites in the area in which Nation lands are located that were identified via database search categories associated with the Resource Conservation and Recovery Act (RCRA); Resource Conservation and Recovery Information System (RCRIS); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and the Comprehensive Environmental Response, Compensation, and Liability Act Information System (CERCLIS). Categories presented include large and small quantity hazardous waste generators, leaking storage tanks, toxic chemical releases, and corrective action reports.

A total of 67 sites are located in the Study Area. Two of the 67 sites identified were located on Nation lands. Thirty nine sites are located within one eighth of a mile of Nation lands and 21 sites are located within one quarter of a mile of Nation lands. The remaining five sites are within one half of a mile of Nation lands. The majority of these sites are nearer to Group 2 lands than Group 1 or 3 lands. Eight sites are located on or



near Group 1 lands and two sites are located near Group 3 lands. The other sites are on or near Group 2 lands.

The two sites found on the Nation's lands are Verona Nice and Easy, listed as a small quantity generator also appearing in the database for leaking storage tanks and historical leaking storage tanks, and Spring Road Farm, listed as a small quantity generator.

#### **Chemical and Petroleum Bulk Storage**

Figures 3.9-6 and 3.9-7 show the locations of chemical bulk storage facilities and petroleum bulk storage facilities in the Study Area, respectively. Figure 3.9-6 identifies the location of fourteen chemical bulk storage facilities. Nine of these are located within one eighth of a mile of Nation lands and all are located within one quarter of a mile of Nation lands. None are located on the Nation's lands. One of these sites is located in the vicinity of a parcel included in Group 1 lands. The remaining chemical bulk storage sites are nearest to Group 2 lands.

Figure 3.9-7 shows the location of 137 petroleum bulk storage facilities in the Study Area. They are primarily located in the City of Oneida and the Village of Canastota just off of I-90. Fifteen storage facilities (12 vehicle fuel facilities and 3 marinas) are owned by the Nation. There are an additional 78 properties located within an eighth of a mile, 38 properties located within a quarter of a mile, and six properties located within a half mile of the Nation's lands; these sites are all associated with non-Nation fuel stations. Nearly all are located on or near Group 2 lands. Only nine are located on or near Group 1 lands and six are located near Group 3 lands.

The Nation completed a compliance audit in 2005 for all of the Nation's petroleum bulk storage facilities (Woodmansee, Rory 2006. Personal communication, April 26, 2006). This audit determined the compliance status of the Nation's facilities with Spill Prevention, Control, and Compliance Rules, NYSDEC petroleum bulk storage regulations, and National Fire Protection Agency regulations. In adhering to this compliance status, the Nation has developed Annex K: Hazardous Materials Operational Guidelines. As stated in these guidelines, the response measures for fuel spills are stated in two additional documents developed by the Nation's Office of Nation Safety & Public Works. The two documents entitled Attachment 12: Spill Response Measures For Gas/Diesel Refueling Stations (The Nation, 1999a) and Attachment 13: Emergency Response Measures For Fuel Spills Not Due To Refueling Station Operations (The Nation, 1999b) cover the two spill scenarios at either a refueling station or other location. For all other incidents involving hazardous materials, the Nation follows the procedures specified in their Annex K: Hazardous Materials Operational Guidelines (The Nation, no date).

Whether a fuel spill of one gallon or more occurs either at a refueling station or other location, the Nation's spill response measures require that the Nation's Police Department be notified immediately. The Nation's Police Department is then required to contact the

Environmental and Risk Manager when a spill threatens to migrate off of the Nation's lands or into any adjacent drainage ditches. The procedures also require the Nation's Police Department to notify the NYSDEC Oil Spill Hotline if any sizeable fuel spill flows off of Nation lands. Following any volume fuel spill regardless of size, the Station Manager creates a written record of the spill and keeps it filed on site. For any spill of more than 20 gallons, a follow-up meeting with Environmental Manager, Risk Manager, Retail Operations Manager and the Nation's Police Department is recommended to determine whether a change in policy or procedure can be implemented to avoid a similar incident.

In accordance with 40 CFR Part 265, the Nation is a Conditionally Exempt Small Quantity Generator (CESQG). As specifically stated in Part 261.5(a), "A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month." The Nation is well below this maximum threshold for CESQG status as demonstrated by their generation of only one 55-gallon drum of primarily used oil and paint thinner waste covering a one year period. To remove and dispose of these generated wastes, the Nation utilizes the services of Safety-Kleen, Inc. who holds the distinction of being the largest recovery and recycling company in North America for the removal of and disposal of hazardous waste. The Nation tracks the removal and disposal of their generated hazardous waste by recording this information on the USEPA Form 8700-22 (Rev. 3-05) entitled "Uniform Hazardous Waste Manifest." For other types of waste removal (i.e. septic tank pumpouts), the Nation has an existing contract with Eggan Environmental Services who are permitted to transport a variety of solid and liquid wastes to several disposal facilities located in New York State in accordance with the NYSDEC Part 364 Permit 6A-120.

### **Pesticide Management**

The Nation controls insect pests and weeds on its developed and landscaped properties, including the Turning Stone Resort & Casino, through the commercial application of approved pesticides and herbicides by licensed applicators in accordance with federal regulations regarding pesticide programs, 40 CFR, Chapter I, Parts 150-189. The Nation practices sustainable farming on its agricultural lands and has implemented an integrated pest management plan for both its agricultural lands and golf courses in order to minimize the use of synthetic pesticides and herbicides. Organic methods of controlling agricultural weeds and insect pests are employed including mechanical cultivation, biological controls (i.e., the use of beneficial insects or birds), the use of genetically resistant crops, cover crops, crop rotations, pest mating disruption, traps, and barriers. Non-synthetic and botanical compounds may be selectively applied to crops if infestations of insects or weeds occur. The limited use of synthetic pesticides and herbicides is only implemented when a drastic infestation appears inevitable. In order to manage insect pests and weeds on its golf courses, the Nation carefully selects the types, amounts, and timing of the application of fertilizer and pesticide applications to maximize benefits and minimize environmental

impacts. In addition, during the design of the Nation's golf courses, turf grass varieties were selected that require less chemicals, fertilizers, and water.

Insect pests are likely to be abundant around manure associated with the Nation's livestock operations. The Nation is investigating the implementation of various manure management systems, such as a biogas recovery system, in order to comply with federal regulations for Concentrated Animal Feeding Operations. Biogas recovery systems have an added benefit of providing odor control and controlling insects as manure is placed in a large gas-tight tank in order produce methane gas which can then be used to generate electricity. The remaining manure-derived solids can then be used as fertilizer.

Currently the Nation uses Fly Blocks to manage flies around the livestock areas and the animals themselves. This has been quite successful and the Nation reports that there have not been problems with fly control. Manure is spread daily and as such is not a area of concern for fly management.

### **Hazardous Waste Sites**

Figure 3.9-8 presents the locations of the 11 hazardous waste sites in the Study Area identified during the database searches performed by Environmental Data Resources, Inc. Of these, eight sites are located within one eighth of a mile of Nation lands, and all are located within a quarter mile of Nation lands. One site is nearest Group 1 lands and one is nearest Group 3 lands. The remaining sites are nearest Group 2 lands.

### **Review of Existing Reports**

The Oneida Lake State of the Lake and Watershed Report identified eleven inactive hazardous waste sites within the greater Oneida Lake watershed, of which the following four are determined to be in the Study Area (Central New York Regional Planning and Development Board, 2003):

- Haz-O-Waste (now Northeast Environmental Services) – located on Canal Road in Canastota, this is a Class 2 (significant threat to public health or the environment, action required) site (USEPA ID NYD057770109);
- Madison County Landfill – located on Buyea Road in Lincoln, this is a Class 3 (does not present a significant threat to public health or the environment, action may be deferred) site (no USEPA ID);
- Oneida Ltd. Silversmiths – located on Seneca Street in Sherrill, this is a Class 5 (site properly closed, no evidence of present or potential adverse impact, no further action required) site (USEPA ID NYD 980507370); and
- Oneida Ltd. Silversmiths, Treatment Pond – located on Seneca Street in Sherrill, this is a Class 5 site (USEPA ID NYD 980507370);

In addition to the above-listed sites, there is a former manufactured gas plant site on Sconodoo Street in the City of Oneida (NYSDEC No. 7-27-008), for which a January

2002 Amended Record of Decision was entered (New York State Department of Environmental Conservation, 2002).

### 3.9.4.3 Utilities

#### **Electric Service**

Electric service for the Nation's lands is provided by National Grid, formerly Niagara Mohawk Power Corporation (NMPC). The Nation purchases electric power through National Grid in the same manner as would any other private or municipal energy user. National Grid's principal subsidiary, The National Grid Company, PLC owns electrical transmission facilities in the United Kingdom, and National Grid USA has also acquired businesses formerly owned by New England Electric System and Eastern Utilities Associates. Electrical power and natural gas purchased on the wholesale market by National Grid is sold and delivered to approximately 1.5 million electric customers in upstate New York. Electrical generating facilities formerly owned by NMPC were divested as part of the system-wide deregulation that took place in the 1990's, prior to National Grid's September 2000 merger with NMPC.

Electrical power generated in New York State comes from a variety of sources, including hydro (15.5 percent), coal (11 percent), natural gas and oil (58 percent), nuclear (14 percent) and other sources (including wind [1.5 percent]). In the year 2000, approximately 155,000 GWh of electricity were consumed in New York State, with a peak demand level of approximately 30,000 MW. These levels are predicted to rise to 190,000 GWh and 36,500 MW, respectively, by 2021.

The marketing of more than 50 percent of the electrical power in New York State is managed by the New York Independent System Operator (NYISO), a not-for-profit corporation formed in 1999, with the balance being bought and sold via private contracts known as bilateral agreements. NYISO also operates the transmission grid for New York State. NYISO activities are conducted according to rules and procedures set forth by the Federal Energy Regulatory Commission. NYISO continually coordinates its operations on both a pre-scheduled and real-time basis with the other states and provinces within the greater grid, to maintain cost-effective service and reliability. An additional 5,000 MW of generating capacity will be needed in the next five years to maintain generation capacity in the New York State of 118 percent of the peak load. In addition, upgrades to the bulk electric transmission system is required to minimize costs associated with transmission congestion. These upgrades in capacity and transmission are required to assure reliable supplies and competitive prices (New York Independent System Operator, 2002).

New York State presently has approximately 10,800 miles of high voltage (115kV and greater) transmission lines. National Grid's electrical infrastructure interfaces with statewide, interstate, and international (Ontario and Quebec) electrical infrastructures to achieve a balance between generators and consumers. For that reason, the limits to

electrical supplies in a specific part of the grid (such as National Grid operated sections) are dependent on Interface Limits between New York State zones and on Interpool Transfer Capabilities between New York State and other States and Canadian Provinces. NYISO oversees specific transmission system upgrades needed to eliminate weak links in this system.

According to the Nation's accounts, during the 2004-2005 fiscal year, the Nation purchased a total of approximately 16,331,000 KWh of electricity from National Grid for the Turning Stone Resort & Casino, or an average (purchased) electrical consumption of approximately 1,361,000 KWh per month. The other Nation lands utilized for commercial and residential uses consumed a total of approximately 7,317,000 KWh of electricity for the fiscal year, or an average of approximately 610,000 KWh per month. Additional electricity used at the Turning Stone Resort & Casino is generated on-site by the Nation's natural gas fired co-generation plant and is quantified below.

One of the local utility providers in the region has expressed confidential concerns regarding what it perceives as potential problems that could arise should the Proposed Action be implemented. The company supplies gas and electricity to most customers in Madison and Oneida Counties, including the Nation's lands. The company's infrastructure in this area consists of high voltage electrical transmission facilities, overhead and underground electrical distribution facilities, high pressure natural gas pipelines, gas distribution facilities, and gas regulator stations. A preliminary assessment conducted by the utility has, to date, identified six high voltage transmission lines which it maintains could be adversely affected by a granting of the Nation's Trust Application. The company is concerned that a loss of access or control could result in interference or damage to these facilities, which could threaten the public health and safety, harm inter-state commerce and result in violations of federal or New York State laws.

The company maintains that implementation of the Proposed Action could:

- Compromise the utility's ability to operate and maintain the company's infrastructure and ability to provide service to customers in the region (including the Nation's lands),
- Eliminate New York State regulation and oversight intended to ensure safe and reliable service, and
- Interfere with the company's access to existing utility easements on the Nation's lands, potentially impacting the company's ability to affect essential repairs and maintenance required to maintain effective service.

It is the company's opinion that should the BIA implement the proposed action, it is essential that it also either grant New York State continuing authority to regulate the provision of gas and electric services on the Nation's lands or mandate that the Nation

enter into a franchise agreement governing the provision of service in a manner consistent with provision of utility service to similarly situated customers across New York State.

The Nation maintains that these potential problems could be resolved in the spirit of cooperation that it has traditionally evidenced towards its neighbors. Accordingly, these issues will be more fully discussed and addressed in the Section 4 Environmental Consequences.

### **Natural Gas**

New York State's 4.6 million natural gas customers use 1,200 million dekatherms (DTH) of natural gas per year. Approximately 540,000 of those New York State natural gas customers reside in upstate New York where National Grid provides natural gas service. Several of the Nation's lands, including Turning Stone Resort & Casino, are natural gas customers of National Grid. New York State natural gas customers (including National Grid customers) depend on interstate and international pipelines for access to domestic and Canadian supplies. Domestic gas, primarily from the Gulf of Mexico, accounts for approximately 62 percent of New York State's natural gas, with approximately 36 percent coming from Canada and two percent from within New York State. The current pipeline capacity to New York State is approximately 6,000 million DT/day, and this capacity is needed to meet existing core market demand on a peak winter day. Many factors, including petroleum prices and general economic vigor, contribute to increased or decreased demand for natural gas, but most forecasts of future demand identify rising prices and sufficient supplies over the next 15 years.

During the 2004/2005 fiscal year, 170,526 DTH of natural gas were used at the Turning Stone Resort & Casino. Approximately 33,600 additional DTH of natural gas was consumed by commercial, residential, recreational, and agricultural activities on other Nation lands. An additional 548,320 DTH of natural gas was used to fuel the Nation's cogeneration plant on Snyder Road, which is discussed below

### **Co-Generation Plant**

The Nation operates a six MW (nominal) gas-fired cogeneration plant that provides heat and electric power to the Turning Stone Resort & Casino. During the winter, the cogeneration plant is capable of providing approximately 90 percent of the electricity (an average of approximately 5,900,000 KWh per month during the December, 2004 through March, 2005 winter) as well as 50 percent of the heat/hot water used at the Turning Stone Resort & Casino during that period. During the summer, the cogeneration plant can provide approximately 60 percent of the electricity (an average of 3,158,600 KWh per month during June through August, 2005) and all of the hot water used at the Turning Stone Resort & Casino. All electricity needed at the Turning Stone Resort & Casino in excess of that provided by the cogeneration plant is purchased from National Grid. All of the electricity and heat energy produced by the cogeneration plant is used by the Nation; the Nation does not sell energy to any other entities or back to the regional grid. Besides

providing energy savings associated with the co-production of heat and electric power, the Nation's system includes emergency electrical generation capacity to provide back-up temporary electric power in case of failure within the National Grid system.

### **Alternative Energy Sources**

The Nation also purchases liquid propane gas from independent suppliers to serve some of the Nation's lands. During the 2004-2005 Fiscal Year, those independent propane suppliers sold approximately 11,227 DTH of liquid propane gas to the Nation for use at those lands.

The Nation has also instituted several pilot programs or studies to determine the feasibility of obtaining some of the energy required to support their various properties from local sources. The sources being considered include natural gas from wells installed on Nation lands and renewable energy from wind. To date, the Nation has conducted only exploratory drilling for natural gas and has not produced gas for use by them. The NYSDEC database lists two gas well permits as being issued to the Nation's lands. These gas well permits are for Nation Parcel # 309 (Town of Verona) and Nation Parcel # 131 (Town of Stockbridge).

### **Telecommunications**

Many companies provide telecommunications services to residents and businesses in Madison and Oneida Counties located in the area of the Nation's lands. Since the 1996 Telecommunications Deregulation Act removed many obstacles to competition in the industry, service and price competition have characterized the industry. The area around the Nation's lands is no exception to this general situation, with multiple service providers competing for the business of potential residential and commercial customers.

Telecommunications providers in the Study Area include:

- Local or basic telephone service – Verizon, myPhone Company, Opex Communications, TDS Telecom, Vernon Telephone Company, MCI, and dPi Teleconnect;
- Long distance service providers – Qwest, Opex Communications, PowerNet Global, Verizon, Alltell, and GTC Telecom;
- Cable/Internet service – ComCast, Cvi Cablevision Industries Oneida Division, Direct Digital TV, DirectStart TV, Time Warner, Inc., EarthLink, Verizon, and HughesNet; and
- Wireless telephone service – AT&T Wireless, Cellular Solutions of Oneida, Cingular Wireless, Cricket, Nextel, Sprint, and Verizon Wireless.

Additional providers for local and long distance telephone service, wireless service, and cable TV service may also exist. Telecommunications services to the Nation's lands are provided either through these service providers through their local infrastructure, or

through one of two fiber-optics loops designed specifically for the Nation. Verizon Communications designed and built an Intellilight Dedicated SONET Ring (IDSR) fiber-optic cable loop. This loop serves the Nation exclusively and is owned and operated by Verizon. Approximately 20 Nation parcels utilized for commercial activities are served by this loop. A second, smaller loop is hooked to this ISDR and is owned and operated by TDS Communications, also exclusively serving the Nation. An additional four of the Nation's parcels utilized for commercial activities are served by this smaller loop. Each Nation parcel remits payments directly to their service provider.

The parcels served by the two fiber-optic cable loops are Group 1 lands, but do not include the Turning Stone Resort & Casino. The Verizon/TDS fiber-optic cable loop connected via switches in the Telecommunications Building in Vernon (Parcel # 105) provides telephone and broadband services to some of the Nation's outlying lands, including several of the service stations, Nation government, and member housing properties. Commercial and residential parcels outside the reach of the fiber optic loop purchase telephone, cable television, and/or broadband service from the market on an individual basis, dependent on service availability and price considerations.

The largest use of telecommunications services by the Nation occurs on the Group 1 lands. The Turning Stone Resort & Casino provides telephone, cable TV, and broadband internet access in the rooms of all patrons. Telephone service is provided through Verizon and through TDS, Inc. through a fiber-optic cable connected to a main cable running along I-90. Telephone services brought into the Nation's network are distributed throughout the Turning Stone Resort & Casino using the Nation's switching system. Similarly, the Nation's Information Technology Department manages distribution of cable TV and broadband internet services purchased through Time Warner, Inc. Wireless telephone service for appropriate Turning Stone Resort & Casino personnel is purchased through Cingular Wireless.

### **3.9.5 Regulatory Jurisdiction**

#### **3.9.5.1 Introduction to Tribal Governance**

The Nation is one of the seven federally recognized Indian nations of the Haudenosaunee community. It is administered by its own sovereign tribal government. Tribal sovereignty and self-determination of the tribe are recognized and supported by the U.S. government under Executive Order 13175 of November 6, 2000. By virtue of the treaties, statutes, and Executive Orders under the law of the U.S., the federal government and its agencies work with the Indian tribes on a government-to-government basis. Federal statutes and regulations apply on Indian lands and lands held in trust on behalf of tribes apply and are administered through the tribal government to the extent possible. According to Executive Order 13175, when implementing policies affecting tribal lands, the Indian tribes are



encouraged to develop their own policies and establish standards pursuant to their goals and objectives, within the applicable framework of the law. The Federal government grants tribal governments the maximum administrative discretion possible in the administration of federal statutes and regulations.

Executive Order 13175 also establishes that each Federal agency is required to consult with the tribal government in the development of regulatory policies that have tribal implications. Pursuant to the requirements of the Executive Order, Federal agencies such as the USEPA, USFWS, and the USACE have established a consultation process and designated personnel responsible for the inter-government coordination for the development and implementation of environmental programs on tribal lands on a regional basis. Through cooperative agreements and memorandums of understanding, these agencies provide grants, technical assistance, enforcement mechanisms, collaborative management plans, training and other forms of support as needed, to the Nation.

USEPA promulgated an EPA Indian Policy in 1984 for the administration of environmental programs on Indian reservations. Under this policy, “Indian Nation governments are recognized as the appropriate entities to implement environmental programs that affect Indian reservations, their environments, and the health and welfare of reservation populations” (USEPA, 1984). USEPA recognizes tribal governments as primary parties in setting standards, making policy decisions, and managing programs on reservation lands. Even though Federal environmental laws and statutes apply on Indian lands and lands held in trust, USEPA encourages tribal governments to participate in deliberations and decision making on matters pertaining to health and environment on reservation lands. USEPA also encourages and provides guidance for authorized tribes to develop and regulate their own environmental programs on reservation lands if they so choose. The responsibility for managing environmental programs is delegable to tribal governments. The USEPA assists tribal governments with planning and management of these environmental programs and provides grants, technical or other assistance as needed. Where specific tribal environmental programs do not exist, the USEPA retains authority to manage Federal environmental programs. Compliance with Federal environmental statutes is the responsibility of the USEPA, for facilities owned or managed by tribal governments. Where compliance is lacking, the USEPA works cooperatively with tribal leadership offering technical support and consultation to achieve compliance. According to the USEPA Indian Policy, the USEPA may consider direct judicial or administrative action if it determines “(1) significant threat to human health or the environment exists; (2) such action would reasonably be expected to achieve effective results in a timely manner; and (3) the federal government cannot utilize other alternatives to correct the problem in a timely fashion” (USEPA, 1984).

Other Federal agencies have similar policies and procedures regarding their interface with tribal nations. For example, the USFWS undertakes its conservation programs on Indian

lands through its Office of Native American Liaison. Through cooperative agreements with the tribes, USFWS extends protection of endangered species of fish and wildlife on Indian lands. In 1994, USFWS also established a Native American Policy consisting of ten principles that establish the framework for cooperation with the tribes to conserve fish and wildlife resources.

### 3.9.5.2 Existing Regulatory Framework

The U.S. Supreme Court, in the case of *City of Sherrill v. Oneida Nation*, 544 U.S.197 (2005) ruled that the Nation is subject to taxation on lands that it acquired in the open market and further established that the Nation could not unilaterally declare sovereign authority over these lands even if they had been part of the aboriginal homeland two centuries ago. It did however acknowledge that sovereign authority could be reestablished under the provisions of 25 USC § 465 by placing lands into trust. Later, the U.S. District Court, Northern District of New York, in the cases of *Oneida Nation v. Madison County*, 401F. Supp. 2d 219 (2005), and *Oneida Indian Nation v. Oneida County*, --- F.Supp.2d ---, 2006 WL 1517522 (2006) recognized that lands owned by the Nation in Madison and Oneida Counties, New York are restricted lands. These lands are inalienable pursuant to the Non-Intercourse Act of 1790. Therefore, although New York State and local municipalities may levy taxes, they may not foreclose on Nation owned lands for non-payment of property taxes. Jurisdictional issues, however, remain ambiguous and disputed between the Nation, New York State, and local governments.

### 3.9.5.3 Present Regulatory Conditions

At present, lands owned by the Nation in Madison and Oneida Counties are under the jurisdiction of the Nation and are subject to Federal regulation. The Nation exercises its right to self-governance on its lands and plays the lead role for matters affecting the environment on all of its lands. The Nation establishes its own standards, makes its own environmental policy and decisions, and manages its own environmental programs on its lands. Consistent with the authority to exercise its own governance and protect its own environment and population, the Nation has established policies, ordinances, and codes. These include, but are not limited to:

- Environmental Protection Ordinance
- Zoning Ordinance
- Land Use Ordinance
- Housing Code
- Amended Health and Safety Ordinance
- Cultural, Historical or Archaeological Resources Ordinance
- Vehicle and Traffic Code
- Business Corporation Code

- Uniform Commercial Code
- Limited Liability Company Code
- General Obligations Code
- Marriage Code
- Partnership Code
- Penal Code
- Juvenile Justice Code
- Rules of Civil Procedure
- Rules of Criminal Procedure
- Rules of Debt Collection
- Rules of Evidence
- Rules of Peacemaking

Over the last two decades, the Nation has established its own administrative departments or offices complete with appointed personnel and staff. These departments or offices are similar to an agency of the U.S. or New York State, with specific functions and authority derived from the Nation's laws. The roles and responsibilities of personnel designated within each department are also prescribed by law and detailed in the Nation's ordinances. Whereas most of the Nation's regulatory departments function autonomously, the Nation consults and cooperates with a Federal agency such as the BIA, U.S. Department of the Interior, the USACE, or the USEPA on specific issues. The Nation has also actively consulted with various levels of New York State regulatory governance on matters related to cultural resources, security, and the environment. The issues and process of cooperation with Federal agencies are described later in this section.

The following is a brief summary of Nation policies on issues within the scope of this Draft EIS.

***Environmental Protection Ordinance***

In many ways the Nation's Environmental Protection Ordinance echoes the spirit and intent of the National Environmental Policy Act (NEPA). The Nation's environmental policy was enacted on November 24, 1998 and led to the creation of a Department of Environmental Protection and a position for a designated Environmental Manager.

- The policy upholds the Nation's intent to be a responsible trustee of the environment for the benefit of future generations. Through means of an environmental protection policy and an environmental management system, the Nation subscribes to optimizing the use of natural resources while minimizing degradation or compromising public health and safety. The policy endorses sustainable development while ensuring a safe, aesthetically pleasing and

- productive environment for its members and all those who work on or visit the Nation's lands.
- The Nation's environmental policy advocates the protection of the environment through pollution prevention, waste reduction, and judicious use of renewable and nonrenewable resources, energy conservation, and preservation of important historic, cultural, and natural resources.
  - The Nation's policy also directs all agencies, departments, programs and projects of the Nation to consult and cooperate with the NYSDEC on proposals for community or economic development, to ensure environmental factors are given due consideration in decision-making.
  - The policy also requires consideration and analysis of alternatives of actions proposed and establishes a system for resolution of impending issues.
  - The policy authorizes the Environmental Manager to produce an annual Environmental Quality Report on the status of the natural environment on Nation lands, foreseeable trends and their potential effect, review of programs and regulatory activities affecting the environment, recommendations for their enhancement, and development of new policy. This report is produced exclusively for internal intergovernmental purposes only.

#### ***Amended Zoning Ordinance***

The Nation regulates the use of lands it possesses, owns, or holds in its sovereign capacity, through Zoning and Land Use Ordinances. The Zoning Ordinance, enacted on October 4, 1994 and amended October 1, 1999 supports the Nation's mandate to provide for the health, safety, and welfare of the people of the Nation.

- The Zoning Ordinance controls development of the Nation's lands by regulating and limiting the lot sizes, number, size and height of buildings, their use and density, and the size of yards and open spaces.
- The Nation's Zoning Ordinance places special emphasis on removal of existing house trailers, prohibits introduction of additional mobile homes, and promotes increasing the size of occupied lots.

#### ***Land Use Ordinance***

The Nation established its Land Use Ordinance on July 8, 1998, whereby it appointed a Commissioner of Nation Safety and Public Works to administer and enforce the law. The intent of the Land Use Ordinance is to regulate the type of use allowable on specific areas of land through permitting requirements. The Land Use Ordinance:

- Authorizes the Nation to issue a Land Use Permit or Special Land Use Permit for any new construction or changes to existing use. All proposed development or alteration must conform to requirements of the Land Use Ordinance.
- Establishes the Nation's right to designate "districts" on its lands for area specific regulation. The land use districts are depicted on an official land use map (Figure 3.2-16) approved by the Men's Council, Clan Mothers and Nation Representative

(The Nation, 2002). The map shows the Nation zoning designations assigned to the limited properties held by the Nation within the City of Oneida, along and near U.S. Route 46, north of Peterboro Road and north of the Town of Stockbridge town line.

- Establishes permissible use and use regulations for each district. It establishes residential districts, community and government districts on lands owned by the Nation. A description of each district and their respective permitted uses are provided in Section 3.2.4 Land Use and Zoning of this Draft EIS.
- Establishes provisions for residential uses such as Zero-Lot Line Development, Planned Unit Development, and Unassigned Residential Development.
- The Community and Governmental District which permits such uses as community activities, government services, administration functions, and governmental facilities.
- Establishes the site development standards for dwelling size or building coverage, street frontage, lot depth, area, setback, and parking space requirements permissible within each district.
- Establishes application and procedural requirements on behalf of applicant and the Nation for a Land Use or Special Land Use Permits. This includes advising contiguous residents of the application and holding a hearing if necessary (The Nation, 1998).

#### ***Nonresidential Land Use Ordinance***

Whereas the Land Use Ordinance focuses primarily on the development of land for residential uses, the Nation also enacted the Nonresidential Land Use Ordinance on March 7, 2005 to regulate all other development on its Nation. Development for nonresidential use is administered by a committee that was also established under this ordinance.

- The Land Use Ordinance authorizes the committee to issue a Special Land Use Permit for nonresidential use of the Nation's lands. The committee negotiates and executes the permit in the form of a Land Usage Agreement between the applicant (a Nation member) and the committee.
- Land Usage Agreements are in conformance with requirements of the Nation's Land Use Ordinance.

#### ***Establishment of the Oneida Housing Corporation***

Housing on the Nation's lands is managed by the Oneida Housing Corporation (OHC), instituted in September 1997 by the Nation and regulated according to the provisions of a Housing Code. Managed and operated by an appointed Director, the OHC is responsible for developing and managing housing accommodation including low-income housing for the Nation members.

- OHC is also instrumental in administering grants and contracts and executing loans to Nation members to assist in the purchase of a residence.

- OHC is authorized to utilize services of the Nation Governmental Programs and Services group in planning, construction design and development; secure assistance from the Nation Public Safety Department for the safety of all Nation residents and properties, and prevent illegal activity; secure assistance of the Nation Finance Department in monitoring finances, financial reporting, budgeting, administration and other operation assistance.
- OHC is responsible for promulgating rules and regulations for housing rentals and ownership on the Nation's lands.
- The OHC may also be designated as beneficiary of all intergovernmental agreements between the Nation and other governments if necessary for funding requirements.

#### ***Ordinance Amending Housing Code***

The Nation established a Housing Code in April, 1997, which was repealed and an amended Housing Code was adopted on June 21, 2001. The Housing Code protects home-owners rights and provides a legal framework for conducting real estate and property transactions, rules for inheritance, procedures for recording, and the priority and foreclosure of mortgages to secure loans on Nation lands.

- The Housing Code establishes the rules for all transactions concerning sales, purchase, rental, lease, or use of all housing buildings for occupation within the territorial jurisdiction of the Nation's lands. It applies to insurance, mortgages, and use agreements.
- The Housing Code also establishes procedures for obtaining loans or other funding for Nation member housing or private construction.
- This ordinance may be superseded by other Nation laws or ordinances that have been enacted to comply with statutes and regulations of any agency of the U.S. that conflict with the provisions of this code.

#### ***Health and Safety Ordinance***

The Health and Safety Ordinance of the Nation protects public health and enforces safety of structures and public facilities on the Nation's lands. Amended in July 8, 1998, the Health and Safety Ordinance established a Department of Nation Safety and Public Works and appointed a commissioner for enforcement and with powers to adopt new amended standards. This ordinance upholds the Nation's commitment to protecting the health and safety of its members, visitors, and employees.

- The Nation's Health and Safety Ordinance establishes a series of standards that must be adhered to during construction, operation, and demolition of structures or public facilities.
- The standards adopted through this ordinance are not restricted to those issued by the Nation. Many of the standards adopted are national codes issued by private organizations, such as the National Building Code issued by the Building Official and Code Administrators International and the National Electric Code issued by

the National Fire Protection Association. Other standards are regional standards set forth by boards, such as the Recommended Standards to Waterworks and Recommended Standards for Waste Water Facilities issued by the Great-Lakes Upper Mississippi River Board. Some others are specific to the Nation and were issued by the Nation, such as the Food Service Sanitation Standards and Occupational Safety and Health Standards.

- The standards adopted through this ordinance apply to all structures with the exception of Nation buildings used or built for traditional or ceremonial purposes or preserved for demonstrating historic activities or construction techniques.
- The health and safety ordinance was enacted to ensure that public facilities and structures on Nation lands had a safe, secure and sanitary environment, free of fire, physical, chemical or biological hazards, with proper fire escape provisions. It also ensures that all structures and facilities on Nation lands are designed and constructed to code, at par with or better than, any other structures or facilities on non-Nation lands.

#### ***Cultural, Historic or Archaeological Resource Ordinance***

- Enacted April 17, 2000, it established a Historic Preservation Committee.
- This ordinance supplements the Environmental Protection Ordinance in detailing the procedures for the preservation and protection of historic, cultural and archaeological resources on Nation lands, and the roles of designated officials.
- The ordinance requires an internal review of the sensitivity of a site, where construction activity is proposed, relative to its potential to impact a resource of historic, cultural significance or archaeological value.
- The ordinance lays out the necessary qualifications and responsibilities of the appointed official, a Nation Historian, who is required to conduct an extensive background search on the construction area, project and proposed construction, and report findings to the committee for review. The Nation Historian is also responsible for coordination with the OPRHP and the SHPO on matters of cultural resource information.
- The committee is authorized to make a determination of significant impact, recommend changes or further site evaluation, and recommend additional mitigation measures.

#### **3.9.5.4 Nation's History of Regulatory Compliance**

When the Nation acquired the lands in Madison and Oneida Counties, the Nation asserted sovereign control and the lands then became subject to both Nation and Federal regulation. The Nation and Federal regulations became applicable, just as they are presently (described in Section 3.9.5.3 Present Regulatory Conditions). Many of the regulatory standards of New York State and local municipalities were incorporated by the Nation in their plans for development of some of those lands. The Nation strives to execute its ordinances and regulations in combination with cooperative ventures with local, New York State, and Federal agencies. A comparison of relevant New York State and Federal environmental regulations and programs is outlined in Table 3.9-5 at the end

of this section. An overview of New York State’s regulatory policies is presented in Section 3.9.5.5 New York State Regulatory Policies.

In many instances the Nation consulted and cooperated with local, New York State, and federal agencies in protecting environmental resources and ensuring health and safety of its members, employees, and visitors. The Nation’s regulatory procedures and cooperative efforts are described below. The following discussion is based on specific resource categories captured under an overarching environmental or health and safety policy of the Nation. It describes past practices and is indicative of how the Nation implements its policies.

### ***Environmental Policy***

The Nation’s policy related to the environment is to be an environmentally responsible neighbor to surrounding communities and to be committed to the protection and conservation of environmental resources.

### ***Water Resources***

New York State controls its public water supply and usage. However, local municipalities often work together with Indian tribes to ensure local access to water for domestic, municipal, and other purposes. In 1995, the Town of Verona collaborated with the Nation to locate additional sources for water to alleviate dependency on on-site water wells. In a study commissioned and financed by the Nation, the City of Oneida was identified as that additional source. Soon thereafter, the City of Oneida entered into a contract with Town of Verona to provide the town with not less than 150,000 gallons per day. To facilitate supply to the Nation’s lands, the Nation funded a \$7 million water line from the City of Oneida to the Town of Verona and a water tower serving both the town and the Turning Stone Resort & Casino located on the Nation’s lands. Residents of the Town of Verona along the water line route also benefit from the new water line as does the Vernon-Verona-Sherrill Senior High School.

In seeking a renewable source of water to irrigate two of the golf courses at the Turning Stone Resort & Casino, Nation entered into an agreement with the City of Oneida to use effluent from the City’s wastewater treatment plant. The reclamation of effluent water has not only reduced demands on the region’s groundwater resources but also contributed to reduction in effluent discharge to Oneida Creek and ultimately to Oneida Lake. The Nation funded the installation of an energy-efficient tertiary filter at the City of Oneida wastewater treatment plant and constructed a pipeline to carry the effluent. Since its inception in 1997, this cooperative strategy has been exemplary in the region and has yielded significant energy savings to the City of Oneida, while upholding the Nation’s policy for water conservation. This joint-effort has also been praised by the USEPA and reported in “Guidelines for Water Reuse” (2004) as “...an inter-governmental and multi-jurisdictional effort...”. In 2003 and then in 2005, the Nation partially funded the



upgrades to the City of Oneida's wastewater facilities, continuing the successful partnership.

Other efforts by the Nation consistent with the Nation's Environmental Protection Policy have resulted in significant reduction of water consumption at the Turning Stone Resort & Casino. The Nation installed a state of the art on-line water treatment system on the co-generation facility cooling towers to facilitate use of reclaimed water from the City of Oneida. This allowed for a water savings of about 40,000 gallons per day. Additionally, they installed a water treatment system at their RV park, resulting in a 15,000 gallon per day reduction in water use during the camping season. The Nation adopted other measures for water conservation in their day to day operations at the resort facility such as:

- Eliminating the practice of thawing frozen foods under running water,
- Draining water features like fountains less frequently for maintenance,
- Using well water for golf-cart wash stations,
- Installing water meters on all water feed lines into the resort and monitoring them daily for leaks or abnormalities,
- Preventing unauthorized use of domestic water by turning off external hose bibs,
- Running boilers at higher cycles of concentration,
- Reducing the amount of blow-down cooling water used,
- Lowering the level of water on the boiler condensate return tank to prevent overflows, and
- Operating cooling tower fan motors with a variable frequency drive to match cooling loads and reduce evaporation.

In a continuing effort to conserve and optimize use of water resources, the Nation cooperated with the Town of Verona in 2002 to fund a study that would identify an alternate source of water supply for a projected 20 year period, as required by the NYSDEC. In 2003, the Town of Verona and Nation jointly signed a 30-year agreement to purchase water from the potential source identified in the study, the Mohawk Valley Water Authority (MVWA). A 13-mile long pipeline was proposed to run from MVWA through the Towns of Westmoreland and Vernon to the Town of Verona. The Nation agreed to fund \$10 million of the estimated \$13.5 million project cost. A corresponding revenue sharing agreement between the Nation and MVWA was intended to have helped reimburse the Nation for its investment over a 30-year period. The agreement won the praise of local legislators but did not earn the approval of the NYSDEC and was not implemented.

The Nation consulted and cooperated with federal agencies on other projects that required compliance with federal regulations to protect the waters of the U.S. For instance, during

the construction of the Turning Stone Resort & Casino, the contractors complied with the requirements for a State Pollutant Discharge Elimination System (SPDES) General Permit for Storm Water Discharges from Construction Activities to ensure that New York State water pollution prevention standards were met or exceeded. A Storm Water Pollution Prevention Plan (SWPPP) was prepared containing specific information about the project and measures to prevent the water pollution from run-off at the construction site. The Nation's Environmental Manager monitors the SWPPP on a weekly basis. The Nation also hired an outside consultant (Dunn & Sgromo Engineers, PLLC) to conduct storm water pollution prevention inspections for conformity with New York State and federal standards. Also, during construction of the golf courses, the Nation cooperated with NYSDEC to inspect occasional siltation and flooding issues arising from the construction of the golf courses. NYSDEC personnel were given access to the golf courses, the building plans, and design documents. Upon NYSDEC's recommendations, the Nation included stone check dams, siltation ponds, and silt fencing around stockpiles of topsoil to check potential erosion.

#### Air Resources

In 2003, the Nation built a natural gas-filled cogeneration facility to meet energy consumption needs at Turning Stone Resort & Casino. Cogeneration, also known as combined heat and power, cogen, district energy, total energy and combined cycle, is the simultaneous production of heat (usually in the form of hot water and/or steam) and power utilizing one primary fuel. The Nation's choice of a cogeneration facility aligned with their mandate for optimizing use of natural resources. Cogeneration produces a given amount of electric power and process heat with 10 percent to 30 percent less fuel than it takes to produce the electricity and process heat separately.

Prior to the construction of the cogeneration facility, Turning Stone Resort & Casino was an existing non-major facility for nitrogen oxide emissions with a potential to emit approximately 90 tons per year. With the construction of the cogeneration facility, Turning Stone Resort & Casino added 60 tons per year to its nitrogen oxide emission potential and, therefore, qualified as a major source, a designation that required the Nation to obtain an operating permit. This permit requirement is based on the attainment designation area in which Turning Stone Resort & Casino is located. Turning Stone Resort & Casino is located in an area currently designated as marginal non-attainment for ozone. The addition of the new cogeneration facility caused the potential emissions from Turning Stone Resort & Casino to exceed major source levels as defined by 40 CFR § 70.2 and 71.1. The Nation applied for an operating permit from USEPA Region 2 under Title V of the Clean Air Act.

In an August 29, 2003 letter sent to USEPA Region 2, the Nation's vendor on the cogeneration project confirmed the correct Air Emissions Source permitting path that the Nation would follow. The Nation complied by inventorying all emission sources for the

USEPA to ascertain permit conditions and monitoring requirements. On February 3, 2005, the USEPA Region 2 notified the public of its intent to issue a draft operating permit to the Nation. The notice opened the process to a public comment period, which ended on March 30, 2005. The USEPA also received comments from the NYSDEC although after the comment period ended. On February 11, 2006, USEPA Region 2 issued a draft Title V permit to Turning Stone Resort & Casino pursuant to 40 C.F.R. § 71 and responded to all public and NYSDEC comments. A full copy of the administrative record was made available for public review. The final Title V Permit for Turning Stone Resort & Casino was issued on February 22, 2006. The Nation has been since in compliance with all stipulated federal requirements as prescribed in the Title V Permit. For details on the cogeneration facility and permitted air emission levels, please see Section 3.4 Air Quality.

### Ecological Resources

The intent of the Nation's Environmental Protection Ordinance is to remain committed to the protection and conservation of environmental resources. To this end the Nation has worked cooperatively with Federal and New York State agencies, especially to ensure the protection of wetlands. According to the Nation, it is their policy to first avoid, then minimize, and finally mitigate any unavoidable impacts to wetlands as a result of developmental activity. The Nation policy follows federal wetland guidance (USACE, 2002) for preventing net losses of wetland area and replacement of wetland functions by providing wetland mitigation at a 1:1 ratio for areas with a low rating based on wetland functions and 2:1 for areas with a high rating (Blatner and Jaehnig, 1996).

The Nation, through its contracted consulting firms, followed the USACE Wetland Delineation Manual to delineate wetlands on Nation lands in 1997 and 2002 before construction of its golf courses. Using USACE and NYSDEC records and consultation with USFWS, plant and wildlife species habitats were also indicated on the delineated wetland maps. The results of these studies were incorporated into the design and development of the golf courses. Subsequently, the Shenendoah Golf Club and two other Nation owned golf courses, Kaluhyat and Atunyote, were awarded Bronze Signature Status by Audubon International for comprehensive natural resource management. The Bronze Signature Status is recognition of the Nation's commitment to integrated wildlife conservation, habitat restoration and enhancement, water conservation and water quality protection.

Among mitigation practices, the Nation has used on-site and off-site mitigation measures in the past. To mitigate for impacts on wetlands during construction of the Turning Stone Resort & Casino, the Nation enhanced woody wetland patches, created drain basins and open water ponds, and planted appropriate vegetation. Later, in 2002, the Nation developed a more comprehensive wetland mitigation plan during the expansion of the Turning Stone Resort & Casino. As part of the plan, it established the Germany Road Wetlands Mitigation Bank (GRWMB) on Nation Parcel 37. The GRWMB is a wetland

reserve on 75-acres of land on Nation lands, which offsets impacts to wetlands elsewhere on other Nation lands. The Nation has used 28.66 acres to date of these 75 acres as mitigation for the Nation's wetland impacts. The Nation's wetland consultants monitor the mitigation bank and provide an annual report. According to the Third Annual Mitigation Monitoring Report, the mitigation plan has been implemented and exceeds all the required success criteria prescribed (Wetland & Ecological Consultants, 2005).

The Nation also conducted a wetland delineation in 1998 in cooperation with the City of Oneida, to comply with the federal requirements of a Nationwide Permit, to construct a water pipeline from the City of Oneida to the Turning Stone Resort & Casino. The Nation coordinated and consulted with the USACE and the City of Oneida to obtain the necessary permits and ensure wetland protection.

In 2000, the Nation performed dredging at the Marion Manor Marina on Oneida Lake. The Nation corresponded with the USACE as well as with the NYSDEC before beginning dredging activities. The Nation incorporated recommendations by the NYSDEC and the USACE in its plan for pollution control. The USACE deemed the Nation's dredging project to be in full compliance with the requirements of both Section 10 of the River and Harbor Act and Nationwide Permit 35.

The Nation implements a Hunting Regulation to ensure safety of the public and restricts the hunting of wildlife to sustainable limits. The regulation governs "all activities arising out of or reasonably related to the hunting of any wild game....by members of the Oneida Nation" (Nation Hunting Regulation, 2002). It requires prospective hunters to obtain a Hunting License, a Field Registration Card, a Carcass Transportation Tag if hunting big game, and a Hunter's Vehicle Tag from the Nation's Office of Public Safety. There are prohibitions on weapons that may be used and on selling and wasting animal meat. The Nation has designated certain areas within Nation lands as hunting and fishing sites to limit these activities to sustainable levels.

In 2005, NYSDEC tested deer in two Oneida County herds as positive for Chronic Wasting Disease (CWD) a terminal disease that affects the nervous system of deer and elk causing brain deterioration. Sources at the Nation's Department of Environmental Protection report that, at New York State's request, the Nation's Commissioner of Public Safety consulted and coordinated with the contact person on CWD at the NYSDEC to assist the agency in controlling the disease. New York State's personnel were given access to Nation lands and the Nation consented to implementing New York State's Chronic Wasting Disease Response Plan on Nation lands.

The Nation maintains a herd of approximately 900 Black Angus cattle which supplies restaurants, including those owned by the Nation, with high-quality beef. In accordance with the Nation's principles to optimize the use of natural resources without compromising public health and safety, the cattle is fed the Nation's own agricultural

produce, including yellow corn, barley, wheat, soy beans and hay, which are steroid and hormone free.

The Nation also operates a boarding facility for dairy cattle (Heifer Hotel) that allows dairy farmers to board their young calves until they are ready to be bred or milked. At 12 to 18 months, the calves are bred with resident bulls and returned to the owner one month prior to the delivery.

In 2006, the Nation is seeking to comply with federal regulatory standards for Concentrated Animal Feed Operation. To this end, the Nation is researching various manure management systems, such as a biogas recovery system that uses anaerobic digestion for manure disposal. The biogas recovery system is a widely recognized sustainable practice for the reuse and recycling of organic waste for energy generation. The Nation plans to begin construction of a manure management system in 2006, for which it has sought Federal grant funds from the USEPA and the BIA's Environmental Resource Committee.

In other conservation efforts, the Nation has cooperated with the NYSDEC in developing an environmental protection plan for the Rome Sand Plains, an inland pine barren (New York State Department of Environmental Conservation, 2003). The Rome Sand Plains are a popular tourist destination for local residents and contain diverse and unique plant and animal life. The Nation is a member of the Rome Sand Plains Management Team, assisting the NYSDEC and Oneida County with restoration of rare plant species, enhancement of flora and fauna around ancient sand dunes, and protection of unique birds endemic to the area.

The Nation has also been involved with The Great Swamp Conservancy, a local conservation group. The Conservancy strives to foster environmental education, preserve biological diversity and manage natural resources in the Oneida Lake and Ontario Lake watersheds. The Nation funded the Great Swamp Conservancy's effort to restore sweetgrass and black ash populations on the Nation's lands (Indian Country Today, 2003). Both are plant species important to Iroquois culture and used in the manufacture of various products. The Nation also helped the Conservancy with its environmental education efforts by sponsoring nature festivals and other educational events. Each year the Conservancy and Nation together with local elected officials celebrate Earth Day with a tree planting ceremony. Typically the Nation members attend the ceremony in traditional headdress and address the gathering in the Oneida language. In 2006, elected officials from the Towns of Lenox and Sullivan and the Village of Canastota planted a white pine tree, the Oneida symbol of peace, to signify the importance of Earth Day.

Land Use and Zoning

Nation lands are located in 11 townships, five villages, and two cities. The towns have established zoning regulations and in many cases, certain villages also have adopted their own jurisdictional regulations. For further discussion of zoning regulations in these communities, please see Section 3.2.4 Land Use and Zoning.

The Turning Stone Resort & Casino, built in the Town of Verona in 1987, was a unique development in the region. The property and many of its accessory maintenance and golf services and structures were zoned as part of the Planned Unit Development (PUD) District (Town of Verona Zoning Map, 2004). The PUD district allows, “for a variety of land uses and a flexible arrangement of lots, structures and land uses in a well-planned and coordinated design. The flexibility of land uses and lots is achieved by the Town continuously participating in and approving stages of project planning and development. Any combination of land uses already permitted within the Town may be proposed for development on sites under this district. This district is also intended to accommodate for land uses or scales of development that may be unique or require fuller consideration by the Town.” Development of Turning Stone Resort & Casino was generally congruous with the purpose, intent, and general provisions of the PUD zoning district.

The Nation’s Land Use Ordinance established the Nation’s right to designate districts for “specific portions of the lands under the territorial jurisdiction of the Oneida Nation for the application of area specific regulations” (The Nation, 1998).

Nation lands located within the City of Oneida have been designated as Planned Unit Development, Community and Government, and Unassigned Districts according to the Nation’s Land Use Ordinance. The existing uses in the PUD zoning district include, the Education Resource Center, the Culture and Education Center, Family Services and Facilities Department, and the Village of White Pines. The existing uses in the Community and Governmental District include the Nation’s legal offices, administrative offices, and an abandoned rink / go-cart track, and the housing corporation. There is a SavOn gas station and convenience store and agricultural uses in the Unassigned Residential district.

The City of Oneida’s recently adopted Zoning Map (City of Oneida, 2006) includes these properties in the City’s Rural Residential or Agricultural zoning districts, as presented in Section 3.2.4 Land Use and Zoning. The Agricultural zoning district permits agricultural uses, residential uses, rooming houses and by special permit it allows golf courses, cemeteries, and other uses. The existing Nation land uses located within the City’s Agricultural zoning district are generally congruous with permitted uses in that district. The City’s Rural Residential zoning district permits rural activities, agricultural uses, and residential dwellings.

Overall, existing Nation land uses throughout the townships are generally congruous and compatible with land uses and activities on adjacent non-Nation land.

***Health and Safety Policy***

The Nation's policy is to protect the health and safety of Nation members and others who reside within the territorial jurisdiction of the Nation.

***Public Safety***

As per the Nation's gaming compact with New York State, the Nation funds 21 New York State officers who enforce New York State laws within Class III gaming areas and who conduct background investigations on Nation employees and vendors.

With reference to county public safety arrangements, the Nation entered into public safety agreements with the Madison County and Oneida County in 1995 (The Nation, 1995). The Special Cross-Deputization Agreements established that the Nation's Police Department has the power to enforce the laws of New York State on the Nation's land. The Nation Police Department was founded in 1993 and it is charged with maintaining public safety and investigating suspected crimes on the Nation's lands. Additionally, the Nation Police Department conducts background investigations on employment applicants. The Special Cross-Deputization Agreements of 1995 set forth procedures to facilitate cooperation, including procedures regarding first response and back-up response, between municipal law enforcement agencies and the Nation Police Department. Madison and Oneida Counties unilaterally terminated these deputization agreements after attempts to settle land claim litigation failed (Middaugh, 2000; Cary, 2000).

Cooperation between law enforcement agencies from Madison County, Oneida County, and the Nation has been successful. Line officers routinely cooperate with officers from other forces with respect to law enforcement concerns. The Nation's Police Department assists with the repossession of motor vehicles on Nation lands. Upon the commission of any crime, the Nation's Police Department detains the suspect and transfers that person to the municipal police department for arrest.

Continuing with a practice that has been ongoing for more than one decade, Nation police staff and county police staff attend monthly meetings to discuss effective law enforcement techniques and to ensure departmental coordination. Law enforcement agencies take turns hosting the meetings, preparing meeting agendas, and discussing existing inter-agency efforts and programs. Some programs and efforts include an anti-drunk driving initiative and domestic violence awareness efforts. Additionally, the Nation Police Department requests the assistance of surrounding police departments in crowd control at concerts, public events, or public meetings held on Nation lands. The overtime costs incurred by such requests are recompensed by the Nation. Local law enforcement personnel and the Nation Police Department frequently assist one another in criminal investigations.

On a Federal level, the U.S. Department of Homeland Security, via the Syracuse U.S. Attorney's Office, sends the Nation Police Department daily bulletins.

Additionally, under 25 U.S.C § 232, New York State has jurisdiction over offenses committed by or against Indians on Indian reservations just as anywhere else in New York, affording an extra layer of police protection on the Nation's lands.

*Fire and Emergency Protection*

In 1993, the Nation entered into a service agreement with the Town of Verona Fire Department by which the Nation agreed to pay for fire protection of the Turning Stone Resort & Casino and all commercial property and first-floor residential property in the Verona Fire District. In 1996, the Nation and Town of Verona Fire Department entered into a new agreement based on the Nation building square-footage requiring protection. In 2004, a flat fee was established for the fire protection service provided to the Nation.

During the period from 1999 to 2003, approximately 12 percent of the Town of Verona Fire Department's requests for fire protection services originated from Nation lands as presented in Table 3.9-4 (Verona Fire District and Verona Fire Department, 2004).

**Table 3.9-4  
Calls to the Town of Verona Fire Department**

Year	Total Number of Calls Received	Number of Calls from the Turning Stone Resort & Casino	Percentage of Calls to the Turning Stone Resort & Casino
1999	304	35	12
2000	287	17	6
2001	326	33	10
2002	315	40	13
2003	430	73	17
Total	1,662	198	12

Source: Verona Fire District and Verona Fire Department (2004)

The Town of Verona Fire Department and the surrounding fire departments have made efforts to develop a program that will effectively protect the patrons and staff at the Turning Stone Resort & Casino. As prepared by the Town of Verona Fire Department, the Turning Stone Resort & Casino July 2005 Mutual Aid Fire/Rescue/MCI Plan ensures adequate fire protection personnel and fire protection equipment are available to respond to emergency situations (Town of Verona Fire Department, 2005). The establishment of this Mutual Aid Plan brought the number of available personnel, at the time of the agreement, to approximately 145. The local emergency service agencies participating in this Mutual Aid Plan include:

- The Town of Verona Fire Department;
- The City of Rome Fire Department;
- The City of Oneida Fire Department;



- The Town of Oneida Castle Fire Department;
- The Town of New London Fire Department;
- The Town of Vernon Center Fire Department;
- The City of Sherrill Fire Department;
- The Town of Durhamville Fire Department;
- The Town of Vernon Fire Department;
- Vineall Ambulance; and
- Oneida County's E911 and Emergency Medical Service.

Most recently updated in August 2005, the Mutual Aid Plan details how the Town of Verona Fire Department would staff and manage a significant fire, emergency situation, or mass casualty incident at the Turning Stone Resort & Casino. (Town of Verona Fire Department, July 2005). Training sessions and programs were conducted for the fire chiefs and deputy fire chiefs of those emergency agencies participating in the Mutual Aid Plan. Additionally, as part of the program, the Nation identified for the Town of Verona Fire Department seven locations in which hazardous materials are stored and/or used.

In an effort to further expand the Nation's fire protection, the Nation is in the process of hiring its own fire marshal. This position would be partially funded by the BIA. Several Turning Stone Resort & Casino employees would be trained to be first-responders by the fire marshal and the Nation's fire consultant, Captain Doug Whittaker of the City of Syracuse Fire Department. The first-responder team would work to eliminate the amount of fire damage occurring before the arrival of the Town of Verona Fire Department. According to the Town of Verona Fire Department, there have only been "a handful of minor fires on Nation-owned property since the early 1990's, when the Nation began acquiring the properties" (Town of Verona Fire Department, July 2005).

Additional fire protection is provided by a sprinkler system and standpipes installed in the Casino, the hotels, the Bingo Complex, the Convention Center, and the Event Center. The parking garage is equipped with a fire suppression system. Water for the sprinkler system is provided from the Nation's on-site Fire Pumphouse, adjacent to the co-generation facility on Snyder Road. Outside consultants regularly inspect the Fire Pumphouse.

#### Emergency Medical Services

The Turning Stone Resort & Casino's security officers typically handle medical emergencies which occur within this facility. Many of the security officers are trained emergency medical technicians. As per the Mutual Aid Plan, the Town of Verona Fire Department would be contacted only if an incident were considered to be very serious, involved many people, occurred away from the Turning Stone Resort & Casino, or occurred at a construction site (Town of Verona Fire Department, July 2005).

Related to emergency preparedness, frequent and open communication occurs between the Nation and all local, New York State, and Federal law enforcement agencies. The Nation's Commissioner organized a terrorism awareness program and attended various New York State programs to keep apprised of the latest developments.

On March 24, 2006, at the request of the New York State Department of Health, Nation representatives met with New York State officials to discuss how to manage an avian flu outbreak. Recent threats of a bird flu pandemic prompted the extensive cooperation between the Nation and various local, county, and New York State health agencies.

### Construction

The Nation inspected its buildings and codes from 1993 to 1999 pursuant to the standards identified in the Building Officials and Code Administrators International, Inc. In 1999, the Nation adopted the IBC, the International Fire Code, and the Property Maintenance Code, incorporating them into its own building code – the Oneida Indian Nation's Building Code Compliance Policy and Procedures (the Building Code).

The Building Code outlines and identifies the steps that a construction sponsor must follow prior to the commencement of any new construction or renovation. These steps must include notifying, presenting plans to, and obtaining a building permit from the Building and Construction Inspector, who is also the Code Enforcement Officer for the Village of Hamilton (The Nation, 1999). All construction documents must be prepared in accordance with both the IBC and the American Society for Heating, Refrigerating, and Air Conditioning Engineers Standard 90.1-1989 for Energy Efficient Design (The Nation, 1999). The Building Construction Inspector is charged with performing inspections throughout the building and construction process to ensure compliance. Upon the completion of construction, a certificate of occupancy is issued if all requirements have been met.

### Demolition Plan

The Nation requires that structures on its land meet or exceed public safety standards. In reacquiring some properties, the Nation found that they included some substandard deteriorated buildings and structures. According to the Nation's policy, where substandard structures are present, the Nation identifies the property as a candidate for demolition. The Nation has so far designated 58 such properties of which nine have already been demolished. The Nation expects to have completed demolition on all remaining properties by the end of 2006.

According to the Nation's procedures, the process for demolition involves an initial inspection by the engineering coordinator of the Nation's Construction and Design Department to determine if the structure is salvageable. A determination of the property's aesthetics and if demolition is appropriate is also made. If initial inspection determines the

property or structure to be suitable for demolition, the Nation's historian and archeologist assess the cultural, historical and archeological significance of the property, pursuant to the National Historic Preservation Act of 1966. A report that includes a site description, photographs of the structure and site maps, summary of the research, and the assessment about the site's historical, cultural or archeological significance, is submitted to the project manager. An outside archaeological expert may be used to assess the structure's eligibility for the National Register of Historic Places. If the report concludes that the structure is culturally significant, the report is submitted to the Nation's government for review. The Nation's Office of Safety and Public Works makes the final decision as to whether to issue a Land Use Building Permit to authorize the demolition of the structure. In May, 2006, based on an archaeological significance report on ten structures prepared by the Nation's historian, the Nation modified its demolition plans on one structure and recommended not to demolish another structure.

The Nation's Project Manager and Environmental Planning Manager inspect all structures to be demolished for hazardous materials and still-connected utilities. If presence of asbestos-containing material is suspected, the Nation hires an independent contractor to conduct a pre-demolition asbestos inspection. The Nation hires New York State-certified asbestos abatement companies to perform any required asbestos removal. The project manager also ensures that the local municipality disconnects and seals any remaining utility connections and that the Nation has disconnected and sealed all septic tanks. Following these three steps (initial inspection, cultural assessment and necessary abatement), the project manager can apply to the Nation's Office of Safety and Public Works for a Land Use Building Permit. If the Office's Commissioner determines that all requisite steps have been fulfilled, a permit is issued and demolition can begin.

The Nation contracts with outside firms to monitor air quality during demolition when asbestos is a concern and to transport hazardous and non-hazardous debris to the appropriate landfill. The structure is hosed as it is being razed to limit dust transport. After demolition, the site is seeded and graded, and the project manager submits a final report to the Office of Safety and Public Works.

#### Solid and Hazardous Waste

Under USEPA guidelines regarding hazardous waste, the Nation is a Conditionally Exempt Small Quantity Generator, and is allowed to generate up to 100 kg of waste per month. According to the Nation, the actual waste generated by the Nation's facilities and operations is far less than the permissible USEPA threshold. The Nation uses Safety-Kleen Systems, Inc., the largest recovery and recycling company in North America, to remove and dispose of hazardous waste. The Nation tracks the removal and disposal of hazardous waste pursuant to the USEPA's Uniform hazardous Waste Manifest. The Nations contracts with Eggen Environmental Services for certain types of waste removal,

including septic tank pump outs. Eggan Environmental Services is a NYSDEC permitted waste transporter (Permit No. 6A-120).

The Nation has implemented its own fuel spill policies and procedures. These require that if a spill of one gallon or more occurs at a gas or diesel facility, the Nation's Police Department must be notified immediately. The Nation's Police Department contacts the Nation's Environmental and Risk Managers and the NYSDEC Oil Spill Hotline if a spill threatens to migrate across Nation lands or into any adjacent drainage ditches. After all fuel spills, the Station Manager creates a written record of the spill and files it on-site. For any spill of more than 20 gallons, a follow-up meeting is recommended to determine whether a change in procedure can be implemented to avoid a similar incident. This procedure is followed for spills occurring at a location other than gas stations.

#### Food Safety

The Indian Health Service (IHS), a division of the U.S. Department of Health and Human Services, inspects the Nation's approximately 25 food service stations, which includes the restaurants at the Turning Stone Resort & Casino, SavOn gas stations and convenience stores, and food stands, at the Nation's request. The IHS conducts inspections of all food establishments three times per year, although Oneida County requires inspections of food establishments only once a year. The IHS follows the FDA's Food Code – a model code that assists tribal regulators, among others, to properly monitor any Nation food and beverage establishment (U.S. Food and Drug Administration, 2005). The Nation entered into a Memorandum of Understanding between the USFDA and the IHS concerning food safety (U.S. Food and Drug Administration and Oneida Indian Nation Health Service, July 1997). If any food establishment is deficient, the HIS returns to the site in a prescribed number of days and performs a follow-up inspection.

#### Spa and Swimming Pool Safety

Swimming pools, wading pools, and spa pools, are inspected at least three times a year by the IHS. These inspections are conducted in accordance with the 1996 Recommended Standards for Swimming Pool Design and Operation with Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, Illinois Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Ontario, Pennsylvania, and Wisconsin.

### **3.9.5.5 New York State Regulatory Policies**

New York State, through its several agencies and departments regulates the land, property, physical and biological environment, transportation, agriculture and market, parks, recreational resources, cultural and historic resources, finances, technology, law and order, and the health and safety of its citizens. There are at least 90 consolidated laws in New York State and several other unconsolidated laws and acts.

### Land Administration

Counties, municipalities, towns, and villages in New York State are regulated under the General Municipal Law, Town Law, and Village Law. The General Municipal Law prescribes cross-municipality laws for amenities such as water supply, sewage disposal, gas and electric services, public health and safety, inter-municipal cooperation for shared services, historic preservation, and other cross boundary issues. It also authorizes establishment of special regulatory bodies such as city and village planning commissions, regional planning councils, county planning boards, urban renewal agencies, New York State Empire Zones, and business improvement districts. Areas designated for such districts or zones are afforded special status in New York to stimulate socio-economic growth in the region.

New York State Town Law authorizes local municipalities to establish their own zoning regulations and planning procedures to control land use and development within their jurisdictions. Under New York State Town Law, town boards are authorized to develop a comprehensive or master plan that serves as a guide for community development, and to prescribe local land use and zoning ordinances that protect public health, safety and general welfare. Any proposals for development are reviewed for consistency with the master plan and must comply with local zoning regulations. Regional impacts are assessed under New York State General Municipal Law section 239. New York State Town Law also empowers towns to accommodate local community amenities such as open space, low-income housing, parks, senior care, or child care facilities in their master plans to benefit the residents of the community. New York State Town Law authorizes additional restrictions in special overlay districts to protect areas of historic significance, flooding concern etc. Towns can also designate special assessment districts for fire safety, water/ sewer distribution, and lighting restrictions. The Village of Canastota has a proposal for the Master Plan for Canal Town U.S.A. that provides design guidelines and recommendations to establish a Canal Town historic area. Nation Parcel 33 would likely occur within the planning area for this special district. Some Nation lands in the Village of Sylvan Beach along the Erie Canal also fall under a HUD Canal Corridor Initiative for economic development along the Erie Canal Corridor.

### Environmental Conservation

Chapter 43-B of New York State consolidated law protects the environment. Environmental Conservation Law (ECL) regulates conservation and protection of natural resources through the NYSDEC. The law enables New York State to control water, land and air pollution, for the betterment of health, safety and welfare of the people of New York State. New York State is the trustee of the environment for present and future generations per the environmental policy. It is the policy of New York State to “improve and coordinate environmental plans, functions, powers and programs of the State, in cooperation with the federal government, regions, local governments, other public and

private organizations and the concerned individual, and to develop and manage the basic resources of water, land, and air” (New York State Laws, retrieved May 15, 2006). It is also the policy to “foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations.”

The ECL is the primary law for protection, improvement and enhancement of the environment in New York State. The NYSDEC is the primary agency with regulatory oversight on New York State’s lands, forests, wetlands, fish and wildlife, water, air and cultural resources. The implementing regulations for environmental conservation are contained in the NYCRR Title 6 (see Table 3.9-5)

Prior to the Nation’s requisition of lands proposed for conveyance into trust (the 17,370 acres that comprise the Proposed Action), the protection of the environment, public health and safety fell under the purview of New York State’s regulatory jurisdiction. At present, lands surrounding the Nation’s lands remain under established local and New York State governance and regulatory jurisdiction. A brief overview of New York State’s environmental regulations for each resource category administered and enforced through the NYSDEC is discussed below.

#### Overall environmental protection

Under Article 8 of the ECL, New York State established a policy to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the State”. The State Environmental Quality Review Act (SEQRA) requires that the protection and enhancement of the environment, human, and community resources be given appropriate weight with social and economic considerations in public policy and in reaching decisions on proposed activities.

In a formal correspondence from Madison County Planning Department to Malcolm Pirnie Inc., dated July 7, 2006, Madison County states that “any building, facility, on-site or community septic system or community water supply installed since the Oneida Nation took ownership of the property requires a permit/authorization issued by either the County of municipality”. The County also suggests that other structures such as signs may require permits depending on local laws and characteristics of the structure. Other requirements for permits can only be determined given more specific information on proposed actions and uses, and an on-site inspection.

### Water Resources

Article 15 of the ECL protects water resources across New York State. New York State has sovereign power to regulate and control its water resources except when the power is delegated to the Federal government. Under this law, New York State regulates any interference with channels or beds of lakes and streams, alteration of water courses and gradients, impounding of water, and dredging and filling of stream beds. The NYSDEC also regulates the supply of potable waters for municipalities, the use of waters for industrial and agricultural purposes and the development or un-development of water power in New York State.

Article 16 of the ECL establishes New York State's participation in the Federal flood control program. It authorizes the NYSDEC to obtain funds for the cost of participation in the program which may include relocation or reconstruction of New York State highways, buildings, structures, facilities, or service lines; channel improvements; construction of check dams, quarries, gravel pits, burrow pits; for building access roads etc. It also authorizes the New York State to acquire any properties necessary of the purpose of flood control.

Article 17 of the ECL seeks to safeguard the waters of New York State from pollution by preventing any new pollution and abating existing pollution. Under this law, the NYSDEC groups designated waters of New York State into classes based on their best usage. The law authorizes New York State to establish and adopt standards of quality and purity for each water classification. Implementation and enforcement of these standards also falls under the purview of the NYSDEC. The NYSDEC has the regulatory authority to control the discharge of wastewater from point and non-point sources into New York State's waters through permitting procedures. The State Pollution Discharge Elimination System (SPDES) is a system of controlling discharges from point sources based on the requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.) and modeled after the National Pollutant Discharge Elimination System (NPDES). The discharges to New York State waters must conform and meet all applicable requirements of the Federal law.

Authorized by the U.S. Congress, New York State also issues Water Quality Certification under Section 401 of the Federal Clean Water Act. A Water Quality Certification is the mechanism by which New York State evaluates whether an activity may proceed and meet its water quality standards.

### Air Resources

Article 19 of the ECL establishes New York State policy on Air Pollution Control, which is "to maintain a reasonable degree of purity of the air resources of the State, which shall be consistent with the public health and welfare and the public enjoyment thereof, the industrial development of the State, the propagation and protection of flora and fauna,

and the protection of physical property and other resources, and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution in the State of New York” (ECL § 19-0103). New York State is empowered to safeguard its air resources by controlling or abating existing air pollution and preventing new pollution. New York State issues permits to construct facilities/structures that are sources of air emissions, and certificates to operate such facilities. The ECL Article 19 authorizes New York State to establish a program for sources subject to Title V of the Federal Clean Air Act, amended 1990. The New York State program delegates authority to New York State to issue a Title V Permit to all facilities that emit contaminants to the air in New York State, unless specifically exempted. The Title V is reviewed by the USEPA before it is finally issued to the facility.

New York State has also instituted its own clean air program. A State Implementation Program (SIP) is a federally approved and enforced program that is required for areas of the New York State that are in non-attainment of the NAAQS.

#### Ecological Resources

Articles 11 and 13 of the ECL protect fish and wildlife in New York State. The law regulates hunting and fishing in New York State and prohibits the taking, wounding, killing, sale, transport or possession of any protected wildlife, shellfish, harbor seals, crustacean and insects, except as permitted by the law.

New York State also has a program for the protection of threatened and endangered species. In partnership with the Nature Conservancy, New York State’s Natural Heritage Program maintains a comprehensive list of rare, threatened and endangered species. NYSDEC regulates protection and conservation of these species.

Articles 24 and 25 of the ECL authorize New York State to regulate Freshwater Wetlands and Tidal Wetlands, respectively. It is New York State’s policy to “preserve, protect and conserve freshwater wetlands and the benefits derived there from, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the State” (ECL § 24-0103). The NYSDEC regulates and restricts encroachment on New York State freshwater wetlands that are 12.4 acres or greater in size. New York State also regulates a 100-foot buffer contiguous to these wetlands. NYSDEC is authorized to issue permits for any activities that may impact wetlands. Such activities could include “draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of



pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived from it” (ECL § 24-0701).

#### Land Resources

Public Land and Forests in New York State are protected under Article 9 of the ECL. NYSDEC Division of Lands and Forests is responsible “for the management, protection and recreational use of these lands, the care of the people who use these lands and the acquisition of additional lands to conserve unique and significant resources”. New York State regulates forest management, timber harvesting, forest product utilization and marketing, management of conservation easements, forest taxes, and unique areas on public lands. It also exercises general oversight over forest health, managing forest insects and tree diseases.

#### Mined Land

Under Article 23 of the ECL all Mineral Resources including Oil, Natural Gas, Liquefied Petroleum and Mined Lands of New York State are regulated by the NYSDEC. Title 27, Mined Land Reclamation Law, requires that mineral resources be developed in compatibility with sound environmental management practices. It authorizes New York State to manage and plan the use of mineral resources, and reclaim such land to productive use, preventing pollution, protecting the value of the property as well as the health, welfare and safety of the people, and the natural aesthetics of the area. To implement this policy, the NYSDEC regulates all mining activity in New York State through a permitting process.

#### Solid and Hazardous Waste

Article 27 of the ECL prescribes the law in New York State for the collection, treatment and disposal of solid and hazardous waste. The law also stipulates siting of hazardous waste facilities, reuse, recycling and marketing of solid waste materials, and transportation of solid waste on public roads to the disposal site. It authorizes the NYSDEC to prepare and manage New York State’s solid waste management plan consistent with its resource recovery policy and the Federal Resource Conservation and Recovery Act of 1976 and its amendments. New York State is authorized to review and approve brownfield investigation and remedial plans for clean-up operations.

Other Laws in New York State protect lands designated for agricultural use, parks, recreation, and sites of historic significance. Public Health Law and Finance Law extend protection to the health, safety and welfare of the people of New York State, while Highway Law controls traffic on public highways.

Agriculture and Markets

Agriculture and Markets in New York State are regulated through consolidated New York State laws. The New York State Department of Agriculture and Markets regulates agriculture, horticulture, farm and dairy products, aquaculture, and the production, transportation, storage, marketing and distributing of food, and enforces and carry into effect the provisions of the laws of the New York State relative to weights and measures. The law authorizes creation of agricultural districts and provides incentives to maintain farmlands for primarily agricultural use (New York State Department of Agriculture and Markets website). Private landowners are required by law to submit an agricultural data statement if the proposed development is in an agricultural district or within 500 feet of a farm operation. Parts of the Nation's lands included in the Nation's Trust Application are situated in agricultural districts.

The Agriculture and Markets Law prescribes New York State's policy and agency authority on control and suppression of diseases of domestic animals (Article 5); licensing requirements of slaughterhouses (Article 5-A); sale of meat (Article 5-B); indemnification for rabies control (Article 6-A); manufacture and distribution of commercial feed (Article 8); pest management (Article 11); agricultural environment management (Article 11-A); prevention and control of diseases in trees and plants, insect pests, and sale of fruit-bearing tree (Article 14); weights and measures (Article 16); adulteration, packing, and branding of food and food products (Article 17); licensing of farm products dealers (Article 20) and of food processing establishments (Article 20-C); milk control (Article 21); marketing of agricultural products (Article 25) and establishment of agricultural districts (Article 25-AA) amongst other controls.

The commissioner of the New York State Department of Agriculture and Markets has the authority to conduct investigations and take measures to best control, suppress or eradicate infectious or communicable diseases affecting domestic animals or carried by domestic animals that can affect humans. The commissioner may adopt and enforce rules and regulations to effectuate New York State law or may accept wholly or partially, rules and regulations adopted by the secretary of agriculture of the U.S. under any act of the U.S. Congress. (Agriculture and Markets Law, Article 5 § 72). The commissioner is also authorized to prevent the entry of injurious insects, noxious weeds and plant diseases into New York State and their eradication (Agriculture and Markets Law, Article 14). There is a requirement for a certificate of inspection to be issued for nurseries and registration of the nursery grower.

Article 16 of the New York State Agriculture and Markets Law declares it the public policy of the State "...to encourage the gradual implementation of the metric system throughout the state's government, industry, commerce, business, education and agriculture....and provide a revised code of weights and measures which will be responsive to the present and future needs of commerce, industry and consumers." The weights and

measures law ensures fairness and equity marketplace by enforcing standardized measurements for all commodities including petroleum. New York State commissioner supervises law enforcement through the county and city governments. The standards adopted by New York State are the primary standards, implemented through the counties and cities. New York State inspects and corrects the standards of weights and measures of each county and city that maintains a weights and measures program. In establishing specifications and tolerances, New York State gives due consideration to federal and State requirements. New York State may enter into an agreement with federal agencies for the purpose of establishing and enforcing uniform specifications and tolerances.

New York State protects its agricultural lands through the provisions of Articles 25-AA, Agricultural Districts. The Article declares it to be the policy in New York State to ...”to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the State to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes. The constitution of the State of New York directs the legislature to provide for the protection of agricultural lands.” Article 25-AA provides for the creation of local agricultural districts pursuant to landowner initiative, preliminary county review, State certification, and county adoption. The purpose of agricultural districting is to encourage the continued use of farmland for agricultural production. New York State’s Program is based on a combination of landowner incentives and protections, all of which are designed to forestall the conversion of farmland to non-agricultural uses. The incentives include preferential real property tax treatment (agricultural assessment and special benefit assessment), and protections against overly restrictive local laws, government funded acquisition or construction projects, and private nuisance suits involving agricultural practices.

#### Recreational and Cultural Resource Protection

New York State adopted the Parks, Recreation and Historic Preservation Law to protect its natural, scenic and other recreational resources. New York State’s policy is to establish and maintain a statewide system of parks, recreation and historic preservation. It requires that local, New York State, and national programs be coordinated and coordination be a function of New York State. The Office of Parks, Recreation and Historic Preservation administers four programs in the New York State including the Historic Preservation Program, the Parks Program, the Heritage Areas Program, and the Acquisition Program. The Historic Preservation program is used to improve, protect, preserve, rehabilitate or restore properties on the New York State or National Register of Historic Places. The Parks Program is used to preserve, rehabilitate or restore lands, waters or structures for park, recreation or conservation purposes, including such things as playgrounds, tennis courts, skating rinks, bandshells and facilities for swimming, boating, picnicking, hunting, fishing, camping or other recreational activities. The Heritage Areas Program is used to

preserve, rehabilitate or restore lands, waters or structures identified in a management plan approved by the Commissioner in accordance with Section 35.05 of the New York State Parks, Recreation, and Historic Preservation Law. The Acquisition Program is for the acquisition of a permanent easement in or fee title to lands, waters or structures, including open space or properties on the New York State or National Registers of Historic Places or identified in an approved local heritage area management plan.

Article 14 (Historic Preservation) of the Parks, Recreation and Historic Preservation Law, declares it to be public policy to “engage in a comprehensive program of historic preservation to accomplish the following purposes: 1. To promote the use, reuse and conservation of such properties for the education, inspiration, welfare, recreation, prosperity and enrichment of the public; 2. To promote and encourage the protection, enhancement and perpetuation of such properties, including any improvements, landmarks, historic districts, objects and sites which have or represent elements of historical, archeological, architectural or cultural significance; 3. To encourage and assist municipalities to undertake preservation programs and activities; 4. To foster civic pride in the beauty and accomplishments of the past through cooperation with municipalities and local organizations; 5. To preserve and enhance the State’s attractions to tourists and visitors”. The law authorizes the commissioner of the Office of Parks, Recreation and Historic Preservation to establish a statewide historic preservation program that includes inventorying historic places and properties for nomination to the national register and New York State register of historic places; planning activities for the preservation and management of historic properties; administering grants with funds from the federal or New York State government for assisting local or regional preservation programs; assisting local and private agencies to promote their historic preservation programs; and educating the public. The law provides for the listing of sites, districts, structures, buildings, areas or objects above or below the surface of the earth, in the New York State register based on the criteria for listing on the national register. A historic preservation officer serves as a liaison to the commissioner regarding matters within his jurisdiction. The historic preservation officer is responsible for all properties owned by or held on behalf of the people of New York State by the agency of which he is an officer. The commissioner prepares a statewide comprehensive historic preservation plan based on the annual New York State plan submitted to the Heritage Conservation and Recreation Service in the U.S. Department of the Interior. The New York State Historic Preservation Office administers programs authorized by both, the National Historic Preservation Act of 1966, Section 106 and the New York State Historic Preservation Act of 1980. These programs include the Statewide Historic Resources Survey, the New York State and National Registers of Historic Places, the federal historic rehabilitation tax credit, the Certified Local Government program, the New York State historic preservation grants program, New York State and federal environmental review, and technical assistance.

Almost all New York State policies for the protection of the environment, and public health and safety, are modeled after corresponding Federal policies. In many cases, Federal agencies authorize New York State to issue and enforce permits that meet Federal permitting requirements or Federal standards. Several laws of the U.S. government authorize grants to New York State to support development and operations of its programs implementing Federal policies. Such programs are federally approved and enforceable. Table 3.9-5 summarizes regulatory policies and programs of New York State and the corresponding Federal laws, protecting a specific resource.

**Table 3.9-5  
New York State and Federal Regulatory Framework**

Resource Category	New York State		Federal	
	Statutory Authority and Implementing Regulations/ Programs	Agency	Statutory Authority and Implementing Regulations	Agency
Air	ECL Article 19  6 NYCRR Part 201-6 Title V permit requirement for major facility	NYSDEC	Clean Air Act  40 CFR Part 71 Title V permit requirement for major facility  40 CFR Part 60 New Source Performance Standards	USEPA
	State Implementation Plan (SIP)	NYSDEC	Clean Air Act Section 109 National Ambient Air Quality Standards  42 USC § 7502(c)-(d) Authorizes State Implementation Plans  42 USC § 7601(d) Specific to tribal authority	USEPA/ Tribal authority if lands are in non-attainment
	6 NYCRR Part 208, 211, 215, 217, 218, 225, 227, 229, 230,231,234, 238 Emission control for other sources	NYSDEC	40 CFR Part 40	USEPA
Water	ECL Article 15  6 NYCRR Part 608 Protection of Waters Permit requirement for watercourses, streams and marinas	NYSDEC	Clean Water Act  Permit requirement for discharge to surface waters. Ground-water discharge regulated through Section 319 programs  42 USCA § 300h(e)	USEPA/ Tribal authority

Section3  
Affected Environment

Resource Category	New York State		Federal	
	Statutory Authority and Implementing Regulations/ Programs	Agency	Statutory Authority and Implementing Regulations	Agency
			Specific to tribal authority for undergrd. injection control	
	ECL Article 17  6 NYCRR Part 750-757 SPDES Permit requirement for stormwater run-off/ run-off from concentrated animal feeding operations  SWPPP requirement	NYSDEC	Clean Water Act Section 401  NPDES Permit requirement for stormwater run-off/run-off from animal feedlots/mining operations  40 CFR § 122.34(b)(4)(iii) SWPPP regulation for tribal implementation	USEPA/ Tribal authority
	ECL Article 15  6 NYCRR Parts 601-602 Water supply permit  10 NYCRR Part 5	NYSDEC   NYSDOH	Safe Drinking Water Act 42 USC §§ 300 (f)  42 USC §300 (j) (11) SDWA specific to tribal lands	USEPA/ Tribal primacy over enforcement of drinking water stds.
	6 NYCRR Part 666 Scenic and Recreational River protection	NYSDEC	Wild and Scenic Rivers Act 16 USC §§1271-1287	USDOI-NPS
	ECL Article 17 Title 17  Wastewater Disposal	NYSDEC	Clean Water Act 40 CFR § 437 NPDES discharge, subparts on POTW, CSO, SSO, MS4	USEPA
	ECL Article 16 and 36  6 NYCRR Part 500 Floodplain development	NYSDEC	Flood Control Act; Water Resources Development Act (2005)  Floodplain Development Permit	USEPA
	Wetland	ECL Article 24  6 NYCRR Parts 662-663 Wetlands Permit requirement	NYSDEC	Clean Water Act Section 404 Rivers and Harbor Act Section 10 Wetland Permit requirement
	Clean Water Act Section 401 Water Quality Certification		Water Quality Standards	USEPA/ Tribal authority
Fish and Wildlife	ECL Article 11 & 13  6 NYCRR Parts 1-48,57,63-101 Hunting and Fishing	NYSDEC	Fish and Wildlife Law 16 USC § 742  Fish and Wildlife Conservation 16 USC 2901-2912	USFWS
	6 NYCRR Part 181 Rabies	NYSDEC	7 USC § 426	USDA

Section3  
Affected Environment

Resource Category	New York State		Federal	
	Statutory Authority and Implementing Regulations/ Programs	Agency	Statutory Authority and Implementing Regulations	Agency
	Control  6 NYCRR Part 189 Chronic Wasting Disease		Rabies Control  Farm Security & Rural Investment Act 7 USC § 3191 Chronic Wasting Disease	
	6 NYCRR Part 182 Threatened and Endangered Species Protection	NYSDEC	Endangered Species Act, Sections 2-18 16 USC 1531-1544	USFWS
Land	ECL Article 23  6 NYCRR Parts 420-426 Mined Land Reclamation Permit requirement	NYSDEC	Surface Mining Control and Reclamation Act 30 USC §§1201-1328	DOI- Office of Surface Mining Reclamation & Enforcement
	ECL Article 9 Forests and Public Lands management  Article 9-1503 6 NYCRR Part 193 Protected Plant Program	NYSDEC	16 USC Chapter 3 Forest Management  Endangered Species Act, Section 12 50 CFR Part 17	USDA  USFWS
	Parks, Recreation and Historic Preservation Law Title B Article 3 Parks/Recreation  Title C Article 14 State Historic Preservation Act Historic/ Cultural/ Archaeological resource protection	NYS OPRHP	16 USC § 1 Parks/Monuments/ Reservations  16 USC 470 National Historic Preservation Act Sections 106 & 110 36 CFR Part 800  16 USC 470 Archaeological Resources Protection Act (ARPA), Section 2 25 CFR Part 262 43 CFR Parts 6 & 7  25 USC 3001 Native American Graves Protection and Repatriation Act (NAGPRA), Section 10.1 43 CFR Part 10	USDOI-NPS
	Agriculture and Markets Law  Article 16 Weights and Measures	NYS DAM	Farmlands Protection Policy Act	USDA



Section3  
Affected Environment

Resource Category	New York State		Federal	
	Statutory Authority and Implementing Regulations/ Programs	Agency	Statutory Authority and Implementing Regulations	Agency
Waste	ECL Article 27 Titles 3 and 7  6 NYCRR Parts 364, 381 Waste transporter permit requirement  6 NYCRR Part 360 Solid waste management and disposal  6 NYCRR Part 373, 361 Industrial hazardous waste management  6 NYCRR Part 375 Inactive Hazardous Waste Disposal Site Remedial Program	NYSDEC	Resource Conservation and Recovery Act (RCRA)- Subtitle C    Comprehensive Environmental Responsibility & Liability Act (CERCLA)	USEPA
	ECL Articles 17, 37, 40  6 NYCRR Parts 595-599, 610, 612-614 Environmental Priorities and Procedures in Petroleum Clean-up and Removal	NYSDEC		
Environmental Review	ECL Article 8 6 NYCRR Part 617 State Environmental Quality Review Act	NYSDEC	42 USC 4321-4347 National Environmental Policy Act	All Federal Agencies