

4.6 Cultural Resources

Introduction

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

As part of the data gathering process for this Draft EIS, the BIA consulted with the OPRHP for information concerning cultural resources. These letters dated August 17 and August 18, 2005 (one each for Oneida County and Madison County) and March 14, 2006 are included in Appendix J. The OPRHP responded to the letters in 2005 by directing the information request to their website at <http://nysparks.state.ny.us>. To date, a response to the March 14 letter has not been received. Further consultation with the OPRHP pursuant to 36 CFR Part 800 concerning the National Register status of sites and the potential effects to them is ongoing. The BIA-SHPO consultation letter, dated August 16, 2006, is included in Appendix J. Additionally, the BIA initiated formal consultation with the Tribal Historic Preservation Officers (THPO) of the Oneida Tribe of Indians of Wisconsin, the Stockbridge-Munsee Community of Wisconsin, and the Tuscarora Nation. The purpose of the consultation was to ascertain whether these Tribes held any religious or cultural significance to the lands proposed for trust transfer. These letters dated January 20, 2006 are included in Appendix J. To date, responses have not been received.

Using the information obtained from OPRHP, NYSM, and the Office of the Oneida Nation's Historian, and described in Section 3.6.3 and Table 3.6.5-1, it can be seen that the number and types of cultural resources present on or within 1,000 feet of Nation lands differ among the Proposed Action (Alternative A) and the trust alternatives (Alternatives B through F). Within the six alternatives, the number and types of resources present differ among Groups 1 – 3 parcels. The resource types consist of:

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

In order to place the analysis of potential effects into the proper context, a summary of this information follows here:

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

Within these two alternatives, 51 resources are associated with Group 1 lands consisting of 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 archaeologically sensitive properties. Properties listed on the State and National Registers of Historic Places are not associated with Group 1 lands. Two hundred and seventy-six (276) resources are associated with Group 2 lands. These consist of 11 properties listed on the State and National Registers of Historic Places, 55 structures fifty years of age or older, 94 previously identified archaeological sites, and 116 archaeologically sensitive properties. One hundred and twenty (120) resources are associated with Group 3 lands within these alternatives. These consist of two properties listed on the State and National Registers of Historic Places, 18 structures fifty years of age or older, 57 previously identified archaeological sites, and 43 archaeologically sensitive properties.

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

Within Alternative C there are 51 resources associated with Group 1 lands consisting of 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 archaeologically sensitive properties. Properties listed on the State and National Registers of Historic Places are not associated with Group 1 lands. Two hundred and seventy-six (276) resources are associated with Group 2 lands. These consist of 11 properties listed on the State and National Registers of Historic Places, 55 structures fifty years of age or older, 94 previously identified archaeological sites, and 116 archaeologically sensitive properties. Group 3 lands are not included with Alternative C.

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

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

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

Within Alternative F there are 51 resources associated with Group 1 lands consisting of 12 structures fifty years of age or older, six previously identified archaeological sites, and 33 archaeologically sensitive properties. Properties listed on the State and National Registers of Historic Places are not associated with Group 1 lands. Two hundred and forty-eight (248) resources are associated with Group 2 lands. These consist of one property listed on the State and National Registers of Historic Places, 49 structures fifty years of age or older, 87 previously identified archaeological sites, and 111 archaeologically sensitive parcels. Forty-four (44) resources are associated with Group 3 lands within Alternative F. These consist of 10 structures fifty years of age or older, 18 previously identified archaeological sites, and 16 archaeologically sensitive properties. A summary of the cultural resources on or within 1,000 feet of Nation lands is provided in

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

Alternatives A + B				
Resource Type	Group 1 Lands	Group 2 Lands	Group 3 Lands	Total Sites
NYS or National Register of Historic Places	0	11	2	13
Buildings and Structures (50 years plus)	12	55	18	85
Archaeologically Sensitive Properties	33	116	43	192
Archaeological Sites	6	94	57	157
Total Resource Count	51	276	120	447
Alternative C				
Resource Type	Group 1 Lands	Group 2 Lands	Group 3 Lands	Total Sites
NYS or National Register of Historic Places	0	11	0	11
Buildings and Structures (50 years plus)	12	55	0	67
Archaeologically Sensitive Properties	33	116	0	149
Archaeological Sites	6	94	0	100
Total Resource Count	51	276	0	327
Alternative D				
Resource Type	Group 1 Lands	Group 2 Lands	Group 3 Lands	Total Sites
NYS or National Register of Historic Places	0	0	0	0
Buildings and Structures (50 years plus)	12	0	0	12
Archaeologically Sensitive Properties	33	0	0	33
Archaeological Sites	6	0	0	6
Total Resource Count	51	0	0	51
Alternative E				
Resource Type	Group 1 Lands	Group 2 Lands	Group 3 Lands	Total Sites
NYS or National Register of Historic Places	0	0	0	0
Buildings and Structures (50 years plus)	0	0	0	0
Archaeologically Sensitive Properties	2	0	0	2
Archaeological Sites	0	0	0	0
Total Resource Count	2	0	0	2
Alternative F				
Resource Type	Group 1 Lands	Group 2 Lands	Group 3 Lands	Total Sites
NYS or National Register of Historic Places	0	1	0	1
Buildings and Structures (50 years plus)	12	49	10	71
Archaeologically Sensitive Properties	33	111	16	160
Archaeological Sites	6	87	18	111
Total Resource Count	51	248	44	343

4.6.1 Cultural, Historic and Religious Properties

Significance Criteria

For the purposes of defining whether the Proposed Action or the alternatives, including No Action (collectively referred to as the action), have a potentially significant adverse effect to cultural, historic or religious properties, the following are considered:

Whether the action is likely to directly, indirectly or cumulatively:

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

Overview of ARPA and NAGPRA

Section 2 of the ARPA states that:

(a) The Congress finds that

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

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on

public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

Section 10.1 of the NAGPRA regulations state:

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

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

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

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

ARPA and NAGPRA provide unique protection to historic artifacts and human remains on only federal or Indian lands. ARPA and NAGPRA afford an elevated level of historic and archaeological protection on lands conveyed into trust by the U.S. government.

Overview of Cultural, Historic and Religious Properties

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

There are no National Historic Landmarks on any of the Nation's lands proposed for conveyance into trust. There are no State or National Register sites, structures or buildings contained on any of the Nation's lands proposed for conveyance into trust but several are within 1,000 feet of Nation properties (Appendix D). There are eleven such resources in Group 2 within 1,000 feet of Nation lands and two within 1,000 feet of

Group 3 lands. One Nation parcel (Nation Police Station, Parcel 33 in Group 2) lies within the bounds of a Historic District and a Multiple Resource Area in Canastota (South Peterboro St. Residential District). This parcel is also within 1,000 feet of a second Historic District, the South Peterboro St. Commercial Historic District. Six National Register sites are located within 1,000 feet of Parcel 33. Two other National Register sites (on North Peterboro Street) are within 1,000 feet of Nation Parcels 75, 76, 79, 80, 87 and 111 (all in Group 2) in Canastota. Although not assigned any State or National Register status, two Nation parcels (Parcel 75 and 76) at this locale make up an important Nation cultural-festival site. Two other Register properties are located within 1,000 feet of Nation lands: Parcel 166 (Group 3, used for corn production) in Oneida is located adjacent to the Mt. Hope Reservoir; Parcel 112 (Group 2, Standing Stone Gaming) in Vernon is located within 1,000 feet of the Vernon Methodist Church.

The Nation contracted an architectural historian to conduct a detailed survey and review of all structures 50 years or older on lands proposed for conveyance into trust in the fall of 2005 to determine their architectural significance and potential eligibility for National Register listing (Appendix D). A total of ninety structures were recorded and evaluated by the historian. Three of the structures are considered eligible for inclusion on the New York State and National Registers of Historic Places with seven other structures considered potentially eligible for listing. The remaining 80 properties are considered to be architecturally insignificant. The 10 structures considered to be eligible or potentially eligible are located on Parcels 16, 139, 159, 208, 209, 109, 237, and 251 in Group 2 and on Parcels 171 and 228 in Group 3. If these 10 structures were to be listed on the National Register, Federal protection under Section 106 would apply once the properties are in trust. No structures were found to be potentially eligible in Group 1.

Eighty-one Native American and Historic period archaeological sites have been previously recorded within the site files of OPRHP, NYSM, and Office of the Oneida Nation Historian that are now located within or in proximity to the APE. More precise information concerning the locations of the sites is not provided in order to protect them from looters and aid in their preservation. In addition, available data on the sites is insufficient to provide definitive information as to their boundaries. National Register significance evaluations for the sites have not been conducted by OPRHP. Accordingly, none of the sites are listed on the New York State or National Registers of Historic Places or have been determined eligible for listing.

A preliminary evaluation of the eligibility of the sites was conducted for the EIS, based upon the information available in the collections and files of the agencies identified above, as well as the archaeological literature, has determined that 36 of the sites are potentially eligible for listing on the New York State and National Registers of Historic Places and 12 of the sites are not eligible for listing (Appendix D). Not enough information is available for a determination to be made for the remaining 33 archaeological sites. Regardless of

their status, however, none of the identified archaeological sites will be affected by the trust action because the undertaking is not ground disturbing and there will not be a change in property use. None of these sites are located on parcels with deteriorated structures slated for demolition by the Nation. Consultation with OPRHP currently is ongoing concerning these National Register status determinations and the potential effects, or lack thereof, the Proposed Action will have on the archaeological properties.

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

4.6.1.1 Direct Effects

Direct effects are applied in various ways throughout this section:

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

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

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

religious properties. Nation parcels within Historic Districts or within 1,000 feet of Historic Districts or resources listed on the State and/or National Registers would simply transfer from Nation title to Federal title held in trust for the Nation. State and Federal protection afforded by Section 106 of the National Historic Preservation Act (16 U.S.C. 470 & 36 CFR Part 800) of these districts and structures would still apply with the lands in trust or not in trust. The seven potentially eligible State and National Register structures on Nation lands would still be afforded protection under Section 106.

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

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

Alternative B. An additional 17,630 acres of land could be conveyed into trust over time resulting in a reservation area of 35,000 acres. Alternative B would involve the same cultural, historic and religious properties and resources as Alternative A in addition to other cultural resources potentially located on those additional lands. Alternative B from the standpoint of the Nation could be viewed as the most preferable alternative since both identified and yet to be identified Oneida sites not yet owned by the Nation containing cultural assets (e.g., villages, burial grounds, camp sites or religious sites), including some which might contain internments, would be purchased by the Nation over time. Many of the Nation parcels especially in Groups 2 and 3 were identified and purchased specifically because they contained cultural assets important to the Nation. It is reasonable to assume that additional cultural, historic and religious properties and assets important to the Nation could be located on future properties comprising this alternative. These properties,

all within the Oneidas' reservation and aboriginal homeland, would be conveyed into trust at some point. Once in trust, these cultural assets would be afforded the additional protection of ARPA and NAGPRA which represents a direct beneficial effect to the Nation.

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

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

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

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

Alternative G. None of the Nation's lands containing cultural, historic and religious properties are conveyed into trust. There are no direct physical effects to such properties or cultural resources under No Action. If the lands are not in trust, the Nation's cultural assets would not be afforded protection under ARPA and NAGPRA. The ARPA and NAGPRA laws only apply to Federal public properties and Indian lands.

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

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

Property Taxes Paid (PTP): The Nation would retain title to the lands not in trust but would submit to regulation of cultural, historic and religious properties under applicable State laws. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 & 36 CFR Part 800) would apply. The Nation would not assert sovereign control over its cultural resources. Cultural resources would not be afforded additional protection under ARPA and NAGPRA.

Property Taxes Not Paid - Foreclosure (PTNP-F): This would have the same adverse regulatory and cultural effects to the Nation as PTP but with the added adverse effect that properties containing cultural, historic and religious resources would be foreclosed or alienated away from the Nation. Loss of these properties and the cultural assets would also have a direct significant adverse effect to the Nation.

Property Taxes Not Paid - Dispute Continues (PTNP-DC): The Nation would retain title to the lands and apply control of cultural, historic and religious properties but absent the additional protection afforded under ARPA and NAGPRA. The Nation would continue to apply its cultural resources ordinances and manage the properties as it has in the past. State regulation of cultural resources would remain in dispute.

Under the No Action - **Casino Closes and All Enterprises Close** scenario, the Turning Stone Resort & Casino would close and lands containing cultural resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The Casino Closes and All Enterprises Close scenario would have a significant adverse effect to the Nation's self-governance and protection of important cultural resources.

Summary of Direct Effects

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

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

4.6.1.2 Indirect Effects

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

Alternatives acquiring fewer Nation cultural resources that are not afforded protection under ARPA and NAGRPA potentially have a greater indirect effect to cultural resources contained there. Absent of trust status over the lands, the protection afforded by ARPA and NAGRPA would not apply. Lands and the historical artifacts and human remains contained there would not be afforded this more comprehensive protection. Several Nation lands contain identified cultural, historic and religious resources critical to the history of the Oneida as a distinct Indian tribe. The Nation acquired (through purchase) these previously alienated lands within their aboriginal homeland specifically to preserve their artifacts, culture and heritage. Part of the need for conveying lands into trust is the preservation and protection of cultural materials and tribal heritage. The National Historic Preservation Act of 1966, Section 106 requires consultation with tribes to protect cultural assets. Historic artifacts and human remains, however, are afforded an additional level of protection when occurring on federal public lands or Indian lands.

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

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

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

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

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

Property Taxes Not Paid - Foreclosure (PTNP-F): This would have the same adverse cultural effects to the Nation as PTP but with the added adverse effect that properties containing cultural, historic and religious resources could be foreclosed or alienated away from the Nation. Loss of these properties could result in an indirect effect to cultural assets if the properties are affected by future development activities on these lands by others.

Property Taxes Not Paid - Dispute Continues (PTNP-DC): The Nation would retain title to the lands and apply control of cultural, historic and religious properties but absent the additional protection afforded under ARPA and NAGPRA. The Nation would continue to apply its cultural resources ordinances and manage the properties as it has in the past. State regulation of cultural resources would remain in dispute.

Under the No Action - **Casino Closes and All Enterprises Close** scenario, the casino would close and lands containing cultural resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The Casino Closes and All Enterprises Close scenario would have a significant adverse indirect effect to the Nation's assets and culture.

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

4.6.1.3 Cumulative Effects

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

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

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

- Cumulative effects resulting from lands held in trust by the federal government.
- Cumulative effects resulting from lands not held in trust by the federal government.

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

Past historical actions adversely affecting the Oneida and their cultural, historical and religious sites and materials include the alienation of their reservation and aboriginal homeland and the loss and destruction of cultural assets contained there. Many Oneida sites as recorded by the Nation's Historian have (prior to purchase by the Nation) been disturbed by amateur archaeologists and artifact seekers. The pattern of disturbance goes back decades and physical evidence can still be seen on some parcels (e.g., pits, trenches,

stakes, and mesh screens for sieving artifacts). Some of these disturbances have involved grave sites and internments. New York State and federal laws were previously unable to adequately protect these sites. Since taking possession of some of their cultural assets, the Nation has implemented a program to preserve and protect the sites on those parcels as well as to archive important artifacts and data recorded from those sites. These sites are now part of important Nation programs regarding cultural, historic and religious education to both Nation members and non-Nation members alike.

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

4.6.2 Archaeological Resources

Significance Criteria

For the purposes of defining whether the Proposed Action or the alternatives including No Action (collectively referred to as the action) have a potentially significant adverse effect to archaeological resources or on the Nation, the following are considered:

Whether the action is likely to directly, indirectly or cumulatively:

- Cause an adverse change in the significance of an archaeological resource;
- Directly or indirectly destroy a unique archaeological or historical resources or records that are sacred or ritually important;
- Affect a resource that has yielded or may likely yield, information important to the archaeological record of Madison and Oneida Counties, New York State, the Nation or the U.S.;
- Potentially alienate control of archaeological resources including human remains and burial grounds that are important to the cultural and historical record of the Nation and afforded protection under the Federal Archaeological Resources Protection Act of 1979 (ARPA, 16 U.S.C. 470 & 25 CFR Part 262, 43 CFR Parts 6 & 7) and the Native American Graves Protection & Repatriation Act of 1990 (NAGRPA, 25 U.S.C. 3001 and 40 CFR Part 10. Refer to the overview of ARPA and NAGRPA in Section 4.6.1.

Overview of Archaeological Resources

Section 3.6.4 of the Affected Environment section describes the archaeological resources potentially affected by the Proposed Action and alternatives. Table 3.6-1 provides a summary of archaeological sensitive properties (192 in number) and identified sites (157 in number) distributed in and among Group 1, 2 and 3 lands. Figures 3.6.-14 through 3.6.-24 indicates the general locations of previously identified archaeological sites by USGS Quadrangle that are associated with Nation lands. These data are derived from OPRHP, NYSM, and Oneida Nation Historian files. Figures 3.6.-25 through 3.6.-33 indicates Nation parcels by USGS Quadrangle within OPRHP areas of prehistoric archaeological sensitivity.

Eighty-one Native American and historic period archaeological sites have been previously recorded within the sites files of OPRHP, NYSM, or Office of the Oneida Nation Historian that are now located within or in proximity to the APE for the Proposed Action. All of these sites are within the Oneida's reservation and aboriginal homeland. National Register significance evaluations for the sites have not been conducted by OPRHP nor has such evaluations been requested. However, a preliminary evaluation of the eligibility of the sites conducted for the trust transfer, based upon the information available in the collections and files of OPRHP, NYSM, and the Office of the Oneida Nation Historian, as well as the archaeological literature, has determined that 36 of the sites are potentially eligible for listing on the New York State and National Registers of Historic Places and 12 of the sites are not eligible for listing. Not enough information is available for a determination to be made for the remaining 33 archaeological sites.

None of the sites are listed on the New York State or National Registers of Historic Places or have been determined eligible for listing. Appendix D provides detailed information on these sites. Precise location information for them is not provided since it is considered confidential in order to aid in their preservation.

Numerous sites are specific to the Oneida and illustrate a pattern of historic occupation on these lands spanning almost 500 years beginning around 1350 (Nichols Pond, c. 1350-1400) through 1820 (Oneida Castle, c. 1762-1820). These sites include camp sites (10), village/habitation sites (32) of which nine contained burials, other mortuary sites (11) and sites of "stray finds" (2). Twenty-seven of the village sites comprise the accepted Oneida village development sequence (refer to Section 3.6.4.1 for a listing of the sites). Of the 27 sites, nine of them are located on Nation lands. Some of the nine sites contain burials. Of these nine sites, three are in Group 2 and six are in Group 3 lands. No previously recorded sites are in Group 1. Six of the 27 sites are within the immediate vicinity (1,000 feet) of Nation lands. Some of the more notable archaeological sites within Group 2 or its APE include those referred to as Nichols Pond, Sterling, Oneida Castle, and McNab. Within Group 3 or its APE, sites identified include those referred to as Vaillancourt, Dungey, Simpson, Wilson, Marsh, Stone Quarry and Onneyuttehage. Twelve other sites,

concentrated primarily in the Stockbridge and Smithfield areas, are not located on or within 1,000 feet, of Nation lands. All are village site types and at least five are associated with burials. These sites lie in an around the very center of the Oneida aboriginal homeland.

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

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

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

- The long history and association of the Oneida with these specific lands;
- An even longer term occupation of the area by prior Native American cultures; and,
- The importance of these lands to Oneida heritage, tradition, culture, identity and world view, both spiritually and to developed lifeways and adaptations.

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

purchased these specific, previously alienated lands instead of lands elsewhere in New York State.

4.6.2.1 Direct Effects

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

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

The State of New York has asserted that the inability to regulate archaeological resources on or adjacent to lands conveyed into trust and covered under the SEQRA and SHPA would constitute a significant adverse effect to the people of the State of New York. This concern of New York State would presumably apply to all alternatives where lands are conveyed into trust and they do not regulate the resources contained there. Further, New York State has asserted that any inability to protect archaeologically significant resources would constitute a significant adverse effect. The Nation's ongoing and reasonably foreseeable plans do not involve activities that would directly affect such archaeological resources, therefore adverse effects are unlikely.

The Nation has enacted its own Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance (Ordinance Number 00-01) which establishes procedures for identifying, evaluating, and protecting cultural, historical and archaeological resources of the Nation. They have a Historic Preservation Committee empowered to recommend purchasing of sites with cultural resources as well as implementing study on existing lands for information recovery, education or avoidance of effects. This committee consists of cultural resource experts and an Oneida Council member. The Nation has appointed a representative historian (Oneida Nation Historian)

to oversee the collection, study and archiving of its cultural materials. The Nation has coordinated with the OPRHP in the past and has shared information contained in each others' databases. The Nation and the SHPO signed a cooperative agreement on March 18, 2004 agreeing to share archaeological site file information (see Appendix D). It is reasonable to assume that this coordination would continue in the future under Alternatives A through F for lands conveyed into trust and serve to help mitigate the type of concerns expressed by New York State.

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

Alternative B. An additional 17,630 acres of land could be conveyed into trust over time resulting in a total trust land area of 35,000 acres. Alternative B would involve all of the archaeological resources within Alternative A in addition to other resources potentially located on those lands. Alternative B from the standpoint of the Nation could be viewed as the most preferable alternative since both identified and yet to be identified Oneida archaeological sites not yet owned by the Nation containing cultural assets (e.g., villages, burial grounds, artifacts), including some which might contain internments, would be purchased by the Nation over time. Many of the Nation parcels especially in Groups 2 and 3 were identified and purchased specifically because they contained archaeological resources important to the Nation. It is reasonable to assume that additional archaeological resources important to the Nation could be located on future properties comprising this alternative. These properties, all within the Oneida reservation and aboriginal homeland, would be conveyed into trust at some point. Once in trust, the cultural assets would be afforded the additional protection of ARPA and NAGPRA which represents a beneficial direct effect to the Nation. The effects asserted by New York State on their jurisdiction over archaeological resources would appear less than significant given that a cooperative agreement is in place with the SHPO and that the Nation regulates archaeological resources on its lands through a dedicated Historian and application of the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance. State laws have proven inadequate to protect Nation archaeological sites from amateur archaeologists and artifact seekers.

Alternative C. Archaeological resources important to the Nation located in Group 3 would not be conveyed into trust and therefore not afforded the additional protection of ARPA and NAGPRA. Several of the Nation's significant archaeological resource (Parcels

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

Alternative D. Archaeological resources important to the Nation located in Groups 2 and 3 would not be conveyed into trust and therefore not afforded the additional protection of ARPA and NAGPRA. These would include Group 3 resources mentioned under Alternative C with the addition of Group 2 lands containing significant archaeological resources (Parcel 57 in Cazenovia; Parcels 138, 139, 140, 142 and 150 in Verona/Sylvan Beach; Parcel 297 in Vernon or the site known as Oneida Castle). Absent of trust status over the lands, the protection afforded by ARPA and NAGPRA would not apply. The same potential effects to the Nation described under Alternative C would apply. This alternative would not include any of the Nation's identified archaeological sites but would include six previously identified sites by the State. The effects asserted by the State on their jurisdiction over archaeological resources in Group 1 would appear less than significant given that a cooperative agreement is in place with the SHPO and that the Nation regulates archaeological resources on its lands through a dedicated historian and application of the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance. New York State would assert its jurisdiction over cultural properties contained in Groups 2 and 3. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust. State laws have proven inadequate to protect Nation archaeological sites from amateur archaeologists and artifact seekers.

Alternative E. Only the casino gaming floor tax lot totaling approximately 225 acres in size would be conveyed into trust. Archaeological resources important to the Nation located in Groups 2 and 3 would not be conveyed into trust, in addition to other State identified sites and sensitive properties in Group 1, and therefore not afforded the

additional protection of ARPA and NAGPRA. The same direct effects to the Nation described under Alternative C would apply. The direct effects asserted by the State on their jurisdiction over cultural resources for lands conveyed into trust would not apply as none are located on the casino grounds. The State would assert its jurisdiction over cultural properties contained in Groups 1, 2 and 3. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust. State laws have proven inadequate to protect Nation archaeological sites from amateur archaeologists and artifact seekers.

Alternative F. Lands comprising all of Group 1, and the majority of Group 2 would be conveyed into trust along with some Group 3 lands. The Group 2 lands comprising this alternative would include two significant Oneida archaeological resources (Parcels 138, 139, 140, 142 and 150 in Verona/Sylvan Beach; Parcel 297 in Vernon or the site known as Oneida Castle). However, a significant archaeological resource property (Parcel 57) in the Town of Cazenovia, Madison County, containing multiple resource components (e.g., Late Woodland, burial, Protohistoric Oneida village) would not be included. In addition, Alternative F includes two parcels in Group 3 (Parcel 255; Parcel 314) containing Oneida archaeological resources. These sites are two of the most significant archaeological properties for the Nation and these also have significant importance to the State of New York. These sites are more fully described in Section 3.6.3 and in Appendix D. Once in trust, these cultural assets would be afforded the additional protection of ARPA and NAGPRA. Some of the archaeological resources important to the Nation located in Group 3 would not be conveyed into trust under this alternative and therefore not afforded the additional protection of ARPA and NAGPRA. Four of the Nation's most significant archaeological resource properties (Parcels 136, 171, 282 and 310) are located in Group 3 within the Town of Stockbridge. The same direct effects to the Nation described under Alternative C would apply to these sites. The direct effects asserted by New York State on their jurisdiction over cultural resources for lands conveyed into trust would not seem to apply given the cooperative agreement in place and the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance. The State would assert its jurisdiction over cultural properties contained in Groups 1, 2 and 3 not conveyed into trust. Protection afforded by Section 106 of the National Historic Preservation Act would also apply to the lands not conveyed into trust.

Alternative G. None of the lands containing archaeological resources are conveyed into trust. There are no direct (physical) adverse effects to such resources under No Action. However the Nation since would not attain control over lands containing archaeological resources (including burial grounds, possible internments, village sites, camp sites, and associated artifacts), which would not provide protection under ARPA and NAGPRA. The ARPA and NAGPRA laws only apply to federal public properties and Indian lands. State laws have proven inadequate to protect Nation archaeological sites from amateur archaeologists and artifact seekers.

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

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

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

Property Taxes Not Paid - Foreclosure (PTNP-F): This would have the same adverse effects to the Nation as PTP but with the added adverse effect that properties containing archaeological resources would be foreclosed or alienated away from the Nation.

Property Taxes Not Paid - Dispute Continues (PTNP-DC): The Nation would retain title to the lands and apply control of archaeological resources but absent the additional protection afforded under ARPA and NAGPRA. The Nation would continue to apply the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance and manage the properties as it has in the past. New York State regulation of archaeological resources would remain in dispute.

Under the No Action - **Casino Closes and All Enterprises Close** scenario, the Turning Stone Resort & Casino would close and lands containing archaeological resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The Casino Closes and All Enterprises Close scenario would have a significant adverse effect to the Nation and their rights to govern and protect resources important to their culture.

Summary of Direct Effects

There are no direct (physical) adverse effects to archaeological resources resulting from the Proposed Action (Alternative A) any of trust alternatives (Alternatives B through F) or No Action (Alternative G). The various trust action alternatives (A through F), however, do

involve different Groupings and Nation parcels. As a result, different Nation and non-Nation archaeological resources would be involved in each. Different alternatives would involve different Nation properties with archaeological resources, within 1,000 feet of other sites with archaeological resources, or within areas determined by the OPRHP to be generally sensitive for archaeological resources (refer to Figures 3.6.4-1 through 3.6.4-20). Regardless of the alternative, federal laws and regulations still apply to all lands not conveyed into trust with the exception of ARPA and NAGPRA. Federal Law applies to lands in trust with the additional protection of ARPA and NAGPRA.

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

4.6.2.2 Indirect Effects

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

Alternatives acquiring fewer Nation cultural resources that are not afforded protection under ARPA and NAGPRA potentially have a greater indirect effect to archaeological resources contained there. Absent of trust status over the lands, the protection afforded by ARPA and NAGPRA would not apply. Lands and the historical artifacts and human remains contained there would not be afforded this more comprehensive protection. Several Nation lands contain identified archaeological resources critical to the history of the Oneida as a distinct Indian tribe. The Nation acquired (through purchase) these previously alienated lands within their aboriginal homeland specifically to preserve their

artifacts, culture and heritage. Part of the need for conveying lands into trust is the preservation and protection of cultural materials and tribal heritage. The National Historic Preservation Act of 1966, Section 106 requires consultation with Tribes to protect cultural assets. Historic artifacts and human remains, however, are afforded an additional level of protection when occurring on Federal public lands or Indian lands.

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

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

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

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

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

Property Taxes Not Paid - Foreclosure (PTNP-F): This would have the same adverse cultural effects to the Nation as PTP but with the added adverse effect that properties containing cultural, historic and religious resources could be foreclosed or alienated away from the Nation. Loss of these properties could result in an indirect effect to cultural assets if the properties are affected by future development activities on these lands by others.

Property Taxes Not Paid - Dispute Continues (PTNP-DC): The Nation would retain title to the lands and control archaeological resources on the lands but absent the additional protection afforded under ARPA and NAGPRA. The Nation would continue to apply the Oneida Indian Nation Cultural, Historical or Archeological Resources Ordinance and manage the properties as it has in the past. State regulation of cultural resources would remain in dispute.

Under the No Action - **Casino Closes and All Enterprises Close** scenarios, the casino would close and lands containing archaeological resources could be foreclosed as the Nation would lose its most significant source of revenue. This revenue enables the Nation to maintain cultural assets and programs. The Casino Closes and All Enterprises Close scenario would have a significant adverse indirect effect to the Nation's archaeological resources and culture.

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

4.6.2.3 Cumulative Effects

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

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

Essentially therefore, there are two broad categories of potential cumulative effects to archaeological resources:

- Cumulative effects resulting from lands held in trust by the Federal government.

- Cumulative effects resulting from lands not held in trust by the Federal government.

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

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

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