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INTRODUCTION

In a short period of time¹, the Oneida Indian Nation of New York (OIN) has acquired fee title to approximately 17,309 acres of real property scattered over thirteen towns, three villages and two cities within the Counties of Madison and Oneida, New York. Consisting of hundreds of different and predominantly non-contiguous parcels, this newly-acquired property is separate from the 32 acres that was the subject of *United States v. Boylan*, 265 F. 165 (2nd Cir. 1920), error dismissed, 257 U.S. 614 (1921) (the 32 Acres). While this newly-acquired property is located within the area that was once occupied by the Oneida people before the nineteenth century, it is not property over which the present OIN can assert sovereignty. Rather, this property is within the sovereign jurisdiction of the State of New York.

The OIN seeks to obtain the right to exercise sovereignty over these newly acquired lands by transferring their fee title to the federal government, which would hold these lands in trust for the benefit of the OIN. The OIN has applied to the Bureau of Indian Affairs (BIA) for such transfer under 25 USC §465 and 25 CFR Part 151. A request was made for such transfer by letter dated April 4, 2005 from the OIN Representative, Ray Halbritter, to the Director of the Eastern Regional Office, BIA, United States Department of the Interior (DOI).

In correspondence dated September 20, 2005 from the Director of the Eastern Regional Office, BIA to the Honorable George Pataki, Governor of the State of New York, the BIA indicated that the newly acquired lands had been divided into three groups: Group 1, Group 2 and Group 3 (see Figure A-1 in Appendix A). The BIA requested comments as to each parcel grouping by a specific date. The BIA's September 20th correspondence did not provide information regarding whether or not the parcel groupings are arbitrary or represent a prioritization offered by the OIN. Group 2 and 3 parcels are scattered throughout Oneida and Madison Counties. Based on the latest extensions provided by the BIA, comments relating to the parcels in Groups 1, 2 and 3 will be received by the BIA if postmarked by the following dates:

- Group 1 – January 30, 2006
- Group 2 – January 30, 2006
- Group 3 – March 1, 2006

This report addresses the issues associated with Group 3 parcels, as well as the cumulative impacts resulting from the placement of all three parcel groups into trust.

The implications of placing land in trust, potentially in perpetuity, are complex and require review among many federal, State, regional and local cross-cutting jurisdictions. The assertion that within the trust process the BIA, "as a federally mandated 'trustee' of Nation land assets is responsible to manage those assets in the *best interest of the tribe* [emphasis added]" (see draft scoping outline prepared by Malcolm Pirnie dated October 6, 2005; page 1), presupposes a bias toward the OIN versus the interests of and potential impacts to New York State, its political subdivisions, residents and citizens. Historically,

¹Based on information compiled by Madison County, approximately 77% of the OIN's holdings in both counties have been acquired since 1998, while for Madison County alone the percentage is 92%. Prior to 1990, only 52 acres were owned by the OIN.

this procedure has been used by the BIA with considerable restraint. Thus, the BIA has not taken additional land in trust from tribal groups that “have the ability to manage their own affairs” and who “have been highly successful through their own efforts” (Memorandum from Commissioner, DOI BIA to All Directors and Superintendents, dated April 21, 1959). BIA policy has also steered away from placing land into trust when it was evident that the trust status would place an Indian tribe in a position where the trust status is being used as a “tax dodge” by a “big operator” (Memorandum from Commissioner, DOI BIA to All Area Directors dated August 3, 1960). BIA policy is certainly relevant given the recent OIN-touted business successes (see OIN 2004 Annual Report; <http://oneidanews.net/annualreport2004/pdfs/oin2004annualreport.pdf>), and the significant implications that would arise by placing such a large amount of land into trust.

A transfer of this kind would be unprecedented and would result in significant adverse impacts to the State of New York, its political subdivisions, citizens and residents. These impacts will be far-reaching and long-term. Illustrative of the specific issues of concern identified by the BIA, *impacts from the removal of the land from the tax rolls* (25 CFR §151.10(e)) and *jurisdictional problems and potential conflicts of land use that may arise* (25 CFR §151.10(f)), the resulting patchwork of cross-cutting jurisdictions and potential lack of regulatory coordination and supervision created by the “land in trust” would place an undue hardship on State and local government’s ability to protect and preserve the safety and welfare of its citizenry and the environment in which they work and reside. A sampling of these issues and hardships are summarized in this report.

In its April 4, 2005 application to the BIA, the OIN advises “that there is no anticipated change in the use of any of the land that is the subject of this request.” However, the OIN also provides statements (including those made by OIN employees and other representatives at the BIA hearings on January 11-12, 2006) that appear to contradict that bald assertion by indicating that the need for placing lands in trust is, in part, “to secure an adequate territorial land base for the Nation, to facilitate the Nation’s self-determination and *economic development* [emphasis added] and to provide housing for Nation members and their families.” In addition, the OIN’s most recent annual report highlights OIN efforts to promote economic self-sufficiency through diverse economic activity. Given that the OIN views lands in trust as “sovereign land”, and depending upon the BIA’s decision regarding the trust application and regardless of present land uses, the State may have a limited opportunity to view potential impacts based on reasonably foreseeable future development (*i.e.*, consistent with past OIN development practices).

Based on the OIN’s past development practices and current objectives, it is reasonably foreseeable that such lands acquired by the OIN, whether or not placed into trust, will continue to be utilized by the OIN to advance its economic development and diversification agenda. Furthermore, it is recognized that placing such lands in trust represents to the OIN a more appealing economic, financial and marketing alternative to achieving its goals, than by complying with financial and regulatory processes required by State and local laws and regulations. However, the OIN applications fail to demonstrate that fee to trust is necessary to achieve OIN goals.

Consequently, comments regarding the application provided herein take into account current land use, as well as reasonably foreseeable future land uses and associated short-term, long-term and cumulative impacts. The parcels included in the current OIN

application represent a “snap-shot” of the OIN’s land holdings at a specific time. It is reasonable to assume that the OIN’s land acquisition efforts will continue and that whatever the outcome of the current application, efforts to place lands into trust will continue resulting in additional direct impacts, as well as greater cumulative impacts. Thus, the BIA must consider the potential cumulative implications in its review of this and future applications. When contrasting the current OIN application to parcels disputed in on-going land claims (see Figure A-2 [Treaty Boundaries] in Appendix A), including those of other tribal governments, or purported tribes (*i.e.*, the Oneida Tribe of Indians of Wisconsin, the Cayuga Indian Nation of New York, the Saint Regis Mohawk Tribal Council, the Stockbridge-Munsee Community, Mohican Band of Indians, the Seneca-Cayuga Tribe of Oklahoma, Mohawk Council of Akwesasne, Mohawk Nation Council of Chiefs, etc.), it is clear that the potential impacts described herein (including cumulative) are multiplied dramatically.

O’Brien & Gere was retained by the State of New York to assist in the preparation of these comments relating to the OIN’s application. Consistent with the BIA’s guidance provided in its September 20, 2005 correspondence, O’Brien & Gere has prepared these comments on behalf of the State to address the specific criteria for evaluating such requests as contained in 25 CFR 151.10, notwithstanding the legal question of whether these criteria, which define “[o]n-reservation acquisitions” apply, or similar criteria in 25 CFR 151.11 for “[o]ff-reservation acquisitions” instead apply.

Substantive comments contained herein focus on parcels identified by the BIA as Group 3 parcels, which largely consist of agricultural and residential rural properties in the Counties of Madison and Oneida, NY. As documented in Appendix C, many of these properties have been abandoned and wasting since their purchase by the OIN.

As referenced herein, additional materials are appended to this report to support conclusions and/or provide additional information. In accordance with the BIA’s submittal schedule, additional stand-alone reports have been provided to the BIA that focus on Groups 1 and 2. The reports include an evaluation of certain potential cumulative impacts associated with placing land into trust.

GROUP 3 PARCELS

Group 3 of the OIN’s application is comprised of 104 parcels (7,407± acres) of land spread throughout the jurisdictional boundaries of Madison and Oneida Counties. Table 1 summarizes the parcels’ acreage and location among the cities, towns, villages, and hamlets of these counties. These lands are predominantly characterized by rural agricultural and residential development consistent with existing land uses in the surrounding area. As noted on parcel fact sheets included in Appendix C, many of the buildings on the Group 3 parcels have been left vacant and abandoned since their purchase by the OIN.

Table 1 Summary of Group 3 parcels in Madison and Oneida Counties.

City (C), Town (T) or Village (V)	Number of Parcels	Total Acreage
Madison County		
Oneida (C)	5	250±
Fenner (T)	1	31±
Lenox (T)	9	186±
Lincoln (T)	5	341±
Smithfield (T)	4	297±
Stockbridge (T)	47	3,460±
Sullivan (T)	2	71±
Oneida County		
Augusta (T)	2	260±
Sherrill (C)/Vernon (T)	2	1±
Vernon (T)	5	440±
Verona (T)/Durhamville (V)	2	20±
Verona (T)	20	2,051±
TOTALS	104	7,407±

The municipalities within which the Group 3 parcels are located are comprised of people who live and work in long established communities. These people are the local electorate who chose representatives to guide community planning processes, provide services, and protect its citizens, finite resources and the environment. These communities are comprised of schools; parks; places of worship; community groups; hamlets; neighborhoods; and businesses. Once a significant agricultural community, the area has seen its farmland diminish, replaced by industry, businesses, services, housing, and ultimately the OIN’s gaming facilities. Agriculture, however, remains an important institution throughout the area and still dominates the community character.

Many of the area’s citizens are also employed in nearby Rome, Utica and Syracuse, illustrating the interwoven nature of communities. The complexity of infrastructure is reflected in municipal reliance on the many existing special districts that provide basic services such as fire, utilities (water, sewer, lighting), libraries and public schools. The local highways interconnect these communities, neighborhoods and municipalities.

Governance of the area established more than 200 years ago includes town, village and city boards, county Boards of Supervisors and Legislators, planning boards, zoning boards of appeal, and school boards, as well as the many departments who provide specific services to the local citizenry. The settled expectations of citizens in the area are that governance will be by open government, including notice of decisions that will affect their lives, public hearings and access to government officials, the ability to obtain information (through the Freedom of Information Law; FOIL), and the availability of judicial review of government decisions. These settled expectations will be disrupted by taking lands into trust.

In addition to not providing for the contiguity of OIN lands, acceptance of this application would create patches of tribal trust lands within the fabric of multiple communities impacting their character and ability to govern. Appendix B represents a tabular summary of the Group 3 parcels including tax map number, street address, acreage, zoning designation and current land use. Summary descriptions of each Group 3 parcel (including photographs) are provided in Appendix C. The locations of Group 3 parcels are illustrated on a map included as Figure A-3 in Appendix A.

In the OIN letter to the BIA of April 4, 2005, the statement is made that “All uses have been in place for many years.” This statement is incorrect and blatantly misleading. The OIN has been in an active and public development mode at most of the Group 1 parcels continuously over the last 10 years. In addition, land use and development on Group 2 parcels have supported the OIN's diversification objectives and include the following OIN-developed facilities and operations:

- SavOn Convenience Stores & Gas Stations (multiple locations)
- Marion Manor Marina
- Snug Harbour Marina

Remaining parcels, including those within Group 3, consist of residential, commercial and other miscellaneous vacant, rural and agricultural uses that may have pre-existed the OIN's purchase of lands.

However, if the development of Group 1 and 2 parcels is any indication of the intent of the OIN to expand its businesses and operations, we can reasonably foresee similar development of the Group 3 parcels, especially given that the OIN will likely continue to pursue patches of lands and seek to place them into federal trust.

The further claim by the OIN in its letter of April 4, 2005, that “With respect to the environmental effect of land acquisition, please be advised that there is *no anticipated change in the use of any of the land* [emphasis added] that is the subject of this request,” cannot be accepted as credible on its face. While casino operations may not change, based on past activities it is expected that the additional development of the properties consistent with that and other uses will continue unabated (see Syracuse Post Standard dated February 8, 2006 – the resort will add six restaurants, renovate and enlarge the poker room, and add a swimming pool to the Lodge at Turning Stone). Assuming past practices were to continue, the OIN will resist State and local regulation or monitoring for the protection of the environment and the public health and safety by the State of New York. Change in use on the remaining and significant non-casino lands is likely and must also be reviewed.

The OIN has touted what it views as the positive economic impact associated with development of gaming and other operations on the Group 1 and 2 parcels. Although not in trust with the federal government, these lands have been developed by the OIN inconsistent with local land use and regulation, without review by local jurisdictions, without applicable permits from federal and State agencies, and without payment of property and other taxes that maintain the public infrastructure that supports such development. It can reasonably be assumed that, contrary to the OIN statement, future development/redevelopment of the Group 3 parcels will occur.

The OIN-touted successes on the Group 1 and 2 parcels have been obtained at the expense of non-OIN businesses, which are required to conduct environmental reviews, obtain permits and pay taxes on lands located within the same community and sometimes contiguous to OIN-owned parcels. In a competitive market, the ability of a non-OIN business to be marketable and sustainable on this “unlevel playing field” is significantly and adversely impacted.

In addition to the “unlevel playing field”, regulatory jurisdiction is a critical issue. It must be asked “who is minding the store” when it comes to regulatory reviews and potential impacts on the environment and public health. The OIN application fails to identify the appropriate OIN programs that would operate in place of State and local programs to protect the environment and public health and safety. While it may not be known what level of environmental detriment (short- and long-term) occurred as a result of past OIN-sponsored Group 1 parcel development (anecdotal information exists and is referenced in the Groups 1, 2 and 3 reports), it is for that very reason that government at all levels has established reviews and regulatory procedures to understand the implications of such projects before they are initiated. Future development of OIN parcels may also occur without the regulatory review and permitting or payment of taxes required for parcels not in trust. Federal, State and local governments also have procedures that allow jurisdictional authorities to monitor sensitive activities and operations so that public health and the environment continue to be protected.

Consequently, the discussion of impacts associated with the Group 3 parcels covers a variety of economic and jurisdictional issues highlighting the following general themes:

- Inability of non-OIN businesses to compete on an equitable basis with OIN businesses due to “unlevel playing field”.
- No formal and conventional mechanism to obtain financial support for maintenance and operation of public infrastructure (*i.e.*, taxes and special assessments).
- Disproportional use of finite resources (*i.e.*, water) by OIN operations impacting local economic development efforts to attract a diversity of sustainable non-OIN owned and operated businesses.
- Ability of the OIN to expand its operations onto these properties without the ability of local governments to review OIN-proposed development to ascertain compatibility with local zoning and building code requirements and master plans (including compatibility with surrounding land uses).
- No review of potential adverse environmental and socio-economic impacts associated with OIN-development including short- and long-term, construction and operation phase, and cumulative impacts (*i.e.*, State Environmental Quality Review Act, or SEQRA).
- No acquisition of permits for regulated activities resulting in loss of resources (*i.e.*, wetlands) and adverse impacts to the environment.
- No review of development or monitoring of operations to document compliance with design and operating standards (*i.e.*, buildings, storm water management facilities, driveways on State and local roads, etc.).
- The potential “wasting” and creation of nuisances associated with the abandonment and neglect of existing structures and properties, an issue of particular concern with respect to the Group 3 properties.
- No showing that there will be timely, appropriate and effective enforcement of operating standards sufficient to ensure no adverse impacts on nearby lands and residents (see page 11 for a further discussion of the areal extent of potential impacts).
- No inspection and monitoring of premises and operations to ensure compliance with public health and safety standards promulgated by local communities and the State.

In consideration of the OIN application (existing and future), it is imperative that the BIA balance the benefits stated by the OIN with the diverse adverse implications to the State, counties, and municipalities, as well as to the environment. As the OIN continues its efforts to diversify its development portfolio, it must continue to be asked – at what and whose expense. The remaining sections of this report provide information on the economic and jurisdictional implications of the OIN's Group 3 application, as well as other considerations pertinent to the review process.

IMPACTS ON REGULATORY JURISDICTION

Summary. This section of the report presents comments requested by the BIA relevant to 25 CFR §151.10(f) (*jurisdictional problems and potential conflicts of land use that may arise*). The proposed placement of Group 3 parcels in federal trust raises many significant issues relating to the jurisdiction of the State of New York, the Counties of Oneida and Madison, and the cities, villages, towns and hamlets contained therein, with regard to environmental planning, compliance, monitoring, reporting and management. To date, in the development of the OIN properties, including the Turning Stone Resort and Casino, golf courses, SavOn gas stations, marinas and other commercial enterprises, the OIN has largely ignored applicable environmental laws, regulations, standards, guidance and policies, the objectives of which are the protection of public health and the environment. In addition, the apparent abandonment of a number of the Group 3 properties and their structures raises public safety concerns with respect to the properties, creates a nuisance with respect to neighboring properties, and potentially reduces the value (and receipts) for neighboring properties. These environmental laws, regulations, standards, guidance and policies would have applied to the OIN's past planning and development efforts, as well as to the on-going operation of facilities. In the past, the OIN has considered all of its parcels (Groups 1, 2 and 3) not to be subject to the jurisdiction of the State of New York or the State's political subdivisions; there has been no indication that this position will change in the future. Therefore, OIN-sponsored development may grow without the regulatory oversight, verification and controls critical to the protection of the environment and public health and safety.

Table 2 represents a summary of State and local jurisdictional authority impacted by activities on OIN parcels. This list is representative of the types of jurisdictions, but is not meant to be all-inclusive. The list is provided to illustrate the established governance and potential disruption of settled expectations and services, which governance (and the related regulatory jurisdiction) is provided to the affected communities. Any loss of these jurisdictions could result in a significant on- and off-site threat to the environment and public health and safety. Such loss may hinder State and local government protection of residents, employees and visitors alike from impacts to the environment, and public health and safety. For purposes of this table, "inability" or "loss" includes actual or potential loss or diminishment of jurisdiction or ability to regulate.

Table 2 State and local jurisdictions.

Jurisdiction	Implication
State	
Article 15 of the Environmental Conservation Law (ECL) (Protection of Waters) (6 NYCRR Part 608)	Inability to track and regulate activities in protected waters of the State. Additional impacts to riparian rights.
Article 24 of the ECL (Protection of Wetlands) (6 NYCRR Parts 663-664)	Inability to track, regulate and restrict (as necessary) encroachments on State freshwater wetlands. Impacts include wetland habitats and functions.
Section 401 of the Clean Water Act (Water Quality Certification)	Loss of ability to review activities within federally-regulated waterbodies to ensure there is no contravention of State water quality standards.
Article 8 of the ECL (State Environmental Quality Review Act) (6 NYCRR Part 617)	Loss of ability to review potential significant adverse environmental and socio-economic impacts from activities developed on OIN-owned lands. Implications are far-reaching including on- and off-site impacts, short- and long-term impacts, and cumulative impacts.
Article 19 of the ECL (Permit to Construct an Air Emission Source) (6 NYCRR Part 201)	Inability to review and approve air emission, mitigation measures and potential off-site impacts (including worker and community impacts typically reviewed under the USEPA's Risk Management and OSHA's Process Safety Management programs).
Article 27, Titles 9 and 11 of the ECL (Hazardous Waste Management Regulations) (6 NYCRR Parts 361, 370-374 and 376)	Loss of ability to review, permit and track the handling, transportation, disposal and manifesting of hazardous waste, and to review the siting of new industrial hazardous waste facilities.
Articles 17, 37 and 40 of the ECL (Hazardous Substance and Petroleum Bulk Storage Requirements) (6 NYCRR Parts 595-599, 610, and 612-614) (Environmental Priorities and Procedures in Petroleum Cleanup and Removal) (6 NYCRR Part 611)	Loss of ability to review, approve and inventory hazardous substance (chemical) and petroleum bulk storage tanks (above and underground). Loss of jurisdiction impacts the ability to ensure compliance with federal and State tank and secondary containment design standards, as well as spill cleanup standards.
Article 27, Titles 13 and 14 of the ECL (Inactive Hazardous Waste Disposal Site Remedial Program) (6 NYCRR Part 375)	Inability to review and approve remedial programs associated with the investigation and cleanup of brownfields and inactive hazardous waste disposal sites that could be sources of significant threats to public health or the environment.
Article 27, Titles 7 and 19 of the ECL (Solid Waste Disposal Facilities) (6 NYCRR Part 360)	Inability to regulate the design, permitting, construction, operation and closure of solid waste management facilities, and to abate noncompliant waste tire stockpiles.
Article 27, Titles 3 & 7 of the ECL (Waste Transporter Permits) (6 NYCRR Part 364)	Inability to regulate the transportation of solid waste on public roads and to point of disposal.
Article 17 of the ECL (State Pollutant Discharge Elimination System) (6 NYCRR Part 750)	Inability to review, approve and monitor point source discharges to waters of the State (including process and storm water discharges, and runoff from Concentrated Animal Feeding Operations).

Comments on the Oneida Indian Nation's Land In Trust Application – Group 3 Parcels

Jurisdiction	Implication
Article 15, Title 15 of the ECL (Water Supply Permits) (6 NYCRR Part 601)	Inability to review, approve and monitor public water supplies including quantity and quality, consumptive use, and public health issues.
Article 17 of the ECL (Approval of Plans for a Wastewater Disposal System)	Inability to review, approve and monitor waste water disposal/treatment facilities (including wastewater treatment facilities and septic systems).
Section 225 of NYS Public Health Law (New York State Sanitary Code) (10 NYCRR)	The New York State Sanitary Code covers a wide variety of public and environmental health related topics including: communicable diseases; drinking water supplies; swimming pools, bathing beaches and recreational spray grounds; temporary residences, mass gatherings, childrens' camps and agricultural fairgrounds; life and health nuisances; barber shops and beauty parlors; qualifications of public health personnel; maternal and child healthcare; transportation and handling of dead bodies; food service establishments; migrant farm worker housing; radiation; mobile home parks; public functions; laboratories; environmental and sexually transmitted diseases; AIDS; vital records,
Section 52 of the NYS Highway Law (Highway Work Permits)	Inability to regulate, review and approve work within State public highway rights-of-way (including utility and road work, driveway cuts, etc.). Potential maintenance and protection of traffic issues.
Articles 16 and 36 of the ECL (Floodplain Development Permits, Flood Control) (6 NYCRR Parts 500 <i>et seq.</i>)	Inability for the State and local floodplain administrators to restrict and regulate development within floodplains and floodways including review of flood-proofing and compensatory storage issues.
Sections 3.09 and 14.09 of the NYS Parks, Recreation and Historic Preservation Law (State Preservation Laws) (9 NYCRR Part 428)	Inability to protect cultural, historic, archaeological, and architecturally significant resources; including potential viewshed impacts from OIN activities on resources in the vicinity.
Article 25-AA of the New York State Agriculture and Markets Law (Agricultural Districts and Prime Farmland) (1 NYCRR Part 371)	Loss of oversight related to the review of potential impacts of non-farm development activities on the continued viability of agricultural operations in New York State.
Article 23 of the ECL (Oil, Gas and Solution Mining Law, and Mined Land Reclamation Law) (6 NYCRR Part 420 <i>et seq.</i>)	Loss of ability to review and permit the environmentally sound, economic development of New York's mineral resources and the return of affected land to productive use for current and future generations.
Article 33 of the ECL (Pesticide Registration, Certification, Storage and Application) (6 NYCRR Parts 325 – 327)	Inability to regulate the application of pesticides and enforcement of State pesticide laws.
Article 11 of the ECL (Fish and Wildlife Law) (6 NYCRR Chapters I)	Inability to manage and protect fish and wildlife populations (including monitoring of chronic wasting disease among resident deer population) and their habitats, or to license hunters, anglers, and trappers.
Section 9-1303 of the ECL (Forest Insects and Other Tree Diseases)	Inability for the State to exercise broad authority in regard to forest insects and other tree diseases to: (1) enter into cooperative

Jurisdiction	Implication
	agreements with other State and federal agencies for the purposes of controlling forest insects (<i>e.g.</i> , wood wasps) and other tree diseases; (2) conduct investigations; (3) by order, enter upon any lands to determine if the property is infested with forest insects or forest tree diseases; (4) to establish quarantine districts to prohibit the movement of materials which may be harboring forest insects; (5) treat infested forest areas; and (6) establish barrier or protective zones for the purpose of preventing the spread of forest insects and disease pests, and in so doing, have the authority to enter on private lands to treat and destroy infected vegetation.
Article 12 of the New York State Navigation Law	Inability to ensure that petroleum discharges are cleaned up.
New York State Finance Law	Inability to levy special assessment fees and regulatory program fees on regulated facilities in New York State. Fees are used to fund remedial efforts and other environmental program needs.
Article 16 of the Agriculture and Markets Law (Weights and Measures)	Loss of ability for a State certified agency to monitor the accuracy of any weighing and or measuring device (<i>i.e.</i> , gas stations). Equipment is inspected and calibrated to the New York State standards in Albany, NY.
<u>Local (County, City, Town, Village)</u>	
Community Planning and Development	Loss of ability to review and approve zoning-related issues, site plans, area and use variances, special permits, subdivisions, NYS General Municipal Law § 239-m reviews. Has far-reaching implications on economic development (<i>i.e.</i> , “level regulatory playing field”), local master planning, land use compatibility, and cumulative impacts.
Section 136 of the NYS Highway Law (Highway Work Permits)	Inability to regulate, review and approve work within local public highway rights-of-way (including utility and road work, driveway cuts, etc.). Potential maintenance and protection of traffic issues.
New York State Sanitary Code (Wells and Septic Systems)	Loss of ability to review and approve public and private wells and septic systems.
Industrial Wastewater Discharge Permits	Oversight of pretreatment, conveyance and discharge of wastewaters to publicly owned treatment works.
Governance Issues	Impacts on State and local ability to provide open government services such as: public participation, open meetings, public access to information, judicial review, etc.
Building and Fire Code Review and Approvals (19 NYCRR) Includes: <ul style="list-style-type: none"> • Residential Code of New York State • Building Code of New York State • Plumbing Code of New York State • Mechanical Code of New York State • Fuel Gas Code of New York State 	Inability of municipalities and the counties to inspect properties and enforce codes designed to protect the public health, safety and welfare.

Jurisdiction	Implication
<ul style="list-style-type: none"> • Fire Code of New York State • Property Maintenance Code of New York State • Energy Conservation Construction Code of New York State 	
Public Health Laws	Inability to inspect facilities to ensure compliance with local and State public health and safety laws (<i>i.e.</i> , hotel and restaurant inspections, storage and preparation of food, smoking ban pursuant to Clean Indoor Air Act, communicable disease reporting, water quality, campgrounds, subdivisions, swimming pools).

Source: O’Brien & Gere Engineers, Inc.

Additional information regarding some of these programs, supported periodically by case study, is provided in the ensuing subsections and appendices.

Moreover, reliance on federal law alone provides inadequate coverage and protection to the environment and public health and safety. In a number of aspects of concurrent federal and state regulatory jurisdiction, the laws of the State of New York are more stringent than federal law. In many more areas regarding the environment and public health and safety protection, New York’s laws are the only laws that provide regulatory oversight and control.

Compounding the uncertainty as to the State’s ability to enforce such laws where lands have been taken into trust status, it is also unclear whether the OIN has implemented surrogate regulations or, if it has, whether such regulations or practices are as comprehensive as State and local requirements. The codes listed on the OIN’s website (<http://www.oneida-nation.net/>) do not address environmental, zoning, building, fire safety, public health and other codes and laws enacted by local communities and the State to protect the public. In addition, under the claim of sovereignty, it is unclear whether federal regulations have been adhered to by the OIN or enforced by the jurisdictional federal agencies, although it is clear in many instances that federal statutes require such compliance and allow enforcement. Furthermore, the decision to place such a substantial amount of land into trust must take into consideration the BIA’s ability (units and resources) to oversee these lands as a complete, effective and reliable replacement to State and local public health and safety and environmental oversight.

To fully comprehend the areal extent of potential impacts, it is important to understand that environmental impacts do not recognize property boundaries. Activities on OIN-owned properties do not just have the potential to impact resources within the parcel boundaries, but impacts may migrate beyond property limits onto non-OIN lands. This also holds true for non-OIN activities, although such activities are required to undergo environmental reviews and obtain permits so that impacts are eliminated or reduced to protect public health and the environment. Figure A-4 in Appendix A illustrates one-quarter mile buffers around the Group 3 parcels. The area within these buffers represents approximately 22,687± acres of land, or an impact area more than three times that of the Group 3 properties themselves. Based on the existing land use characteristics of the Group 3 parcels and the presence of significant non-contiguous parcels, our regulatory and land use experience indicates that construction and operational activities may impact

properties within a one-quarter mile radius, more or less, depending on the type and magnitude of operations (including future uses) and resource impacted.² Impacts may be related to a variety of environmental and socio-economic issues including land-related (soils, flora/fauna, habitats, utilities, traffic), water-related (wetlands, streams, groundwater), air-related (dust, exhaust, emissions), and cultural-related (viewshed, land-use compatibility, historic-archaeological-architectural resources) and a variety of other issues. To support the comments provided herein, the State, working with the local jurisdictions, has compiled Geographic Information System (GIS) data to illustrate the overlap and potential conflicts of Group 3 parcels with resources and regulatory programs pertinent to the area. Group 3 GIS data presented in Appendix A consist of:

- Figure A-1 Groups 1, 2 & 3 Parcels
- Figure A-2 Historic Treaty Boundaries
- Figure A-3 Group 3 Parcels
- Figure A-4 Buffer Zones
- Figure A-5 NYS Freshwater Wetlands
- Figure A-6 2003 Aerial Photograph
- Figure A-7 Hydric Soils
- Figure A-8 Natural Heritage Program
- Figure A-9 Streams
- Figure A-10 Water & Sewer Districts & Utilities
- Figure A-11 Flood Zones
- Figure A-12 National/State Register Sites
- Figure A-13 Archaeological Sensitivity
- Figure A-14 Solid Waste Facilities
- Figure A-15 Regulated Facilities
- Figure A-16 Petroleum Bulk Storage Facilities
- Figure A-17 Gas Stations
- Figure A-18 Oil and Gas Well Permits
- Figure A-19 Chemical Bulk Storage Facilities
- Figure A-20 Zoning
- Figure A-21 Schools & Hospitals
- Figure A-22 New York State Parks
- Figure A-23 Landmarks
- Figure A-24 School Districts
- Figure A-25 Agricultural Districts (pre-2005)
- Figure A-26 Prime Farmland
- Figure A-27 Agricultural Districts (current)
- Figure A-28 Environmental Justice

² The American Society for Testing and Materials (ASTM) publishes standards on “Environmental Site Assessments for Commercial Real Estate” (E1527-00, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process). The ASTM standard identifies minimum search distances to which properties should be reviewed to help assess the likelihood of problems from migrating hazardous substances or petroleum products. ASTM recommended search distances account for the density of the setting in which the property is located, the distance that the hazardous substances or petroleum products are likely to migrate based on local geologic or hydrogeologic conditions, and other reasonable factors. Standard ASTM search distances range between the property and one-mile from the property.

Wetlands. Wetlands perform numerous functions which provide benefits to the environment and the citizens of the State. Wetland functions and benefits that are important in New York State include: flood protection and abatement, erosion and sedimentation control, water quality maintenance, fish and wildlife habitats, nutrient production and cycling, recreation, open space, educational and scientific research, and biological diversity.

New York State Freshwater Wetlands are under the regulatory jurisdiction of the New York State Department of Environmental Conservation (NYSDEC), while federal wetlands are under the purview of the United States Army Corps of Engineers (ACOE). Information regarding each jurisdiction is provided below.

- New York State Freshwater Wetlands. Freshwater wetlands are protected in New York State pursuant to Article 24 of the ECL, which has been in effect since 1975: “It is declared to be the public policy of the State to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, 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” (§ 24-0103 of the ECL).

Activities which may impact freshwater wetlands are subject to a State permitting process: “All persons proposing to conduct, on wetlands or adjacent areas, activities that have not been specifically exempted...must obtain either a permit or a letter of permission” (6 NYCRR Part 663.4). These regulations require that freshwater wetlands greater than 12.4 acres in size and wetlands of any size that are deemed to be of significant local importance be mapped. Under these regulations, the NYSDEC also regulates the 100-foot area adjacent to wetlands as a buffer zone. The buffer zone may be extended beyond the 100-foot adjacent area by formal order of the NYSDEC commissioner where deemed appropriate to protect the wetland area.

The NYSDEC classifies each wetland shown on its wetlands maps according to the classification system set forth in 6 NYCRR Part 664. Four separate classes are established that rank wetlands according to their ability to perform wetland functions and provide wetland benefits. Class I wetlands have the highest rank, descending through Class II, III and IV.

The areal extent of New York State Freshwater Wetlands on and in the vicinity of the Group 3 parcels is illustrated on Figure A-5 of Appendix A. As summarized in Appendix J, the Group 3 parcels overlap approximately 547 acres of New York State Freshwater Wetlands and 606 acres within regulated 100-foot buffer areas. Many of the overlapping wetland-Group 3 parcel boundaries delineate areas where OIN development activities may encroach and permanently fill State jurisdictional wetlands, if allowed to occur without regulatory review. The placement of Group 3 parcels into trust may permanently remove remaining State wetlands on these parcels from the jurisdictional protection of the NYSDEC and eliminate independent

oversight to ensure that wetlands on these properties and their associated functions are not impaired, or lost completely.

As shown on Figure A-5 of Appendix A, additional State-jurisdictional wetlands are present on lands located immediately adjacent to the Group 3 parcels. Placement of the Group 3 parcels into federal trust, may hinder the State's ability to control potential direct and indirect impacts to these remaining off-site wetlands (and to the non-OIN landowners who have complied with the State's regulatory requirements) from continued OIN development and operational activities. Existing and future OIN development and operational activities on Group 3 parcels have the potential to impact these adjacent areas due to:

- altered hydrology;
- degraded fish and wildlife habitat;
- uncontrolled contaminants in runoff, such as fertilizers, herbicides and pesticides used on OIN's lands;
- petroleum contaminants and heavy metals in runoff from paved surfaces, such as parking lots, driveways and roadways; and
- dispersion of litter from OIN facilities.

Development of the OIN parcels was performed without the required consultation with the NYSDEC, or the opportunity for public participation or the incorporation of measures to protect the wetland or buffer areas. Consequently, significant acreage of New York State regulated wetlands were destroyed or impaired. Despite the United States Supreme Court decision in *City of Sherrill v. The Oneida Indian Nation of New York*, 125 S. Ct. 1478 (2005), the OIN continues to consider the properties constituting the Turning Stone Resort and Casino (as well as other OIN facilities) not to be subject to the jurisdiction of the NYSDEC and the protection of the State. Similarly, future development of Group 3 parcels, in addition to OIN land already developed, may occur without consideration of the regulatory requirements to protect the State's wetland resources.

If the Group 3 parcels are accepted into trust, remaining wetlands may be impacted without the oversight and protection afforded by New York State law and regulation. Unmonitored, uncontrolled and unmitigated applications of chemical fertilizers, herbicides and pesticides used for OIN landscaping maintenance activities will find their way into runoff and alter and/or inhibit the natural process that otherwise contribute to the quality of a wetland. These applications may impact the sensitive balance that provides the unique nature and quality of a wetland. Excavation, draining, clearing and regrading of the land associated with development of the infrastructure (water, sewage, drainage) and structures may impact the flow of surface waters and the hydrologic dynamics that support the wetlands.

To the extent that surfaces have been or may be paved or otherwise altered from their former greenfield farmlands by the construction of structures and paved parking areas associated with OIN development of Group 3 parcels, wetland hydrology may also be impaired. Impermeable surfaces, including

structures and paved areas, increase the amount and velocity of overland runoff flow, which can overwhelm a wetland's ability to temporarily retain storm water runoff and provide filtration. The lack of this natural retention and filtration of runoff increases the potential for contaminants reaching the ground or surface waters. In addition, the loss of wetland acreage and increased velocity of surface water flow is likely to increase the scouring of stream banks, lead to increased downstream sedimentation, and the flooding of upstream or downstream properties, both within the Group 3 parcels and those areas outside of the OIN properties.

Additionally, the quality of the groundwater and surface water has been and will continue to be negatively impacted by flow over roads, parking lots, and other developed areas. The impact of this deterioration in water quality on the remaining wetlands has not been subject to oversight by the NYSDEC on behalf of the people of New York. The impacts noted here will only increase should the Group 3 parcels be developed.

Many species of fish and wildlife depend on wetlands for critical parts of their life cycle. By providing breeding, nesting, and feeding grounds and cover, wetlands are recognized as one of the most valuable habitats for wildlife. Young fish find food and shelter in the protective vegetation. Many species of endangered, threatened, or special concern fish and wildlife depend on wetlands. In addition, wetlands are habitat for thousands of species of the plants of New York. One half of New York's protected native plants, many of which are endangered or threatened, are wetlands species.

Finally, wetlands do not recognize property boundaries. There are wetlands that are continuous and hydrologically interconnected onto and off the Group 3 parcels. Effective wetland protection can not end at a property boundary. Since the properties for which trust status is being sought are scattered throughout the region, the impact on the non-tribal landowners of these non-regulated parcels may be far greater than the parcels' acreage would suggest. Since the tribe's claim extends to potentially over 300,000 acres, the effect of unregulated development on the OIN's parcels can have widespread impacts off site including damage to wetland complexes, destruction and degradation of fish and wildlife habitats, increased flooding, and impairment of ground and surface water quality. Any loss of jurisdiction resulting from an acceptance of this application places at risk the integrity of wetland ecosystems throughout the region.

Case Study – Figure A-6 in Appendix A represents an aerial photograph taken in 2003, which depicts the lands surrounding the Turning Stone Resort and Casino. Significant cleared (bare soil) areas are evident in the photograph as a result of the construction of the OIN's 18-hole Atunyote golf course. Comparing the aerial photograph with Figure A-5, which illustrates the State's jurisdictional wetland boundaries, documents areas of wetland and wetland buffer, and shows encroachments for which no NYSDEC permits were acquired by the OIN, and for which no oversight, assessment, control or supervised mitigation were conducted. Federal wetlands were also likely filled as part of these activities. Anecdotal information reported to the

NYSDEC during this timeframe included visual observations of significant siltation of a tributary of Sconondua Creek, which flows from the OIN properties.

- Federal Wetlands. Section 404 of the Clean Water Act of 1977 requires a permit from the ACOE before dredge or fill materials can be discharged into waters of the United States, which includes wetlands. The ACOE is required to issue permits in accordance with guidelines developed by the USEPA [404 (b)(1) Guidelines]. The involvement of the USEPA is for the protection of municipal water supplies, shellfish and fishery areas, wildlife, and recreational areas. In addition, the ACOE is required to give "full consideration" to comments by the U.S. Fish and Wildlife Service (USFWS) and the U.S. National Marine Fisheries Service when reviewing permit applications.

The ACOE also has wetland authority under Section 10 of the Rivers and Harbors Act of 1899. Any activity in navigable waters below the ordinary high water mark of rivers and lakes (or mean high water in tidal areas) requires a permit from the ACOE. These activities include filling, dredging, structures, underwater cables, and similar activities. Navigable waters are defined in 33 CFR 329.4 as those "subject to ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce".

The ACOE and USEPA jointly define wetlands as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" [33 CFR §328.3(b) and 40 CFR §230.3(t)]. Human actions in ACOE and USEPA defined wetlands are subject to regulatory scrutiny.

The current method for identifying and delineating federally regulated wetlands are set forth in the United States Department of the Army Technical Report Y-87-1, Corps of Engineers Wetland Delineation Manual, January 1987 (ACOE 1987). According to the ACOE (1987), wetlands are characterized based on a triad approach consisting of the study of hydrology, soil, and vegetation. The three parameters are evaluated for wetland indicators such as hydric soils, periodic flooding or soil saturation, and presence of hydrophytic (water tolerant) vegetation. Evidence for a minimum of one wetland indicator for each of the parameters must be found to make a positive wetland determination. A site is classified as a federal wetland if: the prevalent vegetation is hydrophytic; and the soils present have been classified as hydric or possess reducing soil characteristics; and the area is either permanently or periodically at mean water depths less than 6.6 feet, or the soil is saturated to the surface at some time during the growing season. The USFWS, in response to the increasing national recognition of the value of wetland resources, initiated an ongoing national inventory of wetlands in 1979 using the U.S. wetland taxonomic scheme, Classification of Wetlands and Deepwater Habitats of the United States (USFWS 1979). The National Wetlands Inventory (NWI) was developed to provide comparable

information on the status and extent of U.S. wetland resources. NWI maps provide an indication of the potential presence of federally regulated wetlands.

NWI maps published by the USFWS are not available in GIS format for the Group 3 parcel area. However, locations of hydric soils (source: United States Department of Agriculture), a prime indicator of wetlands, are illustrated on Figure A-7 in Appendix A. Hydric soils, and soils with hydric inclusions, are present throughout and adjacent to the Group 3 parcels. These characteristics indicate that under federal criteria for wetlands, large portions of the Group 3 parcels (2,695 acres, see Appendix J) are likely ACOE jurisdictional wetlands. Therefore, plans for the development of these properties should have been subject to the jurisdiction and approval of the ACOE; restrictions may have been placed on development of large portions of these properties by the ACOE if appropriate notification of these wetlands and a permit application had been filed prior to construction; and mitigation would have been required, the nature of which would have depended on the type of wetland and the wetland values. Mitigation options may include wetland protection, on-site wetland enhancement, on site creation of new wetlands, enhancement of off-site wetlands, and/or creation of new wetlands off-site. The mitigation options required by the ACOE are highly dependent on the values of the specific wetlands, and their uniqueness nationally and regionally. Mitigation may extend from a 2:1 ratio (for example, acres created v. acres lost) to as high as a 5:1 ratio.

It is worth noting that during past development of OIN parcels, the required proactive notification and consultation with the ACOE (during project planning) did not occur, and the process to obtain appropriate permits and approvals was not conducted. Therefore, jurisdictional federal wetlands were destroyed without notification to or approval by any agency before the fact. In addition, remaining jurisdictional federal wetlands on the Group 1, 2 and 3 parcels remain directly at risk, since the OIN does not recognize the jurisdictional processes dealing with regulated federal wetlands. As was the case for State jurisdictional wetlands, regulated federal wetlands on adjacent properties are also at risk from the impacts of continued development and operational activities of the Group 1, 2 and 3 parcels. These impacts to off-site federal wetlands include, but are not limited to, altered hydrology, degraded habitat, uncontrolled contaminants in runoff courses, petroleum contaminants and heavy metals in runoff from paved surfaces, and dispersion of litter.

Both the state and federal programs are necessary for adequate protection of wetlands in Oneida and Madison Counties. The federal program includes small wetlands not covered by the state program, and the state program protects the 100-foot buffer area not protected under the Clean Water Act. The OIN application represents a substantial amount of land, and a BIA decision on the application will represent a significant precedent (*i.e.*, national policy) that may be relied upon when weighing future, similar applications. It is critical that the implications for wetland systems in the region be considered in making this important decision.

Clean Air. Air resources and quality are protected in New York State pursuant to Article 19 of the ECL and its implementing regulations (6 NYCRR 200 *et seq.*). NYSDEC has maintained a strong air pollution control program since at least the early 1980s. In fact, the State had established a program to control toxic air pollutants before the federal program initiated by Congress' passage of the "Clean Air Act Amendments of 1990." The goal of the State's clean air program 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."

A State Implementation Plan (SIP) is the federally approved and enforceable plan by which each state identifies how it will attain and/or maintain the health-related primary and welfare-related secondary National Ambient Air Quality Standards (NAAQS) described in Section 109 of the Clean Air Act (CAA) and 40 CFR 50.4 through 50.12. SIP documents contain a wide variety of information, including air quality goals, measurements of air quality, emission inventories, modeling demonstrations, control strategies, evidence of public participation, and more. The SIP serves as the plan by which the monitoring and control of air emissions throughout the State are coordinated, since emissions in an area of the State may be incremental, but their impacts may be additive and synergistic.

Thus, the framework for the improvement and maintenance of clean air in New York State consists of the federal Clean Air Act and its implementing regulations, the federally enforceable State SIP, and the State's own clean air laws and regulations, which are more protective than those of the federal program.

Examples of State regulatory provisions routinely anticipated to apply to OIN-owned parcels, and to the continuing development activities include:

- air emission sources, which require facility owners and/or operators of air contamination sources to obtain a permit or registration certificate from the NYSDEC for the operation of such sources;
- installation, maintenance and operation of emission control equipment; and
- documentation of emission operations.

Specific State air emissions regulations in 6 NYCRR that may apply to such facilities include, but are not necessarily limited to, the following:

- Part 201 Permits and Certificates
- Part 202 Emissions Verification
- Part 208 Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills
- Part 211 General Prohibitions
- Part 215 Open Fires
- Part 217 Motor Vehicle Emissions
- Part 218 Emission Standards for Motor Vehicles and Motor

- Part 225 Vehicle Engines
- Part 225 Fuel Composition and Use
- Part 227 Stationary Combustion Installations
- Part 229 Petroleum and Volatile Organic Liquid Storage and Transfer
- Part 230 Gasoline Dispensing Sites and Transport Vehicles
- Part 231 New Source Review in Non-Attainment Areas and Ozone Transport Areas
- Part 234 Graphic Arts
- Part 238 Acid Deposition SO₂ Budget Trading Program

Under the Clean Air Act, activities on trust lands are subject to federal jurisdiction. Therefore, the acceptance of this application may exempt the Group 3 parcels from the State's air emission regulatory programs. Existing regulated facilities (including facilities with air permits/registrations) are illustrated on Figure A-15 in Appendix A. As illustrated in the State's Group 1 and 2 reports previously submitted to the BIA, a "black hole" of no facilities is evident on the OIN parcels, not because of the absence of facilities that emit air contaminants, but refusal by the OIN to comply with State requirements. Future unregulated OIN development of the Group 3 parcels would exacerbate this issue. As a practical matter, this is a highly significant environmental and public health issue. Air emissions are not limited to property boundaries. Therefore, the impacts of air emissions are not restricted to the boundaries of the properties on which the emissions sources are located, but rather, have impacts to the properties around them. Downwind receptors (residences, schools, hospitals, and similar sensitive land uses) are subject to the environmental and health impacts of the operations of any sources and sensitive receptors are present in proximity to OIN properties and operations. Therefore, clean air regulations and policies acknowledge and incorporate the important concept that impacts may extend far beyond the boundaries of a property.

There are several important aspects to the potential loss of jurisdiction by the State of New York:

- New air emission sources. The OIN may develop the Group 3 parcels consistent with the OIN's prior development practices under the contention that its activities on these properties are not subject to State jurisdiction. Acceptance of this trust application may place such development beyond the environmental and public health jurisdictions of the State of New York. As a result, considerations for the protection of the environment and of the public health from the construction of new air emission sources through State jurisdiction may not be applied to such projects. New sources of air pollution in New York State must undergo permitting review to ensure there will be no adverse air quality impacts, and that appropriate air pollution controls are installed. Existing facilities located upon OIN parcels did not undergo this type of review, and future activities may potentially avoid this review resulting in air quality impacts to New York State.

Case Study – One example is the OIN's cogeneration facility at the Turning Stone Resort and Casino that was constructed without compliance with federal or State regulations. The OIN has since been issued a federal Title V air permit for a major source of air emissions from the USEPA; typically,

such permits would be requested from the NYSDEC under delegation from the USEPA. Prior to the recent issuance of this permit, this facility had been operating without a permit and without monitoring or regulation by any agency – federal or State. Additionally, the permit may not address any State clean air act policies based on the OIN's contention that its properties are tribal lands exempt from State jurisdiction.

Based upon discussions with the USEPA, it is the State's understanding that the OIN is operating an air contamination source(s) consisting of the following equipment:

- one Natural Gas Boiler (33.5 MMBtu/hr)
- one Natural Gas/Number 2 Fuel Oil Boiler (33.5 MMBtu/hr)
- six Emergency Diesel Generators (from 2 to 15 MMBtu/hr)
- one 5.3 MW Combined Cycle Combustion Turbine
- two Natural Gas Boilers (20.4 MMBtu/hr each)
- one Emergency Diesel Generator.

The facility currently has a potential to emit (PTE) of 150 tons per year of nitrogen oxides (NO_x). Because its PTE is greater than 100 tons per year, the Turning Stone Resort and Casino is considered a major facility and is subject to major source permitting requirements. These requirements were never fulfilled prior to the commencement of construction and operation of the facility.

- Existing emission sources. A loss of State jurisdiction to monitor and control air pollution from existing air emissions sources would be to the detriment of the environment and the public health. The OIN would not be obligated or accountable for the operations of equipment on its properties, making clean air policy as applied by the NYSDEC to this region of the State difficult to implement. The context of interaction and impacts of emissions from the Group 1, 2 and 3 parcels with other sources in the region, and the reverse, is a clean air protection policy that would be outside the jurisdiction of the State to implement.
- Mobile source program. The State's mobile source program is based on the California program rather than the less stringent federal program. The State might lose the ability to enforce the more stringent emission limits, vehicle inspections, and other provisions of that regulation would be nullified if the application for placing the Group 3 parcels in trust were to be approved. As part of its mobile source emission reduction strategies, New York State has promulgated and enforced regulations stating that “no person shall sell or supply gasoline to a retailer or wholesale purchaser-consumer, having a Reid vapor pressure greater than 9.0 pounds per square inch as sampled and tested by methods acceptable to the Commissioner of the NYSDEC, during the period May 1st through September 15th of each year” (6 NYCRR § 225-3.3).
- Loss of contiguity. The patchwork pattern of the OIN request makes effective management of clean air by the State particularly difficult, if not impossible. As a practical matter, this lack of contiguity effectively hinders

the State's jurisdiction for the protection of clean air non-existent in a significantly larger area than just the Group 3 parcels since new air emission sources and the operations of existing sources may be conducted without the oversight normally performed pursuant to State regulations.

- Sensitive receptors. Group 3 parcels are located in communities with sensitive receptors (*i.e.*, schools, hospitals, churches, senior homes, etc.) (see Figure A-21 in Appendix A). Any loss of jurisdiction by the State with respect to clean air may place the State in a position of being unable to protect and maintain the clean air and protect the health of people who utilize these facilities.

Threatened and Endangered Animal Species. Threatened and endangered species and species of special concern are protected in New York State pursuant to Article 11 of the ECL and its implementing regulations (6 NYCRR Part 182). Article 11 also includes provisions regulating hunting, fishing, trapping, the collection and possession of wildlife species, and the control of dangerous diseases in wildlife. Based on data obtained from New York State's Natural Heritage Program, known occurrences of threatened and endangered species, species of special concern, and habitats are illustrated on Figure A-8 (Natural Heritage Program) in Appendix A. Known occurrences include such species as: Brindled Madtom (*Noturus miurus*), Lake Sturgeon (*Acipenser fulvescens*), Northern Harrier (*Circus cyaneus*), Spiny Softshell Turtle (*Trionyx spiniferus*), Pied-billed Grebe (*Podilymbus podiceps*), Upland Sandpiper (*Bartramia longicauda*), and Short-eared Owl (*Asio flammeus*). The NYSDEC provides oversight on these critical New York State resources, including assistance in evaluating impacts during SEQRA and National Environmental Policy Act (NEPA) reviews. The NYSDEC's federal counterpart is the USFWS. Any loss of State jurisdictional oversight will have significant impacts on these resources, including direct impacts on species and habitats (*i.e.*, loss of and segmentation), and indirect impacts on adjacent (non-OIN) parcels.

New York State has a mature program to protect threatened and endangered species, with the objective to perpetuate and restore native animal life within New York State for the use and benefit of current and future generations, based upon sound scientific practices and in consideration of social values, so as not to foreclose these opportunities to future generations.

The key definitions in the State regulations, which have been in place since 1979, are:

- Threatened species (6 NYCRR § 182.2[h]). Defined as any species which meet one of the following criteria: (1) are native species likely to become an endangered species within the foreseeable future in New York; or (2) are species listed as threatened by the United States Department of the Interior in the Code of Federal Regulations (50 CFR Part 17, revised as of October 1, 1998, pages 95-177).
- Endangered species (6 NYCRR § 182.2[g]). Defined as any species which meet one of the following criteria: (1) are native species in imminent danger of extirpation or extinction in New York; or (2) are species listed as endangered by the United States Department of the Interior in the Code of

Federal Regulations (50 CFR Part 17, revised as of October 1, 1998, pages 95-177).

- Species of special concern (6 NYCRR § 182.2[i]). Defined as species of fish and wildlife found by the NYSDEC to be at risk of becoming either endangered or threatened in New York. Species of special concern do not qualify as either endangered or threatened.

It is not known whether the OIN has performed a habitat survey to identify the presence or absence of threatened or endangered animal species, or species of special concern, as defined by both federal and State regulations, on Group 3 parcels. While the past OIN development of parcels may have impacted existing species, including potentially significant resources, the acceptance of the trust application may adversely impact the jurisdiction of the NYSDEC to monitor and protect remaining species that may be present on the OIN parcels as these properties continue to be developed.

Additionally, absent the jurisdictional authority of the NYSDEC, the development of the Group 3 parcels will impact threatened and endangered species and species of special concern on adjacent properties, including direct impacts on species and habitats (*i.e.*, loss of and segmentation of habitat). The patchwork pattern of the OIN request makes effective management of the sensitive habitats of these species difficult, if not impossible, even with respect to the properties adjacent to the Group 3 parcels. As a practical matter, this impact is far greater than just the Group 3 parcels.

Threatened and Endangered Plant Species. The Protected Native Plants Program was created in 1989 as a result of the adoption of the protected native plants regulation (6 NYCRR Part 193.3). This regulation established four lists of protected plants:

- endangered
- threatened
- rare
- exploitably vulnerable.

Consistent with statutory authority (ECL §9-1503), the NYSDEC's implementing regulations state that "It is a violation for any person, anywhere in the State, to pick, pluck, sever, remove, damage by the application of herbicides or defoliant, or carry away, without the consent of the owner, any protected plant" (6 NYCRR Part 193.3). The regulation gives landowners additional rights to prosecute people who collect plants without permission.

The list of rare, threatened, or endangered (RTE) plant species (as contained on federal, State or Natural Heritage Program lists) that are or may be present in Oneida and Madison Counties and potentially on (or formerly on) the Group 3 parcels is provided in Appendix D. Implications resulting from the loss of State jurisdictional authority to protect remaining resources are identical to impacts identified above for protected animal species; impacts which are unacceptable given the stated importance of these resources to the people of New York and their responsibility to preserve these resources for future generations.

Comprehensive Wildlife Protection and Conservation. In addition to protection of threatened and endangered species, and species of special concern, the NYSDEC also maintains jurisdictional authority under Article 11 of the ECL to regulate hunting, fishing, trapping, collection and possession of wildlife; as well as the control of dangerous diseases in wildlife. The latter issue has been of particular importance in recent months to the greater Oneida County area. The first confirmed occurrence of Chronic Wasting Disease (CWD) in New York State's deer population was identified in Oneida County. CWD is a transmittable disease that affects the brain and central nervous system of certain deer and elk. In April 2005, in its continuing efforts to protect New York State's deer population and prevent further spread of the disease, the NYSDEC issued emergency regulations regarding the handling, transport and management of deer in the State. The NYSDEC, New York State Department of Agriculture and Markets (NYSDAM), and New York State Department of Health (NYSDOH), together with the United States Department of Agriculture's Animal and Plant Health Inspection Service, are cooperating to develop a comprehensive statewide response to the threat of CWD. Any loss of jurisdiction over OIN-owned lands will significantly hinder the NYSDEC's and other cooperating agencies' ability to control the spread of this disease.

Forest Management. The NYSDEC is also responsible for the protection of the forest resources of the State. With invasive forest insects already spreading, the NYSDEC needs to act quickly to minimize damage to forests. New York State has over 18 million acres of forest land that support a wide array of plants and animals. In addition, the forest produce industry is robust in the State and would be negatively impacted if forest insects went unchecked.

Under Section 9-1303 of the ECL, the NYSDEC has broad authority in regard to forest insects and other tree diseases to: (1) enter into cooperative agreements with other State and federal agencies for the purposes of controlling forest insects (*e.g.*, wood wasps) and other tree diseases; (2) conduct investigations; (3) by order, enter upon any lands to determine if the property is infested with forest insects or forest tree diseases; (4) establish quarantine districts to prohibit the movement of materials which may be harboring forest insects; (5) treat infected forest areas; and (6) establish barrier or protective zones for the purpose of preventing the spread of forest insects and disease pests, and in so doing, have the authority to enter on private lands to treat and destroy infected vegetation.

Case Study (Wood Wasp) – The Sirex wood wasp (*Sirex noctilio*) is an invasive insect species that has the potential to cause significant mortality of pines in New York State and throughout the United States. Cornell University (www.news.cornell.edu/stories/may05/woodwasp.ssl.html) and the United States Department of Agriculture's Forest Service (http://www.na.fs.fed.us/spfo/pubs/pest_al/sirex_woodwasp/sirex_woodwasp.pdf#search='sirex%20noctilio') experts agree that the discovery of a single specimen in Fulton, New York (adjacent to Oneida and Madison Counties) raises red flags across the State and nation due to this insect's past devastation of up to 80% of pine trees in areas of New Zealand, Australia, South America and South Africa. This wasp destroys red pine and scotch pine in a matter of weeks, and is suspected of being able to infest white pine, which would have a devastating effect on the State's lumber industry. One specimen means there are more. Containment requires the cooperation of federal and State agencies, as well as

local municipalities, who are currently carrying out a large dragnet, setting multiple traps in places they suspect the wood wasp may be doing its destructive work. Efforts are coordinated by the NYSDEC and the New York State Invasive Species Task Force. In addition to the impacts on the lumber industry, the inability to control and contain this species will have a monumental detrimental impact on the State's forests, parks, tourism and biodiversity.

Water Protection. New York State enforces several regulatory programs aimed at protecting New York State's waters. Some of these programs are state-enacted, while others are activities where a specific State primacy agency has delegated enforcement responsibility to administer federal requirements. The breadth of topics covered by these programs is extensive, but the goal of all is to promote the safety and well-being of the State's residents, as well as protection of our shared environment. Representative water protection programs include:

- Protection of Waters (Article 15 of the ECL; 6 NYCRR Part 608) administered by the NYSDEC;
- Dam Safety (Article 15 of the ECL; 6 NYCRR Part 673);
- Flood Control (Articles 16 and 36 of the ECL; 6 NYCRR Parts 500 *et seq.*);
- Water Supply (Article 17 of the ECL; 6 NYCRR Part 601; State Sanitary Code; 10 NYCRR Part 5) administered by the NYSDEC and NYSDOH;
- State Pollutant Discharge Elimination System (SPDES) (Article 17 of the ECL; 6 NYCRR Part 750) administered by the NYSDEC;
- Approval of Plans for a Wastewater Disposal System (Article 17 of the ECL) administered by the NYSDEC;
- Approval of Realty Subdivisions (Article 11, Title II of the Public Health Law; Article 17, Title 15 of the Environmental Conservation Law) administered by the NYSDOH;
- Wellhead Protection Program (1986 Amendments to the Safe Drinking Water Act) administered by the NYSDOH; and
- Floodplain Development Permits (Article 36 of the ECL; 6 NYCRR Part 500) administered by the NYSDEC and/or local floodplain development coordinators.

Any loss of State jurisdictional oversight of these programs on the Group 3 parcels will have implications ranging from direct impacts on OIN-owned lands (*i.e.*, future OIN economic diversification efforts similar to the Turning Stone Resort and Casino, Car Care, SavOn Gas Stations, Salmon Acres, Village of the White Plains, Marian Manor Marina, Snug Harbor Marina, golf courses, etc.), as well as indirect impacts on non-OIN lands due to lack of oversight and review and the resultant environmental harm.

- Protection of Waters. As illustrated on Figure A-9 in Appendix A, Group 3 parcels are located within the Oneida Lake drainage basin. Drainage within this system is conveyed through a complex network of interconnected rivers, streams and ponds, as well as groundwater flow that is interconnected hydrologically with surface waters. These water resources are necessary for drinking and bathing; agricultural, commercial and industrial uses; and fish and wildlife habitat. In addition, these waterways provide opportunities for recreation; education and research; and aesthetic appreciation.

Certain human activities can adversely affect, even destroy, the delicate ecological balance of these important areas, impairing the uses of these waters. The policy of New York State, set forth in Title 5 of Article 15 of the ECL, is to preserve and protect these lakes, rivers, streams and ponds. To implement this policy, the NYSDEC created the Protection of Waters Regulatory Program to prevent undesirable activities on water bodies by establishing and enforcing regulations that:

1. are compatible with the preservation, protection and enhancement of the present and potential values of the water resources;
2. protect the public health and welfare; and
3. are consistent with the reasonable economic and social development of the State.

All waters of the State are provided a class and standard designation based on existing or expected best usage of each water or waterway segment.

- The classification AA or A is assigned to waters used as a source of drinking water.
- Classification B indicates a best usage for swimming and other contact recreation, but not for drinking water.
- Classification C is for waters supporting fisheries and suitable for non-contact activities.
- The lowest classification and standard is D.

Waters with classifications A, B, and C may also have a standard of (T), indicating that it may support a trout population, or (TS), indicating that it may support trout spawning (TS). Special requirements apply to sustain these waters that support these valuable and sensitive fisheries resources. Small ponds and lakes with a surface area of 10-acres or less, located within the course of a stream, are considered to be part of a stream and are subject to regulation under the stream protection category of Protection of Waters.

Certain waters of the State are protected on the basis of their classification. Streams and small water bodies located in the course of a stream that are designated as C(T) or higher (*i.e.*, C(TS), B, or A) are collectively referred to as “protected streams,” and are subject to the stream protection provisions of the Protection of Waters regulations (6 NYCRR Part 608). Protected streams overlapping the Group 3 parcels are illustrated on Figure A-9 in Appendix A. No person, local public corporation, intrastate or interstate authority may excavate from or place fill, either directly or indirectly, in any of the

protected waters of the State or in wetlands that are adjacent (typically 50-foot horizontally from the mean high water line) to and contiguous at any point to any of the navigable waters of the State, and that are inundated at mean high water level or tide, without a permit issued by the NYSDEC.

These State-protected streams, as well as other streams (*i.e.*, not meeting the State's definition of "protected stream") also may be regulated by the ACOE under Section 404 of the Clean Water Act.

NYSDEC administers its water quality certification program pursuant to §401 of the Clean Water Act [33 USC §1341]. The Department reviews applications for federal permits or licenses that will create a discharge into the State's waters, and determines whether the discharge associated with the proposed project will comply with the State's water quality standards. The authorities for this program are set forth in 6 NYCRR Part 608, and the applicable standards are found in 6 NYCRR Parts 700 through 704. The standards include numerical and narrative standards, and they designate the uses appropriate to the various types of water bodies in New York. A federal agency may not issue its permit or license for a project that involves such a discharge unless the State has issued a water quality certification, or has waived the opportunity to do so. If the State agency responsible for assuring compliance with water quality standards denies certification, the applicant must proceed through State administrative processes to modify its application in a way that demonstrates it will be able to comply with applicable water quality standards, and ultimately it may bring an action in State court against the State agency to overturn the agency's denial. Once the water quality certification is issued, the federal agency incorporates the certification terms into the federal permit conditions or license articles. This incorporation is generally verbatim, and the federal agency is not at liberty to substitute its judgment as to conditions that will assure compliance with water quality standards established by the State.

The potential loss of jurisdiction to regulate these resources on OIN lands can have serious deleterious downstream impacts to water quality, stream stability, and habitat; potential upstream impacts include erosion and flooding.

Case Study – In April 2000, the OIN initiated dredging operations in and near Oneida Lake at the Marian Manor Marina it purchased in 1998. As part of the OIN's actions, silt and sand materials were dredged from the mouth of the marina's access channel to Oneida Lake and deposited to another part of the marina's grounds. Activities also included clear-cutting of trees and vegetation to increase the visibility of the marina from the State highway. Although located in federal and State regulated waters (including wetlands) no permits were obtained by the OIN. Although the OIN claimed "sovereignty" from local, State and federal requirements, clarification requested from the United States Justice Department by Rep. Sherwood Boehlert reaffirmed that the OIN is subject to federal requirements (see Rome Daily Sentinel dated April 15, 2000).

- Water Supply. The NYSDEC exercises jurisdiction over the State's public water supply program. This program protects and conserves available water supplies by ensuring equitable and wise use of these supplies by those who distribute potable (drinkable) water to the public for domestic, municipal, and other purposes. The State's waters must satisfy domestic, municipal, agricultural, commercial, industrial, power and recreational needs and other beneficial public purposes.

The program's implementing regulations (6 NYCRR Part 601) apply to any person or public corporation who is authorized and engaged in, or proposing to engage in, the acquisition, conservation, development, use or distribution of water for potable purposes, or who proposes to transport or carry water from this State to any location outside the State for use therein. A permit from the NYSDEC is required before a person or public corporation may take any of the following actions:

- install a new water supply system;
- acquire, take or develop any source of water supply in connection with a new water supply system;
- acquire, take or develop any new or additional source of water supply in connection with an existing water supply system;
- take or condemn lands for any new or additional sources of water supply or for the utilization of such supplies;
- commence or undertake the construction of any works or projects in connection with proposed plans for a water supply system;
- extend supply or distribution mains into a municipality, water district, water supply district, or other civil division of the State wherein it has not heretofore legally supplied water;
- construct any extension of its supply mains, except within a service area approved by the department;
- extend the boundaries of a water district;
- supply water in or for use in any other municipality or civil division of the State which owns and operates a water supply system therein, or in any duly organized water supply or fire district supplied with water by another person or public corporation;
- enter into a contract or other agreement for a supply of water;
- purchase or condemn any existing water supply system;
- sink or drill additional wells in connection with an existing water supply system;
- increase the amount of water diversion from a source of water supply already in use, by enlargement of the conduits, increased storage or by any other means;
- exercise any franchise hereafter granted to supply water to any inhabitants of the State; or
- transport or carry water through pipes, conduits, ditches or canals from any freshwater lake, pond, brook, river, stream or creek of this State or any groundwater of this State to any location outside the State for use therein.

The NYSDEC also issues permits associated with water districts (see Figure A-10 in Appendix A), as well as to the regional water purveyors – the City of Oneida and the Mohawk Valley Water Authority. Approval of private wells remains the purview of the local and or state health departments.

- State Pollutant Discharge Elimination System. Article 17 of the ECL entitled "Water Pollution Control" was enacted to protect and maintain surface and groundwater resources. Article 17 authorized creation of the State Pollutant Discharge Elimination System (SPDES) program to maintain New York's waters with reasonable standards of purity. The SPDES program is designed to eliminate the pollution of New York waters and to maintain the highest quality of water possible, consistent with:
 - public health;
 - public enjoyment of the resource;
 - protection and propagation of fish and wildlife; and
 - industrial development in the State.

The NYSDEC issues permits associated with private, commercial and institutional discharges for the following activities:

- constructing or using an outlet or discharge pipe (referred to as a "point source") that discharges wastewater into the surface waters or groundwater of the State;
- constructing or operating a disposal system such as a sewage treatment plant; and
- storm water discharges associated with industrial activity from a point source.

In addition, the NYSDEC is working with the USEPA to implement a federal regulation, commonly known as Storm Water Phase II, which requires permits for storm water discharges from Municipal Separate Storm Sewer Systems (MS4s) in urbanized areas and for construction activities disturbing one or more acres. To implement the law, the NYSDEC has issued two general permits, one for MS4s in urbanized areas and one for construction activities. The permits are part of the SPDES program.

Under the storm water SPDES program, permittees are required to prepare, implement and maintain Storm Water Pollution Prevention Plans (SWPPPs) that describe activities, mitigation (including an erosion and sedimentation control plan), and storm water management features aimed at controlling storm water quality and flows. Developing a SWPPP that complies with the requirements of the State's SPDES program does not relieve developers and contractors from the obligation of complying with storm water management requirements of the local government having jurisdiction over the project. Additional reviews by the local government may be necessary during the local right-to-build processes (*i.e.*, site plan review, subdivision review, etc.).

- Concentrated Animal Feeding Operation (CAFO). New York State is authorized to administer the National Pollutant Discharge Elimination System (NPDES) permit program. Under the SPDES permit program, the NYSDEC has issued a General Permit for “Concentrated Animal Feeding Operations (CAFOs). Large and small CAFOs operating in New York State can obtain coverage under the SPDES General Permit (GP-04-02) to document that manure management practices are sound and minimize impacts on the environment. The OIN operates a significant black angus herd in Madison County. The herd consists of 520 head of angus which is, by the OIN’s estimate, the second largest black angus herd in the northeastern United States (Indian Country Today, March 29, 2005); such an operation meets the definition of a CAFO. Based on the OIN’s objective to continue on its path to self-sufficiency, it is plausible that agricultural activities on Group 3 parcels may be expanded. CAFO permittees are required to meet USDA Natural Resources Conservation Service standards regarding runoff from livestock housing and feed storage areas, process wastewater, manure management including application to cropland, and erosion control on cropland. The local Soil and Water Conservation Districts offer assistance to farms to meet CAFO permit requirements. The importance of such permits and reviews and potential impact of CAFOs on the environment and surrounding land uses was evident in the recent discharge of millions of gallons of liquid manure into the Black River from a Lowville, NY farm. While the OIN has been offered assistance from the local Soil and Water Conservation District, to date this assistance has not been accepted.
- Approval of Plans for a Wastewater Disposal Systems and Public Water Supply Improvements. Pursuant to Article 17 of the ECL, as well as the State’s sanitary code, the NYSDEC and NYSDOH working with county health departments have regulatory responsibility to review and approve wastewater disposal systems (*i.e.*, conveyance and treatment facilities including septic systems) and public water supply improvements. While many existing OIN operations on Group 1 parcels currently rely on public infrastructure, many of the more rural Group 3 parcels rely on on-site water (wells) and wastewater (septic) systems (see Sections on Real Property Taxes and Special Assessments). Future plans may entail the development of OIN-operated potable water and wastewater treatment systems. Furthermore, it is reasonable to assume that future development of parcels, where such public infrastructure remains unavailable, will require the OIN to implement additional on-site measures (*i.e.*, wells and septic systems). It is imperative that local, State and federal governments have the ability to review and approve of the design, capacity, reliability, and security issues associated with such facilities to ensure protection of public health, as well as of the environment.
- Realty Subdivisions. Under a Memorandum of Understanding with the NYSDEC, the NYSDOH has statewide responsibility for approval of all realty subdivisions, including the review and approval of plans for individual sewage treatment systems. NYSDEC retains responsibility only for the review and approval of plans for public or community sewerage. With the

OIN's development of the Village of the White Pines and its stated objective of providing additional housing for its people, the proposed placement of the Group 3 parcels into trust highlights the need for continued local and State oversight of such projects.

- Wellhead Protection. The Wellhead Protection Program was created by the 1986 Amendments to the Safe Drinking Water Act. The NYSDEC developed New York's Wellhead Protection Program, which was approved by the USEPA in 1990. In 1998, administration of the Wellhead Protection Program was transferred from the NYSDEC to the NYSDOH and integrated into the NYSDOH's Source Water Assessment Program. The goal of the Wellhead Protection Program is to protect the groundwater sources, aquifers, and wellhead areas that supply public drinking water systems from contamination. New York's approach to wellhead protection recognizes and includes the existing federal, State and county programs that protect groundwater and complements these programs through a combination of activities and efforts using existing public and private agencies and organizations at all levels. The ability of State and local governments to protect groundwater and public and private well supplies would be significantly hindered if access to OIN-related activities was eliminated. The ability of State and local governments to protect the local watershed is vital to ensuring that groundwater resources, which supply local private and public well supplies, are protected. This is especially important in rural areas (such as the area surrounding the Group 3 parcels) where regional public water supplies are unavailable, and wells are the predominant source of supply.
- Floodplain Development Permits. The NYSDEC (Bureau of Flood Protection) has statutory authority under Articles 16 and 36 of the ECL and its implementing regulations (6 NYCRR Part 500 *et seq.*) to regulate flood control issues in New York State. Local floodplain development coordinators work with the NYSDEC and Federal Emergency Management Administration (FEMA) to restrict and regulate development within floodplains and floodways (see Figure A-11 in Appendix A) including review of flood-proofing and compensatory storage issues. Development that includes diverting streams, increasing impervious surfaces, or developing in floodplains has the potential to raise flood elevations that would impact both OIN and non-OIN properties. The inability for local and State planners to review development applications has severe ramifications relating to health, environmental and liability including:
 - loss of life from flooding, dam breaks and erosion;
 - economic loss to new and existing development; and
 - inability to exercise appropriate planning and decisions.

It is not known if the previous development/redevelopment of Group 3 parcels by the OIN was reviewed and evaluated to ensure that adequate flood protection measures were incorporated into the design and construction of facilities. Acceptance of the application to place the Group 3 parcels in trust would mean that future development of these parcels would not be subject to any review and evaluation by local or State governments to ensure that flood

control measures are included where appropriate to protect public health and property. While such reviews are critical (and required) in all flood regulated areas, land proximal to Oneida Lake is especially sensitive to changes resulting from development activities.

Cultural Resources. The protection of historic and archaeological properties collectively known as cultural resources is mandated by the National Historic Preservation Act (NHPA) (16 USC 470) and the New York State Historic Preservation Act (SHPA) (Article 14 of the New York State Parks, Recreation and Historic Preservation Law). Oversight and guidance to state and federal agencies in implementing the applicable statutes in New York State is provided by the Office of Parks, Recreation and Historic Preservation (OPRHP), which is also the designated State Historic Preservation Officer under NHPA. Both statutes require agencies to identify, evaluate and avoid or mitigate impacts to buildings, structures, objects or sites that are listed in or eligible for listing in the State and/or National Registers of Historic Places (see Figure A-12 in Appendix A). Projects involving State or federal agencies are required to comply with SHPA and NHPA, respectively, and generally incorporate consideration of cultural resources as a component of SEQRA or NEPA compliance during project planning, review and approval. As illustrated on Figure A-13 in Appendix A, there are several areas of overlap between the OIN Group 3 parcels and areas identified by OPRHP as being archaeologically sensitive. It is the policy of New York State that sponsors of activities, which are funded, permitted or approved by any State agency, perform appropriate cultural resource investigations within such sensitive areas. Any significant loss of jurisdiction over these areas under SEQRA and SHPA, including the ability to provide oversight, would have a significant detrimental impact on the people of the State of New York.

Solid Waste Management, Transport and Disposal. The management and land disposal of wastes is regulated by the State of New York pursuant to 6 NYCRR Part 360. These regulations have been in effect since 1973, with substantive changes occurring in 1988 and subsequent years. Solid waste management facilities, including municipal solid waste landfills, industrial and commercial waste landfills, construction and demolition (C&D) debris landfills, transfer stations, waste-to-energy facilities, C&D processing facilities, regulated medical waste facilities, composting facilities, land application facilities, and recyclables handling and recovery facilities, must be designed, located, constructed, operated and monitored in compliance with a Part 360 permit. In addition to the requirement of a permit, financial assurance may be required to cover the costs of properly closing the facility if the owner or operator fails to do so. The objective of the State's jurisdiction in these matters is to protect the environment and the public health from the exposure to, and the impacts of, improper waste management.

The highway transport of regulated waste requires a permit pursuant to 6 NYCRR Part 364. There are annual fees associated with a Part 364 permit, with the amount being determined by the type of waste being transported and the number of permitted vehicles. Regulated waste includes, but is not limited to, hazardous waste, waste tires, used oil, medical waste and residential septage. A Part 364 transporter has certain responsibilities associated with the permit, which includes: sufficient tracking of certain wastes, namely hazardous waste; ensuring that the waste is delivered to an authorized facility; maintaining proper records on the amount of waste transported; and containing waste to prevent leaking, blowing and other discharges.

Case Study (C&D Debris) – Part 360 permitted facilities located in the region are illustrated on Figure A-14 of Appendix A. The lack of facilities on OIN parcels is not indicative of the absence of regulated facilities, but the “black hole” that depicts the lack of information (and ability to obtain information), as well as the ability to monitor OIN activities. Specifically, the OIN is known to have demolished structures on its properties (see Syracuse Post Standard dated January 13, 2002), and to have disposed of the debris on its property without regard to appropriate disposal practices to reduce potential impacts to the environment and to public health, as embodied in the State regulatory program in 6 NYCRR Part 360. In these instances, a permit application for a solid waste landfill, or a C&D landfill (whichever may have been appropriate), was not requested from the NYSDEC. A Part 360 permit contains certain design, construction, operational, and closure requirements. Protective liner designs and monitoring requirements ensure that the environment and health and safety of the community are protected to the greatest extent practicable. Improper solid waste disposal may cause significant negative consequences off-site, as in the case of groundwater contamination.

It is not known whether, in the process of acquiring the Group 3 parcels, it was the practice of the OIN to use the same procedure, that is, to demolish and bury structures without appropriate care for the environment and the protection of public health. It is clear that the OIN could apply such practices on the Group 3 parcels in the future – the disposal of wastes without measures to protect the environment. Any removal or significant loss of State jurisdiction from these properties would place the environment and public health at risk from waste disposal practices the OIN has not hesitated to use in the past.

Case Study (Madison County Flow Control) – Under Local Law No. 3 of 2004, all waste generated in Madison County (including waste generated on OIN trust application lands) is to stay in Madison County for management at the county's landfill and/or transfer stations. Based on information provided by Madison County, it is believed that the OIN currently contracts with private garbage haulers to dispose of its waste, and that wastes are, with at least one exception, disposed of at an appropriate County facility.

The one known exception involved a dispute between the County, the OIN and one of the OIN's contracted private waste haulers – Riccelli Trucking, Inc. Madison County commenced a lawsuit in New York State Supreme Court against Riccelli Trucking alleging seventy violations of the flow control law. The bulk of these violations were said to relate to waste removal from OIN lands and subsequent hauling of these wastes to a landfill located outside of Madison County, the commingling of recyclables and solid waste materials, and the unpermitted operation of a solid waste business in the County. The lawsuit was ultimately settled in August 2002.

During the Riccelli dispute, the OIN took the position that it is entitled to control the disposal of its waste free from regulation, believing it was therefore not subject to the flow control law. Madison County took the position that once waste is put out for disposal by the owner, the owner of the waste abandons any

interest in it at that point, and the hauler who picks it up is subject to local waste regulation. The flow control law targets waste haulers, not waste generators, which allows the County to enforce the local law against the private haulers, regardless of whose waste they may be disposing.

However, it is important to note that, should the OIN become a private waste hauler and start hauling its own waste (on public, non-OIN roads) and to its own landfill, the County's ability to effectively enforce the flow control law would be in jeopardy. Madison County has expended significant effort in ensuring the safe disposal of solid waste within its borders (see also Local Law No. 3 of 2004). In addition, the County has incurred significant debt and invested millions of dollars in the development, operation, and maintenance of the County's integrated waste management system, spending approximately \$3,000,000 annually on the system. Waste management is a matter that is vitally important to the citizens of Madison County and will remain the focus of public concern. It is essential that the County be able to continue to regulate the flow of all solid waste within its borders, as well as to assure the necessary, predictable revenue stream provided by its local laws.

Hazardous Waste Siting, Management, Transport and Disposal. Under the statutory authority of Article 27, Titles 9 and 11 of the ECL, the NYSDEC regulates the management, transport and disposal of hazardous wastes and the siting of new industrial hazardous waste facilities in New York State. New York State has a strong commitment to protect its citizens and the environment from potentially devastating exposure to hazardous wastes. Working cooperatively with the USEPA, the NYSDEC's Resource Conservation and Recovery Act (RCRA) Subtitle C program establishes the regulatory framework for managing the generation, transportation, treatment, storage and disposal of hazardous waste. The program covers the following topics with relevance to the OIN trust application:

- **Authorization.** The NYSDEC received initial USEPA authorization to implement and enforce the federal RCRA-C program on May 29, 1986.
- **Manifest.** New York State enforces a manifest program to track hazardous waste from the time it leaves the generator facility to the place of ultimate disposal ("cradle-to-grave") to ensure that wastes are transported from the generator to a regulated disposal facility without being tampered with or illegally disposed. Unlike the federal manifest program, the New York State manifest program requires both the generator and the receiving facility to submit copies of manifest forms to the NYSDEC. The NYSDEC then uses a computerized data system to ensure that all hazardous waste shipments in fact make it to an approved receiving facility.
- **Fees.** Through the Hazardous Waste Special Assessment Fees and Regulatory Fees a portion of the public debt service associated with the 1986 Environmental Quality Bond Act is repaid, as well as the funding of other environmental programs, including cleanup of hazardous waste sites.
- **Reduction.** The NYSDEC has statutory requirements for hazardous waste reduction efforts.

- Permits. Through Part 373 permits (6 NYCRR Part 373), the NYSDEC ensures the environmentally-protective standards in design, operation and performance of hazardous waste treatment, storage and disposal facilities (TSDFs).
- Financial Assurance. All permitted TSDFs have financial assurance mechanisms to ensure that owners/operators have the funding to provide closure and post-closure activities necessary to protect human health and the environment upon ceasing operation.
- Corrective Action. The NYSDEC provides oversight on the implementation of corrective actions required to remediate existing impacts to the environment (*i.e.*, soil, surface and groundwater contamination).
- Inspections. The NYSDEC performs inspections to monitor compliance with RCRA-C regulations. Through routine inspections of hazardous waste generators, transporters and treatment, storage and disposal facilities, inspectors uncover serious offenses – violations that, left undetected, could result in extreme, adverse consequences to human health and the environment.

Figure A-15 in Appendix A illustrates the locations of regulated facilities in the area inclusive of the Group 3 parcels. Regulated facilities include Part 373 and RCRA facilities (*i.e.*, TSDFs, Small Quantity Generators [SQG] of hazardous wastes, and Large Quantity Generators [LQG] of hazardous wastes). Not included are Conditionally Exempt SQGs.

It is not known whether hazardous waste is being safely managed or was disposed at OIN properties. Without adequate oversight, there is potential for groundwater contamination, whereby such contamination could be transported to off-site properties, exposing other landowners to potential health risk by several exposure pathways. In addition, continued past practices by the OIN at other properties can impair the groundwater resource through the deterioration in groundwater quality, with the potential for the loss of this important resource in a region where many private landowners subsist on residential potable groundwater sources. Also, if surface waters are affected, it could impact aquatic resources and habitat. In addition to groundwater concerns, there are other issues that can arise from the unregulated disposal of waste, such as odor, noise, blowing waste, and vermin.

Petroleum Bulk Storage. The State of New York is authorized to regulate petroleum bulk storage facilities. Pursuant to Section 3-0301 and Article 17, Title 10 of the ECL, the State adopted Petroleum Bulk Storage (PBS) regulations in 1985 that established requirements aimed at preventing petroleum spills from contaminating the lands and waters of the State (6 NYCRR Parts 612-614). Those regulations include requirements for: registration of facilities (tanks and connecting piping) having a combined storage capacity of more than 1,100 gallons; storage and handling, including requirements relating to inventory monitoring, periodic testing and inspection of equipment; tank closures; reporting of spills; and construction, design and installation requirements for new or substantially modified facilities. It is known that the OIN has developed a

number of facilities that are likely subject to the PBS regulations. Gasoline station tanks and facilities with fuel tanks typically exceed the threshold storage capacities that would make those facilities subject to the design, construction, and registration requirements of the PBS regulations. As illustrated on Figure A-16 in Appendix A, it is unknown how many facilities within the Group 3 parcels are subject to the State's PBS regulations. A comparison of known (registered) PBS facilities (Figure A-16) with known gas stations in the area (Figure A-17 in Appendix A) again illustrates the regulatory "black hole" that persists due to the OIN's lack of compliance with State PBS tank registration procedures. The inability to identify, track, regulate and monitor these facilities may ultimately lead to impacts on OIN and non-OIN lands due to unreported and uncontained spills or leaks, improper designs, and/or inadequate best management practices.

Facilities that store 400,000 gallons or more of petroleum (commonly known as major oil storage facilities or "MOSFs") pose a heightened risk of damaging spills, due to their capacity and throughput. Pursuant to Section 174 of the State's Navigation Law, a facility operator must obtain a license from the State to operate such facilities. MOSFs also are subject to the PBS storage and handling requirements, and construction, design, and installation requirements for new or substantially modified facilities. Although presently there are no known MOSFs subject to the State's licensing authority within the Group 3 parcels, future development for that purpose cannot be precluded.

Petroleum spills pose a significant threat to the lands, natural resources, and waters (including groundwater) of the State. There are approximately 16,000 spills reported annually in the State. It has been estimated that a single quart of gasoline can render 1,000,000 gallons of water unfit for drinking water purposes. Accordingly, Navigation Law Article 12 prohibits the discharge of petroleum, requires persons responsible for a discharge to notify the NYSDEC within two hours, and imposes strict liability on the discharger. Pursuant to Article 12, the NYSDEC has exclusive responsibility to clean up discharges of petroleum, either through State-standby contractors or by the responsible party under careful NYSDEC oversight. Consistent with that responsibility, Article 12 expressly grants the NYSDEC authority to enter property to investigate suspected or actual spills and to clean up petroleum contamination. Absent notice of a spill, the NYSDEC will be unable to ensure that the petroleum is contained and cleaned up to meet standards.

Chemical Bulk Storage. Articles 37 and 40 of the ECL prohibit releases of hazardous substances and authorize the State to regulate the storage and handling of hazardous substances. Pursuant to that authority, the State adopted chemical bulk storage (CBS) regulations in 1994 designed to prevent releases in the first instance (6 NYCRR Parts 595-599). Those regulations establish reporting requirements for releases of hazardous substances; over 1,000 substances are currently listed in the regulations as hazardous substances. The CBS regulations also include requirements for: registration of tanks (aboveground tanks with a capacity of 185-gallons or more, and any underground tank); storage and handling, including requirements relating to inventory monitoring, periodic testing and inspection of equipment; tank closures; and construction, design and installation requirements for new or substantially modified facilities. Facilities that may have storage tanks subject to the CBS regulations are, for example, water and wastewater treatment plants and those with swimming pools that may store chlorine, as well as manufacturing facilities that may store various solvents. As illustrated on Figure A-19 in Appendix A, the number of CBS facilities within the Group 3 parcels that may be subject

to the CBS regulations is unknown due to the aforementioned “black hole” effect (see Petroleum Bulk Storage). Similar to the PBS discussion, any lack of CBS oversight would result in the potential for similar impacts to public health and the environment.

Petroleum and Hazardous Material Emergency Spill Response. The NYSDEC maintains a Spill Response Program with trained response personnel assigned to regional offices throughout New York State. The program operates a Spill Hotline for receiving notification of incidents. The program staff promptly responds to known and suspected releases, and ensures that containment, cleanup and disposal are completed to minimize environmental damage. Regional spill response staff are available to respond to releases of petroleum and other hazardous materials 7 days-a-week, 24 hours-a-day. Any loss of jurisdiction in the area of emergency spill response will impair the ability of the State of New York, and of the local municipalities, to protect the environment and of the public health in accordance with the requirements of the Environmental Conservation Law, the Navigation Law, and associated regulations.

After receiving notification of actual or suspected releases, NYSDEC spill responders evaluate the situation to determine what actions are required to protect public health and the environment, and to identify the spiller, or responsible party. When NYSDEC spill responders arrive at the site of an incident, they have the authority to:

- enter property to investigate actual and suspected releases;
- give responsible parties direction on actions to be taken and the type of environmental cleanup contractors they will need;
- answer questions concerning notification requirements;
- provide information on technical questions;
- advise responsible parties when cleanup goals are being properly met;
- in cooperation with the NYSDOH, arrange for the evacuation of structures where contaminated vapors from spills present a threat to the health of the occupants; and
- arrange for containment and cleanup by a State-funded contractor when the responsible party is unknown, unable, unwilling or doing inadequate clean up, or if local public safety agencies need emergency assistance.

Cleanups, particularly those in which spills have contaminated groundwater, take time. Extensive drilling and laboratory sampling may be required, and remediating the groundwater may take several years. Responsible party requirements will vary with type of release, site characteristics, disposal requirements, and cleanup goals for soil and water.

The State's Navigation Law and the Environmental Conservation Law and associated regulations require at least the following actions at a site:

- removal of all free product from the surface and underground;
- remediation of the affected surface environment;
- treatment of drinking water or provision of alternative water supplies during groundwater remediation;
- remediation of contaminated soil;
- treatment of contaminated groundwater;

- rescue and rehabilitation of affected wildlife; and
- restoration/replacement of affected natural resources.

Article 12 of the Navigation Law establishes the New York State Environmental Protection and Spill Compensation Fund (Fund) as a non-lapsing, revolving fund administered by the Office of the State Comptroller. The Comptroller:

- disburses Fund money for administrative, cleanup and removal expenses incurred by NYSDEC;
- arranges for settlement of damage claims from releases; and
- collects reimbursement and penalties from dischargers, and establishes the license fees.

The New York State Attorney General's Office also supports the program through legal actions to obtain reimbursement from responsible parties. Other public agencies may respond if a release creates immediate hazards to life and health. The first trained personnel to arrive at a release site are usually from local emergency service agencies such as the police or fire department. Local agencies will lead the response to protect the public from fires, explosions, or toxic gases, and sometimes to divert traffic or evacuate residents. Other State and federal agencies, such as the NYSDOH, the USEPA and the U.S. Coast Guard, may also respond.

Under New York State's Navigation and Environmental Conservation Laws, the responsible party (usually the owner or operator of equipment or of a facility that has a release) is responsible for notification of appropriate agencies, and for containment, cleanup and removal of spilled and contaminated materials. The responsible party is liable for all costs associated with a release, including relocation costs and third party damages. If NYSDEC conducts a cleanup, the responsible party must pay not only for the direct cleanup costs, but also for NYSDEC's administrative costs and for any interest and penalty charges. Reimbursement is sought either by NYSDEC, the Spill Fund Administrator or the Attorney General's Office.

It is not likely that the OIN would be able to adequately undertake the roles and responsibilities currently filled by the NYSDEC and other State, local, and federal agencies regarding emergency spill response. A lack of proper response would lead to increased threats to public health and the environment of the many communities attributable to the migration of contaminant plumes of OIN lands.

Spill Prevention, Control, and Countermeasure Plans. Under authority of Section 311 of the Federal Clean Water Act, regulations have been adopted which set forth the requirements for the prevention of, preparedness for, and response to oil discharges at specific non-transportation related facilities (40 CFR Part 112). Facilities that have aboveground storage capacity of greater than 1,320 gallons or underground storage capacity of greater than 42,000 of non-transportation related oil storage that could reasonably be expected to discharge oil to navigable waters or shorelines in the event of a spill or leak are subject to these regulations. These regulations require that facilities subject to the regulations develop and implement Spill Prevention, Control, and Countermeasure (SPCC) plans that identify site-specific measures to prevent oil from reaching navigable waters and adjoining shorelines, and to contain discharges of oil. The SPCC regulations are designed to protect public health, welfare, and the environment

from potential harmful effects of oil discharges. The SPCC plan for a given facility must establish procedures, methods, and equipment requirements to achieve these requirements. The number of facilities within the Group 3 parcels that may be subject to the SPCC regulations, either now or in the future, is unknown due to a lack of information from the OIN.

Inactive Hazardous Waste Disposal Sites and Brownfields. Articles 3, 27 (Titles 9, 13, 14), 56, and 71 of the ECL and selected sections of the New York State Finance and the New York Public Health Laws, provide the State with extensive programs to remediate hazardous substances that constitute a significant threat to health, safety and the environment (the State's hazardous waste, hazardous substance and superfund programs). In addition, these laws provide means for enforcement and sanctions against parties responsible for releasing pollution as well as the funding mechanisms for the cleanup of abandoned polluted sites. The law also provides for a broad "brownfields" cleanup program whereby interested parties can clean up otherwise neglected, but polluted, sites in exchange for liability releases from the State.

In a related authority, the federal Comprehensive Environmental Responsibility and Liability Act (CERCLA) provides that the NYSDEC, as the appointed Natural Resource Trustee for the State, has the appropriate authorities and powers to assess damages and seek collection at certain State superfund sites identified under federal and State law.

Due to a lack of information from the OIN, it is not known what, if any, programs the OIN has implemented to clean up and remediate any existing inactive hazardous waste disposal sites located within the Group 3 parcels. The potential existence of such disposal sites and the absence of oversight by the State of any clean up or remediation actions by the OIN places not only tribal lands within the Group 3 parcels, but properties outside of the OIN lands at risk for contamination of soils, ground and surface waters, both now and in the future.

Oil and Gas Regulation. The NYSDEC oversees permitting, compliance and enforcement of all regulated oil and gas wells in New York State. Specific responsibilities include:

- development, implementation and enforcement of regulations, policies and procedures to ensure that oil, gas, gas storage, solution mining, brine disposal, stratigraphic, geothermal and waterflood wells are drilled, operated and plugged so that the environment, correlative rights and public health and safety are fully protected;
- development, implementation and enforcement of regulations, policies and procedures to ensure that wastes generated during the drilling and operation of regulated wells are handled so that the environment and public health and safety are fully protected;
- management of a full regulatory permit program for underground storage of natural gas and liquefied petroleum gas;
- establishment of well spacing requirements in new and existing fields and review requests for variances;
- investigation and resolution of citizen complaints and non-routine incidents;

- provision of technical assistance and information to the regulated community, local governments, the public, other State agencies and other units within NYSDEC; and
- performance of technical review of solution mining well proposals and coordination with other involved State and federal agencies regarding solution mining and brine disposal wells.

Existing, permitted oil and gas wells are identified on Figure A-18 of Appendix A. The OIN has previously investigated the potential to locate underground natural gas reserves on OIN-owned properties. While non-OIN contractors have applied for applicable reviews and permits, no such applications have been made by the OIN. Based on past experiences, it is expected that the OIN will continue to seek on-site natural gas sources.

The Pesticide Sales and Use Database and Record Keeping and Reporting Law (Pesticide Reporting Law). The NYSDEC regulates the application of pesticides in New York State and is responsible for compliance assistance and public outreach activities to ensure enforcement of State pesticide laws, Article 33 and parts of Article 15 of the ECL and 6 NYCRR Parts 320-329. As part of the Pesticide Reporting Law, pesticide applicators are required to maintain records of pesticide applications and report certain information to the NYSDEC annually. The following information must be reported to NYSDEC for each application: the product's USEPA registration number, product name, quantity used, date applied, and location of application by address. In addition, for each application, records must be kept regarding dosage rate, application method, target organism and/or crop treated.

It can be safely assumed, at a minimum, that the OIN makes extensive use of pesticides in the maintenance of the golf courses that have been developed as part of the Group 1 parcels. Prior OIN activities including: the proper storage and application of pesticides, registration of pesticide user facilities, as well as certification of individuals who apply the pesticides have not been reported to the State. Development of Group 3 parcels in the future may include projects where the use of pesticides is needed. Should the application of the OIN to place the Group 3 parcels in trust be accepted, the permanent removal or substantial impairment of State jurisdiction from these properties may place the environment and public health at risk from pesticide management practices.

Zoning Districts. Local right-to-build requirements such as zoning are established under the home-rule provisions of the New York State Constitution and laws to allow municipalities to provide for the well-being of their communities (*i.e.*, public health, safety, morals or general welfare). Within each community, the local electorate chooses representatives who determine zoning and other local planning processes and controls. These local planning processes provide a means to review the short- and long-term implications of land development activities. Under zoning-related reviews, development applications are reviewed for consistency with local land use regulations, local zoning requirements and potential impacts on the health and safety of residents. Regional impacts are evaluated by the county under General Municipal Law Section 239-m. Towns and villages have adopted local zoning ordinances to provide for regulating, controlling and restricting the use and development of land and buildings to promote and protect, to the fullest extent permissible, the environment and its public health, safety and general welfare in accordance with purposes outlined in applicable sections of New York State Town and Village Law. The towns and villages have established zones consistent

with master or comprehensive plans for the entire jurisdiction and with associated allowable uses, as well as overlay districts, which impose additional regulations for specific purposes such as historic preservation, flooding, parking or other concerns. General zoning district information is presented on Figure A-20 in Appendix A. Zoning regulations are an aid in the effectuation of a comprehensive plan for sound community development. Placement of significant and isolated parcels in trust bypasses the zoning review processes (*i.e.*, allowable land uses, site plan review, subdivision, special permit, and use and area variances) and significantly impacts the ability to provide for cohesive and consistent community planning. Placement of lands into trust makes it impossible for communities to implement their vision and comprehensive plan for zoning and land use regulations when there is uncertainty surrounding neighboring parcels.

Case Study (Comprehensive Plans) – Local right-to-build reviews allow community representatives the ability to review development applications, with discretion to approve, deny or modify proposals based on consistency with master plans and the need to protect public health and the environment. Local reviews, including a review of environmental impacts under SEQRA, and regional impact reviews under General Municipal Law Section 239-m, look at the potential for development to impact a wide range of issues (*i.e.*, land use compatibility, traffic, viewshed, wetlands, storm water runoff, utility capacities, nuisances, etc.), that might otherwise be neglected absent the requirements. Construction and operation phase, short-term and long-term, as well as cumulative impacts are reviewed in order to make an informed decision on whether or not the type and magnitude of the project is consistent with the public good. At the State and local levels, those reviews were not accomplished for development of the Group 1 parcel gaming operations, nor has the OIN presented a comprehensive plan of its development objectives that typically forms the basis for New York State local zoning laws. Future reviews of new OIN development proposals should be required to undergo these reviews. Impacts on schools, hospitals and other sensitive receptors should be evaluated.

Building, Fire and Inspection Codes. The Uniform Fire Prevention and Building Code of New York State (the Uniform Code) consists of several components, each based on a model code developed by the International Code Council. Each of the following components is incorporated in Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (19 NYCRR):

- Residential Code of New York State
- Building Code of New York State
- Plumbing Code of New York State
- Mechanical Code of New York State
- Fuel Gas Code of New York State
- Fire Code of New York State
- Property Maintenance Code of New York State
- Energy Conservation Construction Code of New York State

The Uniform Code was enacted to protect the health and safety of the building occupants and the general public in all communities across New York State. Furthermore, Executive Law § 381 directs that the cities, towns and villages of the State shall be responsible for enforcing the Uniform Code, unless they choose to transfer that

responsibility onto the county. The Uniform Code is designed to eliminate or minimize health and safety hazards, including, but not limited to, fire, earthquake, collapse, flooding, wind and storm, and communicable disease. The code requires the issuance of building permits before construction can begin, inspections during and at the completion of construction, and, in the case of multi-unit residential and commercial buildings, periodic inspections to ensure that the property is maintained in accordance with the code.

Building permits can only be issued upon review and acceptance, by the authority having jurisdiction, of building plans and specifications prepared, signed and sealed by Licensed Design Professionals. Design Professionals, by law and practice, are required to comply with or exceed the code as a condition of licensure. Regardless of the code jurisdiction under which a building is to be constructed, and whether or not the owner agrees with such code or jurisdiction, any Design Professional would be expected to comply or seek a variance before construction.

Construction on OIN parcels has been undertaken by the OIN without meeting Uniform Code procedural requirements, and may have been undertaken without meeting substantive requirements. Building permits have not been prior issued, construction has not been inspected by, nor has there been ongoing inspection by the appropriate jurisdictions. Therefore, neither the municipalities nor the State can provide assurance to citizens who reside in or visit OIN's gaming and other facilities that such facilities are safe in accordance with the requirements of the Uniform Code.

SEQRA. The New York State Environmental Quality Review Act (SEQRA) requires state and local agencies to “conduct their affairs with an awareness that they are the stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.” ECL §8-0103.8. The intent of SEQRA, which is a more rigorous counterpart to NEPA, is to ensure that State and local agencies which regulate the activities of individuals and corporations within the state do so with due consideration to protecting the natural and living resources of the state. ECL § 8-0103.9. Article 8 of the ECL (and its implementing regulations at 6 NYCRR Part 617 *et seq.*), is a procedural and substantive law that acts as an overlay to the underlying jurisdictional authority that triggers the act, and requires State and local agencies to prepare an environmental impact statement when a proposed project may have a significant adverse impact on the environment. Stated simply, if a State or local agency has a decision to make on a project or activity, it then must consider environmental impacts as part of its decision-making process.

A State or local agency may only issue an approval (*e.g.*, permit, grant) if it finds that, consistent with social, economic and other essential considerations from among reasonable alternatives available, the decision avoids or minimizes adverse environmental impacts to the maximum extent practicable. Additionally, SEQRA requires that the agency's decision will mitigate the adverse environmental impacts to the maximum extent practicable through the incorporation into its approval, as a condition of that approval, those mitigation measures that were identified as practicable during the environmental impact statement review process. Any significant loss of jurisdiction under SEQR would have a detrimental effect on the people of the State of New York and the OIN.

IMPACTS ON REAL PROPERTY TAXES

In accordance with the statutory review obligations under 25 CFR §151.10(e) (*i.e.*, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls), Appendix E consists of a tabular summary of parcel-specific taxes and special assessments including:

- sale price
- assessed value at sale
- current assessed value (2005)
- town/city/village tax
- county tax
- school tax
- special district taxes (see discussion on special assessments below)

Based on this information provided by the affected towns and counties, the removal of Group 3 parcels from the tax rolls would result in an estimated annual (2005 dollars) reduction of \$281,380 in tax dollars available to local governments, with no significant reduction in the provision of services. Moreover, the development and expansion of these properties and operations continues the expectation for services from local and State governments. According to the affected counties, non-payment of real property taxes by the OIN has contributed to the following financial issues:

- inability to reduce local tax levies;
- reduction in investment grade credit rating; and
- reluctance to undertake significant and necessary capital improvements.

The counties, under statute and pursuant to generally accepted accounting principles, are required to reserve the total amount of the unpaid bill. The obvious impact of the delinquency results in higher county taxes in all towns and for all taxpayers across the county as the reserve is raised countywide for the delinquency and obvious cash flow considerations.

The OIN initiated open market purchases of land included in the fee-to-trust application in the late 1980s, with the most recent acquisition completed in April 2005. While the data presented in Appendix E represents recent annual taxes and special assessments, many of these parcels have been on the delinquent tax rolls for years under claims of sovereignty by the OIN (see section on “Cumulative Impacts”). In correspondence dated June 10, 2005 from the Associate Deputy Secretary of the DOI to the Honorable Ray Halbritter, Nation Representative, the DOI indicated that it is Departmental policy not to accept into trust lands that are encumbered by tax liens.

In its *City of Sherrill* decision, the U.S. Supreme Court decided that the lands at issue (property interests purchased by the OIN on the open market) are subject to real property taxes. The placement of OIN-owned lands into federal trust may have a significant adverse impact on the ability of the State, local governments and special assessment districts to provide services to the community – services paid for by tax dollars. If the OIN is successful in its application to the BIA, it is expected that the OIN will continue to purchase lands and apply for trust status resulting in a long-term cumulative drain on the

financial resources of the surrounding jurisdictions. To the extent the OIN will continue to benefit from the public infrastructure, social services and amenities (*i.e.*, use of public roads, parks and other landmarks [see Figures A-22 and A-23 in Appendix A], libraries, schools, solid waste management facilities, etc.) of the State and local communities, the OIN will have received such benefits without paying compensation to the affected governmental jurisdictions. These types of impacts are further detailed in the report prepared by the Center for Governmental Research, Inc. (CGR) for Oneida and Madison Counties, a copy of which is included in the counties' comments to the BIA.

IMPACTS ON SPECIAL ASSESSMENTS

As illustrated on Figures A-10 and A-24 in Appendix A, some of the Group 3 parcels are located in special assessment district areas established pursuant to New York State law and including water/sewer districts, fire districts, and lighting districts. The tabular summary provided in Appendix E identifies the parcels impacted, the special districts in which they are located, and special assessments levied. These special districts were created such that properties in the district are taxed in proportion to the benefits derived from the proposed facilities. District maintenance fees are derived from a combination of taxes on assessed value and frontage, or per parcel taxes on various types of properties, or through some other formula. In a benefit district, extensions of facilities within the district beyond those in the original proposal are paid for by those benefiting from the additional facilities, unless the additional facilities benefit the entire district.

The State of New York and local municipalities have historically assumed the burden of establishing and maintaining infrastructure and support services for its residents. Portions of the Group 3 parcels presently receive municipal sewer, water and emergency services. Placement of special district lands in trust will result in fewer users (than originally proposed) financially supporting the district facilities, who then will share the burden of the district's operation and management. This scenario will result in diminished funds to maintain districts, and a need to increase district revenues through user fees/taxes on the remaining parcels in the district.

While the OIN trust application indicates the OIN's goal of becoming self-reliant, it is unclear what impact this will have on the need for the OIN to continue to rely on State and local services or for future operations on lands included in the OIN application. Continued reliance on such services would seemingly necessitate enforcement and taxation on the same basis as provided to other State citizens who benefit from these services. Unfortunately, in the absence of fair compensation for services, the State and local jurisdictions will have to address the loss of such compensation on the provision of services.

Case Study (Verona Fire District) – The Group 3 parcels are serviced, in part, by the Verona Fire District. In correspondence dated October 2, 2005 from the Verona Fire District to the Deputy Supervisor of the Town of Verona, the Fire District summarized its services to the OIN, compensation received for such services, and the Fire District's position on the OIN's application for trust status on lands within the Fire District. A copy of the Fire District's letter is included as Appendix F. Acceptance of the Group 3 parcels into trust may result in

similar positions by other special assessment districts that overlap Group 3 parcel boundaries.

Case Study (Agricultural Districts) – New York State Agriculture and Markets Law (Article 25-AA) authorizes the creation of local agricultural districts pursuant to landowner initiative, preliminary county review, State certification, and county adoption. As illustrated on Figure A-25 in Appendix A, portions of the OIN Group 3 parcels were previously adopted by Oneida County as Agricultural District lands. The purpose of agricultural districting is to encourage the continued use of farmland for agricultural production. The program is based on a combination of landowner incentives and protections, all of which are designed to prevent the conversion of farmland to non-agricultural uses. These lands are often characterized by prime farmland (see Figure A-26 in Appendix A) as defined by the United States Department of Agriculture – Natural Resources Conservation Service.

- **Incentives Program.** Included in the incentives program are preferential real property tax treatment (agricultural assessment and special benefit assessment), which provide farmland owners with real property assessments based on the value of their land for agricultural production (*i.e.*, based on agricultural soils) rather than on its development value. OIN Group 3 parcels within Agricultural Districts were likely assessed in this manner. During the regular agricultural district renewal process initiated in 2005, the OIN did not respond to Oneida County's request for an update on the status of these lands, and they were subsequently removed from the Agricultural District boundaries (see Figure A-27 in Appendix A).
- **Protection Program.** Included in the protection program are procedures that safeguard farmland owners against overly restrictive local laws, government funded acquisition or construction projects, and private nuisance suits involving agricultural practices. The NYSDAM requires State agencies, local governments and public benefit corporations to avoid or minimize adverse impacts to farm operations in pursuing projects within an agricultural district, which involve either the acquisition of farmland or the advance of public funds for certain construction activities. These entities which may undertake an action within an Agricultural District are required to submit detailed "Notice of Intents" (NOI) to the Department for review, evaluation and recommendation of mitigative measures. Such projects cannot proceed until the notice process is complete.

For private developer/landowner actions, Section 305-a of New York State's Agriculture and Markets Law provides for the preparation of an "Agricultural Data Statement" if the proposed action involves a special use permit, site plan application, use variance, or subdivision application on a property within an agricultural district containing a farm operation or on property with boundaries within 500-feet of a farm operation located in an agricultural district.

Both the NOI and Agricultural Data Statement processes recognize the importance of protecting and preserving the viability of farm and agricultural operations in New York State.

Prior to any transfer of lands into trust, potential financial and agricultural impacts (based on existing and future development) should be assessed relative to:

- value of land based on development potential
- impact on existing agricultural practices
- impact on adjacent agricultural practices
- potential lands in conservation easements
- identification if any of the OIN Group 3 parcels benefited from State assistance payments to municipalities for the purchase of development rights.

In addition, as a federal action, the placement of land into trust by the BIA would be required to comply with the federal Farmlands Protection Policy Act of 1984. The purpose of the Farmland Protection Policy Act is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that federal programs are administered in a manner that, to the extent practicable, will be compatible with State and local government, and private property programs and policies to protect farmland.

As part of the consideration of this application, the BIA must perform a substantive review of the impacts of this request on local farmland and related issues, such as the impacts of development of the Group 3 parcels on adjacent and area farmland. Such an evaluation was not completed for the OIN's Turning Stone Resort and Casino, which was constructed on agricultural lands.

OTHER CONSIDERATIONS

In additional correspondence dated October 26, 2005, the BIA indicated that “the Counties will have additional opportunities to comment on other aspects of the proposed acquisition during the NEPA [National Environmental Policy Act] process.” In correspondence dated November 22, 2005 from the Associate Deputy Secretary of the Interior to the Honorable John McHugh, “the Department and the OIN have agreed that the most comprehensive level of analysis, an Environmental Impact Statement (EIS), will be conducted for the proposed acquisition.” Based on recent BIA correspondence, it appears that efforts to initiate the EIS process have commenced. Notwithstanding these assertions, additional information beyond the jurisdictional and tax issues requested in the BIA's September 20th correspondence is provided herein under this category of “Other Considerations.” The State reserves the right to continue to expand on these issues, as well as to identify new issues, during the on-going NEPA review process.

Need. It is imperative that the OIN provides detailed analysis on why particular parcels of land need to be held in trust. Information should include financial, marketing and development plans that document the current standing of the OIN, and its future

objectives. While it is understood that the OIN wishes to preserve and protect its unique cultural heritage, it needs to justify why placement of these lands (including gaming operations) is necessary to accomplish that objective.

Removing over 17,000 acres of land from local tax rolls so that the OIN can produce \$100 million of annual revenue for a tribe with a membership of 1,000 hardly fulfills the intended function of 25 USC § 465. The OIN clearly may use the land it owns in an economically productive way without having it held in trust. Consequently, there is no reason why the OIN needs to, or should, enjoy the significant economic advantage over surrounding non-OIN businesses that comes along with having its land exempt from State and local taxes and regulatory requirements.

Future Development. The BIA cannot take at face value the assertion by the OIN that it is not proposing any change to the land use. It is inconceivable that there are not going to be any changes to any of the lands included in the application.³ Past development of the OIN parcels demonstrates that the OIN is likely to develop lands, change land uses, and continue to expand its current operations. The OIN application identifies the need to provide housing for its residents, and a speaker at the BIA-sponsored public hearing on January 10, 2006 identified a five year waiting list. Such a track record supports a conclusion that development of Group 3 parcels is a “reasonably foreseeable future action.”

Future development will have direct, indirect, short- and long-term, and cumulative impacts on these and adjacent properties. If these lands are placed in trust, the ability for current jurisdictions (local, State and federal) to evaluate potential impacts, review right-to-build applications, and provide for the safety and well-being for all residents in the community, may be significantly diminished, if not altogether eliminated.

Regardless of whether the OIN intends to be bound by its “no change in land use” assertion, the BIA should request an evaluation of existing uses, identification of unoccupied facilities, and a plan to minimize the “wasting” and “nuisance” health and safety impacts that abandoned facilities present to the community-at-large.

Additional Consultation. The DOI must make a final determination on the application based on the criteria set forth at 25 CFR §151.10(a) through (c) and (e) through (h), and any additional information or justification that he considers necessary to reach a decision. Part 516, Chapter 2 of the DOI's manual on “Initiating the NEPA Process” indicates that the BIA “shall initiate early consultation and coordination with other bureaus and any federal agency having jurisdiction by law or special expertise with respect to any environmental issues that should be addressed, and with appropriate federal, State, local and Indian tribal governments authorized to develop and enforce environmental standards

³ Based on information provided by the Madison County Attorney, it is understood that the OIN leadership and its legal counsel have for many years promoted economic development including the continued development of businesses on OIN lands, with the use of Indian lands as free trade zones, touting tax and regulatory benefits, as well as potential benefits of Indian sovereign immunity (see Ray Halbritter and Steven McSloy, *Empowerment or Dependence? The Practical Value and Meaning of Native American Sovereignty*, 26 N.Y.U.J. Int'l L & Pol. 531; see also comments of Eric Facer, Esq., at seminar “Doing Business with Indian Tribes”, Syracuse University College of Law, November 8, 2002). OIN Representative Ray Halbritter has repeatedly spoken of, and concentrated on, the development of economic power, and recently confirmed his intention of expanding OIN holdings beyond the 17,000 acres currently owned (see Utica Observer Dispatch dated February 16, 2006).

or to manage and protect natural resources.” Due to the broader and precedent-setting implications of this important decision, several other jurisdictions have been identified that the BIA should consult with prior to making a final determination. Jurisdictions of these agencies are identified in the text of this report.

- Other tribal governments that may also intend to seek, or have already sought, trust status in New York State (*i.e.*, the Oneida Tribe of Indians of Wisconsin, the Cayuga Indian Nation of New York, the Saint Regis Mohawk Tribal Council, the Stockbridge-Munsee Community, the Seneca-Cayuga Tribe of Oklahoma, Mohawk Council of Akwesasne, Mohawk Nation Council of Chiefs, etc.).
- Office of Indian Gaming Management pursuant to gaming and gaming-related acquisitions and the Indian Gaming Regulatory Act of 1988 Section 20 Determinations (25 USC §§ 2701-2721).
- National Indian Gaming Commission.
- United States Department of Agriculture pursuant to the Farmlands Protection Policy Act of 1984.
- Other federal agencies with jurisdiction over resources and activities including: National Labor Relations Board, USEPA, USFWS, and ACOE.

Environmental Protection. As discussed above, both the federal and State government share stewardship responsibilities in protecting by statute and regulations various resources (*e.g.*, land, air, water, flora/fauna, historic/cultural/archaeological/architectural resources, community services, and other critical resources). Under federal jurisdiction, wetlands and other waters of the United States are regulated under the Clean Water Act and Rivers & Harbors Act of 1899. State jurisdiction is promulgated under New York State's Environmental Conservation Law and Navigation Law, and various implementing regulations covering land, air and water related issues. These regulations were established to protect resources, including direct impacts on resources, as well as indirect, cumulative and off-site impacts (*e.g.*, viewshed impacts on a protected cultural/historic resource or migration of pollutants). Placement of land in trust undermines the requirement for the existing local, State and federal jurisdictions to be involved in the planning process, to ensure the protection of jurisdictional resources, and be involved in the evaluation and mitigation of potential impacts to resources on and proximal to lands identified in the OIN application. In addition, the BIA process does not identify a surrogate process by which these resources will continue under the same level of protection as provided under current statutes and regulations and by current jurisdictions.

Contiguity. In its *City of Sherrill* decision, the U.S. Supreme Court refused to disrupt the longstanding governance of the State and local governments. Similarly, the patchwork pattern of the OIN request makes effective use of the State's jurisdictional authority with respect to the intervening properties and those properties adjacent and in proximity to the Group 3 parcels difficult, if not impossible. Information in Appendix K documents the patchwork nature of the OIN parcels – the checkerboard of alternating OIN and non-OIN lands. To further analyze the substantial lack of contiguity between these parcels, OIN-owned parcels were grouped into distinct patches. As illustrated on the figures included

in Appendix K, patches were defined for each group, as well as for the cumulative total of OIN-owned parcels. Each patch represents OIN owned parcels contiguous to each other. Contiguity was defined as adjacent OIN-owned parcels or clusters of parcels that were not separated either by non-OIN parcels or public roadways (*i.e.*, OIN parcels that share property lines). Information derived from the analysis including the number of patches, average acreage per patch per group, average number of parcels per patch per group, and maximum distance between group parcels is summarized in Table 3.

Table 3 *Contiguity analysis summary.*

Group	Number of Patches ¹	Average Acreage Per Patch	Average Number of Parcels Per Patch	Maximum Distance Between Parcels
Group 1 (99 parcels)	38 ²	89.4	4	5.5 miles
Group 2 (241 parcels)	118 ²	54.7	3	22 miles
Group 3 (104 parcels)	65 ²	111.3	3	18.5 miles
Groups 1, 2 & 3 (444 parcels)	198	86.3	3	22 miles
Notes				
1. A patch is defined as one or more contiguous parcels of OIN-owned land. OIN-owned land separated by non-OIN land or public roadways is not considered contiguous and is part of distinct patches.				
2. The sum of the number of patches for each group is greater than the number of patches for cumulative Groups 1, 2 & 3 because the cumulative assessment accounts for parcels considered contiguous that might be in different groups.				

The information provided in Table 3 and Appendix K illustrates the non-contiguous nature of the parcels (by Group and cumulatively). The high number of OIN parcels (444) and the low average number of contiguous parcels that comprises each patch (3) is indicative of the high number of patches scattered throughout Oneida and Madison Counties. This dispersion is further demonstrated by the longest distances between these distinct patches: 5.5 miles for Group 1, 22 miles for Group 2, and 18.5 miles for Group 3.

As a practical matter, this lack of contiguity of the Group 3 parcels (*i.e.*, “checkerboard sovereignty”) (as well as Groups 1 and 2) may substantially impair the State’s jurisdiction in a significantly larger area than just the OIN parcels. In addition, the impacts of any loss of State and local governmental jurisdiction with respect to the OIN parcels would significantly and negatively impact other properties in the region. The discontinuity of the relationships of these properties, combined with the jurisdictional losses, will be particularly detrimental to the environment; components of the environment are interrelated, making it impossible to disassociate the ecosystem simply by introducing artificial barriers by inserting property lines on a map.

The impacts resulting from the unusual lack of contiguity of the parcels in the OIN application include, but will not be limited to, the following issues:

- Emergency services. Emergency services are provided by several fire districts including, but not limited to, Verona, Cazenovia, Smithfield,

Sullivan, Lenox, Lincoln, Stockbridge, Oneida, and Kenwood Sherrill. The Verona Fire District provides these services at a significant negative financial impact to the fire district (see Appendix F). The OIN does not consider itself to be responsible for the cost of these vital, lifesaving services that are provided to it. Regardless, the fire districts have the obligation of providing services to these properties. The fact that the Group 3 parcels are not contiguous places intervening and adjacent properties at risk in the event of a fire or other catastrophic event; the fire district responds to fires and other emergency calls to protect adjacent property owners and the general public. This is also true for other first responders such as local and State police, as it is uncertain what public safety jurisdiction (OIN or non-OIN) will respond to emergency service calls on the widely spread-out and non-contiguous Group 3 parcels.

The underlying philosophy of the OIN with respect to this vital service causes serious concern for the public safety on and off the Group 3 parcels should the loss or substantial impairment of local jurisdiction be imposed through the acceptance of this application. With present visitors to the Turning Stone facilities estimated at 4 million people per year, and continued development occurring on both the Group 1 and 2 (and likely Group 3) parcels, the acceptance of this application would result in a significant risk to the public safety through the loss of local jurisdiction.

- Transportation corridors. The maintenance of roads under State, county, or local jurisdiction which extend past and through Group 3 parcels should the application for the placement of the Group 3 parcels in trust be accepted is questionable. Both residents of the Group 3 parcels, as well as non-residents make use of these roads. The taxes paid for road maintenance ensure that the area roads are repaired as needed, and plowed in the winter, and that traffic control measures are provided and maintained to ensure safe and efficient flow of vehicles.
- Wetlands. There are wetlands that are continuous and interconnected onto and off the Group 3 parcels. Effective wetland protection cannot end at a property boundary. Any loss of jurisdiction resulting from an acceptance of this application would place at risk the integrity of wetland ecosystems in the region, which are subject to protection by the NYSDEC and also the federal jurisdiction of the ACOE.
- Rare, Threatened and Endangered Species. Additionally, with any loss of jurisdictional authority of the NYSDEC, the development of the Group 3 parcels will impact RTE habitat and species on adjacent properties, including direct impacts on species and habitats (*i.e.*, loss of and segmentation of habitat). The patchwork pattern of the OIN request would make effective management of the sensitive habitats of these species difficult, if not impossible, even with respect to the properties adjacent to the Group 3 parcels. As a practical matter, this lack of contiguity would effectively impair the State's jurisdiction in these matters in a significantly larger area than just the Group 3 parcels.

- Clean Air. The patchwork pattern of the OIN request would make effective management of the clean air by the State particularly difficult, if not impossible. As a practical matter, this lack of contiguity would effectively impair the State's jurisdiction for the protection of clean air in a significantly larger area than just the Group 3 parcels since new air emission sources and the operations of existing sources might be conducted without the oversight normally performed pursuant to State regulations.

Environmental Justice. In accordance with federal *Executive Order (EO) 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. This order requires federal agencies to identify and address, as appropriate, any disproportionately adverse human health or environmental impact that federal programs, policies, and activities may have on minority populations and low-income populations. Pursuant to this EO, the BIA should evaluate potential environmental justice impacts that may arise from the transfer of land into trust, including the economic impact of OIN business operations (existing and future) on non-OIN businesses, and the impact on non-OIN residents with fixed or low incomes (*i.e.*, senior citizens). Potential Environmental Justice areas in the vicinity of the Group 3 parcels are identified on Figure A-28 in Appendix A.

Economic Development (“Level Playing Field”). Placing a significant amount of land in trust would establish or continue an unfair competitive development advantage to OIN-owned lands over non-OIN lands, the latter of which is required to comply with local right-to-build requirements (*i.e.*, site plan review, etc.), obtain environmental permits, and pay taxes. As the OIN continues to develop parcels and diversify its economic base, this “unlevel playing field” will continue to push non-OIN businesses out, as well as to decrease the marketability and developability of non-OIN owned lands (including areas where the State has invested capital such as in Empire Zones) thereby creating a monopolistic or “big operator” business environment controlled by the OIN. The beginnings of such an environment are evident in the predominance of OIN-owned SavOn gas stations in the area versus non-OIN owned gas stations and mini-marts, as well as marine gasoline sales along the southeastern shore of Oneida Lake (see Figure A-17 in Appendix A).

Noteworthy as well is the potential disproportional use of finite utility resources by OIN operations that also impact local economic development efforts to attract a diversity of sustainable non-OIN owned and operated businesses. The OIN continues to negotiate with local water purveyors to provide a reliable supply of water for the OIN's existing and future needs, including an interbasin transfer from the City of Utica's supply. Current capacities rely on excess capacity that became available when existing non-OIN business operations in the area ceased operations. However, should the recent economic downturn be reversed, the ability to backfill those vacant facilities by new businesses will be adversely impacted by the lack of potable water.

Case Study (SavOn Gas Stations) – As illustrated on Figure A-17 of Appendix A, the OIN operates approximately twelve SavOn gas stations and three marine fuel stations within Madison and Oneida Counties – a significant advantage over its competition, which has experienced several closings in recent years. New York State currently collects nearly 24 cents per gallon in combined excise and petroleum business taxes on most sales of motor gasoline. In addition, gasoline

sales are also subject to State and local sales taxes. With gasoline prices currently above \$2.00 per gallon, this means that combined New York State and local taxes on a gallon of gasoline exceed 40 cents per gallon. The OIN currently does not collect taxes from sales of gasoline to non-members, which has resulted in prices for gasoline approximately 5 to 10 cents lower than those of nearby stations. The OIN's strategy with respect to gasoline appears to be to retain most of its cost advantages over its competitors in the form of higher per gallon profits.

Case Study (City of Oneida Water System) – In 1926, a cooperative effort among the Cities of Oneida and Sherrill and Oneida Ltd. (located in the City of Sherrill and the Kenwood section of the City of Oneida) was undertaken to find a reliable source of water for Oneida and for Sherrill-Kenwood and its enterprises. \$300,000 (1926 dollars) was provided by Oneida Ltd. to develop the source in Taberg and underwrite the transmission infrastructure costs. For the ensuing 80 years, there were a series of agreements between the City of Oneida and the Sherrill-Kenwood Water District (SKWD), which were renewed periodically without serious controversy. This City of Oneida water system, the source of which is Florence Creek, currently serves over 20,000 people in two counties, three cities, five towns and four villages.

Due to the finite water capacity of and expanding demands on the system, the City of Oneida has sought to diminish the SKWD's and City of Sherrill's water allocation by 60% (currently permitted by NYSDEC at 2.2 million gallons per day [mgd]) to 0.9 mgd. The expanding demands are, in large part, due to the unplanned and unregulated OIN gaming and golf course operations in the Town of Verona. The OIN is currently receiving a water allocation of 0.6 mgd versus a permit allocation of 0.15 mgd.

The loss of allocation is crippling to the Sherrill-Kenwood community, which has recently lost the greater region's most important employer (Oneida Ltd.). The closure of Oneida Ltd. operations has left extensive first class facilities located in Empire Zones, with available low cost power ready to be reoccupied, albeit for the potential lack of a sufficient water supply. The former Oneida Ltd. facility is being actively remarketed by local and State economic development agencies, and its "backfilling" by other industry(ies) would greatly benefit Madison and Oneida Counties.

New York State has a longstanding and comprehensive program for regulating the water supply, which integrates with other State and local institutions (municipal governments, local and regional planning boards) to help assure rational growth and use of resources. To grant the trust application and introduce an unregulated sovereign into the midst of these longstanding, developed communities is inappropriate, and is illustrative of "Jurisdictional problems and potential conflicts of land use that may arise..." (25 CFR §151.10(f)).

Additional Issues. The Center for Governmental Research (CGR) was retained by the affected counties to assess the local impact of the OIN application. A copy of the CGR report is included with the counties' comments to the BIA. In its report, CGR highlights

specific impacts associated with local governments' ability to provide services. The following topics are addressed:

- the right of citizens to govern through elected representation is seriously impaired by “Checkerboard Sovereignty”;
- citizens lose power to regulate conflicts among individual uses of property;
- public health standards become unenforceable;
- communities lose power to protect consumers and employees;
- public safety is endangered by loss of enforcement power;
- communities lose capacity to protect non-OIN properties from environmental contamination;
- scattered OIN ownership obstructs management of public infrastructure and utilities;
- community planning rendered ineffective without clear hierarchy of authority and sharing of information;
- zoning and land use regulations rendered ineffective;
- justifiable expectations of non-OIN property owners diminished;
- impacts on property values;
- private covenants and agreements rendered unenforceable by transfer of properties into trust;
- unequal treatment under the law;
- non-payment of taxes cripples fiscal capacity of local government;
- land placed in trust no longer available to the marketplace for commercial expansion and development;
- Public works maintenance and repair hindered by lack of tax revenue;
- lost revenue has forced counties to reduce on-going spending on public infrastructure , possibly increasing long-run maintenance burden;
- financial burden of public safety services [from existing OIN operations] has increased;
- expansion of gaming increases social service burden on local government;
- higher property taxes create burden on local income property owners;
- bond rating falls in Madison County due to loss of taxable value, increasing cost of borrowing;
- the failure of the OIN to pay taxes has significantly affected the ability of school districts to educate students;
- public safety infrastructure inadequately funded; and
- economic and fiscal impacts of accepting OIN-owned lands into trust: inappropriate economic multipliers, construction jobs, spillover growth overstated, loss of cigarette sales and job growth, fiscal impact from property taxes, and fiscal impact from sales and excise taxes (cigarettes and gasoline).

CUMULATIVE IMPACTS

Summary. The BIA has an obligation pursuant to NEPA to ensure that cumulative effects from the proposed trust applications are evaluated. The Council on Environmental Quality's (CEQ) regulations (40 CFR Sections 1500 to 1508) implementing the procedural provisions of the NEPA define cumulative effects as:

“the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.”

Consistent with this definition, any review under NEPA (including alternatives) must account for the incremental effects of:

1. Each of the approximately 450 parcels *individually* and then *collectively* and *cumulatively*, taking into account, as stated by the U.S. Supreme Court in its decision in *Sherrill*, the justifiable expectations of the people living in the area “grounded in two centuries of New York’s exercise of regulatory jurisdiction” (*Sherrill v. Oneida Indian Nation of New York*).
2. All the parcels in a Group, rather than taken individually. Pursuant to NEPA, an analysis and assessment of the potential cumulative impacts of all of the parcels in Group 1 is required, as noted in (2), preceding. While the Group 1 parcels are generally developed, the individual properties have the potential to be developed further; it is not reasonable nor prudent to disregard this prospect or discount the magnitude of potential impacts. Additionally, the impacts of the operations of existing development, as well as potential further future development, collectively raise substantive negative issues for the local communities, and for the State.
3. The Groups taken collectively. The OIN has applied collectively for Groups 1, 2 and 3 to be placed into trust. The segmentation of these Groups and consideration of them in that manner represents an artificial construct that begs the regional proximity of the properties and the Groups to each other, the potential uses to which the properties will be placed, the collective impacts that their removal from State and local jurisdiction will have on the surrounding communities, and the impacts that this “patchwork or checkerboard sovereignty” will have on the fabric of the region.
4. Future land-in-trust applications (by the OIN or other Indian tribes). Other tribes or purported tribes have filed claims or expressed potential interest in similar land-into-trust applications in the region and the State. The BIA has an obligation to assess the impact(s) of the application for these three Groups of properties in the context of other claims and applications. Given that there has not been a land-into-trust application of a similar magnitude or nature elsewhere in the nation, there is an obligation for the BIA to perform a rigorous assessment of the cumulative impacts of the OIN applications with other Indian claims and potential trust applications.

To conduct an adequate assessment of cumulative impacts as described above, the BIA has an obligation to perform the following:

1. A regional assessment to examine the interrelationships of all types of development expected in the geographical area encompassed by the Group 1, 2 and 3 properties. Such development would include, but not be limited to, those similar to potential land development and present land uses associated

with the OIN properties, such as golf courses, retail stores, gas stations and associated stores, restaurants, and entertainment venues. Environmental, jurisdictional, land use, and economic impacts as described in this document must be addressed as part of this assessment.

2. A programmatic assessment to study the impacts of related or similar projects expected to occur as part of the ongoing and future activities of the OIN. In addition to the cumulative environmental and jurisdictional impacts of such projects and ongoing operations, this assessment must include non-competitive economic and market control in certain businesses where the OIN operations are not subject to land use, environmental, economic, or jurisdictional factors that non-OIN businesses must face.

A lesser level of assessment would present an incomplete evaluation of the potential impacts, as well as an impermissible segmentation of the project.

Cumulative impacts on regulatory jurisdiction. As discussed throughout this document, the placement of OIN lands into trust may significantly impair the ability of State and local governments to regulate activities on specific trust parcels. A cumulative summary of the parcels within each township is provided in Table 4.

Table 4 Summary of Group 1, 2 and 3 parcels in Madison and Oneida Counties.

City (C), Town (T), Village (V) or Hamlet (H)	Number of OIN Parcels	Total OIN Acreage	Municipal Acreage
Madison County			
Oneida (C)	45	1,039±	14,119±
Cazenovia (T)	2	9±	33,079±
Fenner (T)	1	31±	19,919±
Lenox (T)	34	824±	23,280±
Canastota (V)/Lenox (T)	13	226±	2,124±
Lincoln (T)	8	363±	15,988±
Smithfield (T)	4	297±	15,564±
Stockbridge (T)	48	3,581±	20,248±
Sullivan (T)	4	182±	47,047±
Oneida County			
Augusta (T)	6	262±	17,728±
Sherrill (C)/Vernon (T)	11	4±	1,295±
Vernon (T)	37	1,919±	24,381±
Verona (T)	224	8,565±	44,572±
Vienna (T)/Sylvan Beach (V)	7	7±	487±
TOTALS	444	17,309	279,831

Based on the information summarized in Table 4, the OIN-owned lands represent approximately 19% of the total acreage in the Town of Vernon, 18% in the Town of Stockbridge, and 11% in the Village of Canastota.

A tabular summary of current land uses and zoning designations for Group 1, 2 and 3 parcels is included as Appendix H. An OIN development project on one or more contiguous parcels has the potential to impact environmental and socio-economic resources that extend beyond those parcel boundaries. A development project combined

with other OIN or non-OIN projects has a greater cumulative potential to impact resources and regulatory jurisdictions than the singular project alone.

Simply stated, the non-contiguous characteristics of the OIN-owned lands would in and of itself create a significant impact that otherwise might be overlooked if the focus was solely on specific parcels. Impacts of placing these properties into trust occur across a variety of natural environments, each under the jurisdiction of separate governmental entities. It is not uncommon that several governmental entities control an environmental media, or an economic or other public function (*e.g.*, taxation, public safety). The cumulative impacts associated with the “checkerboard sovereignty” that would ensue if all the non-contiguous OIN lands were placed into trust would represent a worst case scenario, leaving an absence of social and environmental responsibility or accountability. Such a scenario would create multiple resource and jurisdictional impact zones (“black holes”) with long-term effects; limit the effectiveness of government conduct, resource planning and environmental protection; and restrict the ability of the State and the localities to effectively protect the safety and social welfare of the public, and the quality of the environment. In its decision, the BIA must account for the spatial and life cycle impacts associated with the loss of regulatory jurisdiction including:

- past, present and future actions (parcel and cumulative impacts)
- focusing on each affected resource, ecosystem and human community
- addressing additive, countervailing and synergistic effects
- looking beyond the life of the action (*i.e.*, fully understanding the implications of placing the land into trust)
- addressing the sustainability of resources, ecosystems and human communities.

Cumulative impacts on real property taxes and special assessments. A tabular summary of the affect that placement of land in trust would have on reducing annual estimated municipal property tax revenue (excluding school taxes) is presented in Table 5. The analysis is based on real property tax data presented in Appendix I.

Table 5 Oneida Indian Nation land trust impact on municipal real property taxes (excluding school taxes).

City (C), Town (T), Village (V) or Hamlet (H)	Local and County Real Property Taxes (OIN Parcels) ¹	Local and County Real Property Taxes (Total)
Madison County		
Cazenovia (T) (2 parcels)	\$0 ⁵	\$4,397,356 ²
Canastota (V) (13 parcels)	\$71,221	\$2,595,291 ²
Lenox (T) (34 parcels)	\$64,283	\$2,683,303 ²
Lincoln (T) (8 parcels)	\$10,027	\$1,152,624 ²
Stockbridge (T) (48 parcels)	\$60,584	\$857,005 ²
Sullivan (T) (4 parcels)	\$834	\$7,028,958 ²
Oneida (C) (45 parcels)	\$328,151	\$6,124,919 ²
Fenner (T) (1 parcel)	\$89	\$935,823 ²
Smithfield (T) (4 parcels)	\$2,120	\$695,422 ²
Oneida County		
Vernon (T) (32 parcels), Vernon (H) (5 parcels)	\$63,093	\$2,618,444 ³
Verona (T) (224 parcels) (includes Durhamville & Verona Beach)	\$3,791,073	\$3,882,644 ^{3,4}
Augusta (T) (6 parcels)	\$7,027	\$404,859 ³
Sherrill (C) (11 parcels)	\$11,815	\$778,033 ³
Sylvan Beach (V) (7 parcels)	\$12,924	\$475,500 ³
Notes		
<ol style="list-style-type: none"> Sum of annual Town/City/Village and County taxes for OIN-owned properties presented in Appendix I. Sum of 2004 total municipal real property tax revenue provided by NYS Comptroller's Office, Division of Local Services & Economic Development Business Systems, and Madison County apportionment of 2004 taxes provided by Madison County Attorney's Office. Sum of 2004 total municipal real property tax revenue provided by NYS Comptroller's Office, Division of Local Services & Economic Development Business Systems; and 2004 Oneida County budget and tax distribution County levy provided by Oneida County Executive's Office. 2004 Town of Verona data not filed with NYS Comptroller's Office. \$2,231,346 represents Town of Verona accepted 2006 budget as provided by Oneida County Finance Department. Cemetery exemption. 		

The data presented in Table 5 indicates that the potential loss of \$3.8 million assessed OIN properties in the Town of Verona represents 98% of the total County and Town real property taxes in that town (excluding school taxes – see Table 7 below).

To put the loss of this real property tax revenue into a local perspective, the following summary compares the potential lost municipal revenue against existing (2004) municipal budget expenditures filed with the NYS Comptroller's Office (municipal tax totals for OIN-owned properties are summarized in Appendix I):

- Town of Verona – the annual loss of \$445,665 in revenue represents approximately 20% of the Town's overall 2006 budget.
- City of Oneida – the annual loss of \$99,682 in revenue is equivalent to 90% of the City's annual spending for police equipment and contractual services.
- Town of Stockbridge – the annual loss of \$22,917 in revenue is equivalent to 99.6% of the Town's annual contracted fire services spending or 124% of the Town's annual debt service.

- Town of Vernon – the annual loss of \$7,089 in revenue is equivalent to 263% of the Town’s annual total public safety spending or 23% of the Town’s annual contracted utility services spending.
- Town of Lenox – the annual loss of \$6,968 in revenue is equivalent to 61% of the Town’s annual recreational equipment spending or 56% of the Town’s annual economic assistance budget.
- Village of Canastota – the annual loss of \$38,957 in revenue is equivalent to 97% of the Village’s total utilities spending including personal services, contractual services and capital projects.
- Town of Lincoln – the annual loss of \$1,942 in revenue is more than the Town’s total spending for police and other public safety services.

Non-payment of property tax levies increases the need to borrow. As documented in CGR’s report submitted to the BIA, one result of the OIN’s unpaid tax levies is that Madison County has seen its investment grade credit rating drop from an A to an A3. The decline has increased borrowing costs on bonds issued in the last five years.

In addition, various OIN-owned parcels are located within special assessment districts, which allow the municipality to assess and collect additional taxes to operate and maintain specific public facilities and infrastructure. The following table and text illustrate the cumulative financial impact associated with the loss of special assessment district revenues, as well as the fact that the OIN parcels are intricately woven into the communities in terms of infrastructure and character.

Table 6 OIN parcels located in special assessment districts.¹

Impacted Municipality	Fire	Water ²	Sewer ²	Hydrant	Lighting	Library	Parcels In No District	% of OIN Parcels In At Least 1 District
Group 1 (99 parcels)								
Oneida County								
Vernon (T) (19 parcels)							19	0%
Verona (T) (80 parcels)	80	36			11		0	100%
% of total parcels in special districts	80.8%	36.4%			11.1%		19.2%	
Impacted Municipality	Fire	Water	Sewer	Hydrant	Lighting	Library	Parcels In No District	
Group 2 (241 parcels)								
Madison County								
Cazenovia (T) (2 parcels)	2		2				0	100%
Lenox (T), Canastota (V) (13 parcels)		4					9 ²	31%
Lenox (T) (25 parcels)	25	13	7			1	0	100%
Lincoln (T) (3 parcels)	3						0	100%
Stockbridge (T) (1 parcel)	1						0	100%
Sullivan (T) (2 parcels)	2						0	100%
Oneida (C) (40 parcels)	22			31		31	0	100%
Oneida County								
Augusta (T) (4 parcels)					4		0	100%
Vernon (T), Sherrill (C) (9 parcels)							9 ²	0%
Vernon (T), Vernon (H) (5 parcels)							5	0%
Vernon (T) (8 parcels)						2	6	25%
Verona (T), Verona Beach (V) (9 parcels)	9		9		9	9	0	100%
Verona (T), Durhamville (V) (1 parcel)	1						0	100%
Verona (T) (112 parcels)	111	13	3		11	22	1	99%

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Impacted Municipality	Fire	Water ²	Sewer ²	Hydrant	Lighting	Library	Parcels In No District	% of OIN Parcels In At Least 1 District
Vienna (T), Sylvan Beach (V) (7 parcels)						5	2 ²	29%
% of total parcels in special districts	73.0%	12.4%	8.7%	12.9%	10.0%	29.0%	13.3%	
Impacted Municipality	Fire	Water	Sewer	Hydrant	Lighting	Library	Parcels In No District	
Group 3 (104 parcels)								
Madison County								
Oneida (C) (5 parcels)	2			1		5	0	100%
Fenner (T) (1 parcel)	1						0	100%
Lenox (T) (9 parcels)	9	7	1				0	100%
Lincoln (T) (5 parcels)	5						0	100%
Smithfield (T) (4 parcels)	4						0	100%
Stockbridge (T) (47 parcels)	47	2					0	100%
Sullivan (T) (2 parcels)	2						0	100%
Oneida County								
Augusta (T) (2 parcels)							2	0%
Vernon (T), Sherrill (C) (2 parcels)							2 ²	0%
Vernon (T) (5 parcels)							5	0%
Verona (T), Durhamville (V) (2 parcels)	2					2	0	100%
Verona (T) (20 parcels)	17					2	3	85%
% of total parcels in special districts	36.9%	3.7%	0.4%	1%		3.7%	11.5%	
Cumulative Groups 1, 2 & 3 (444 parcels)								
Madison County								
Cazenovia (T) (2 parcels)	2		2				0	100%
Lenox (T), Canastota (V) (13 parcels)		4					9 ²	31%
Lenox (T) (34 parcels)	34	20	8			1	0	100%
Lincoln (T) (8 parcels)	8						0	100%
Stockbridge (T) (48 parcels)	48	2					0	100%
Sullivan (T) (4 parcels)	4						0	100%
Oneida (C) (45 parcels)	24			32		36	0	100%
Fenner (T) (1 parcel)	1						0	100%
Smithfield (T) (4 parcels)	4						0	100%
Oneida County								
Vernon (T) (32 parcels)						2	30	6%
Verona (T) (212 parcels)	208	49	3		22	24	4	98%
Augusta (T) (6 parcels)					4		2	67%
Vernon (T), Sherrill (C) (11 parcels)							11 ²	0%
Vernon (T), Vernon (H) (5 parcels)							5	0%
Verona (T), Verona Beach (V) (9 parcels)	9		9		9	9	0	100%
Verona (T), Durhamville (V) (3 parcels)	3					2	0	100%
Vienna (T), Sylvan Beach (V) (7 parcels)						5	2 ²	71%
% of total parcels in special districts	77.7%	16.9%	5.0%	7.2%	7.9%	17.8%	14.2%	
Notes								
1. Parcels can be serviced by multiple special assessment districts.								
2. Water and sewer districts are typically not established in city and villages where metered services are provided for all property owners within the municipal limits. Consequently, the number of parcels located within cities or villages and not located within a special assessment district may be artificially high, and not representative of the lack of such services.								

The data in Table 6 indicates that a large portion of the OIN properties (Groups 1, 2 and 3) are located in fire districts. In addition, a portion of the Group 1 properties are located in water and lighting districts; Group 2 parcels in water, sewer, lighting, and library districts; and Group 3 in water, sewer, hydrant, and library districts. The data indicates that Group 1 and 2 parcels are located in more developed areas than the Group 3 parcels, and have access to greater public infrastructure and services. Placement of these parcels into trust may have a greater cumulative impact on the districts' ability to provide

services and maintain facilities and infrastructure. As illustrated in Appendix C, Group 3 parcels are predominantly characterized by agricultural and rural residential land uses. Future development on such rural parcels lacking public infrastructure will require on-site alternatives (*i.e.*, wells, septic systems), which are reviewed and approved based on compliance with public health and environmental standards. Furthermore, residents, employers and employees on these parcels will continue to have access to the public services and facilities within the area (*i.e.*, libraries, lighting, schools, hospitals, roads), but for which they may not pay taxes to maintain if such lands are placed into trust. For communities that do not have specific special assessment districts for these resources, financial support is provided through the payment of property taxes.

Based on information provided by the affected towns and counties, the cumulative removal of Groups 1, 2 and 3 parcels from the tax rolls would result in an estimated annual (2005 dollars) reduction of \$16.2 million in tax dollars and special assessments available to local governments. Appendix I consists of a tabular summary of Groups 1, 2 and 3 parcel-specific taxes and special assessments. This data represents a snap-shot in time. Placement of OIN-lands into trust would have the cumulative long-term impact associated with non-payment of taxes in perpetuity and the associated impacts discussed herein.

In addition, based on information provided by Oneida County, there were unpaid real property taxes, beginning with the year 1994 and through and inclusive of the 2006 real property taxes, levied in various jurisdictions against properties owned by the OIN in an amount just over \$26.2 million (including school, town [inclusive of special assessments], and county taxes).

Madison County reports a cumulative delinquent tax amount of \$7.5 million inclusive of school, city/town/village, county, special assessments, penalties and interest due through December 2005. The Madison county figure does not include 2005/2006 school taxes, which have reportedly been paid by the OIN “under protest”.

A snap-shot of impacts to individual municipalities and districts is provided below.

- Town of Verona (including Durhamville and Verona Beach). Based on the information in Table 6, 224 parcels located in the Town of Verona (including Durhamville and Verona Beach) are included in the OIN's application. Of these 224 parcels, 220 parcels (98.2%) are located within fire districts, 49 parcels (22.3%) in water districts, 12 parcels (5.4%) in sewer districts, 31 parcels (13.8%) in lighting districts, and 35 parcels (15.6%) in library districts. Based on recent tax data (see Appendix I), placement of the Town of Verona parcels (including Durhamville and Verona Beach) into trust would result in the cumulative loss of approximately \$643,846 in annual special assessment tax revenue to the Town. Based on information filed with the New York State Comptroller's Office, the loss of revenue represents an estimated 24% reduction in budgeted municipal special assessment tax revenue.
- City of Oneida. Based on information in Table 6, 45 parcels located in the City of Oneida are included in the OIN's application. Of these 45 parcels, 24 parcels (53.3%) are located within fire districts, 32 parcels (71.1%) in

hydrant districts, and 36 parcels (80%) in library districts. Based on recent tax data (see Appendix I), placement of the City of Oneida parcels into trust would result in the cumulative loss of approximately \$51,053 in annual special assessment tax revenue to the City.

- Town of Lenox. Based on information in Table 6, 34 parcels located in the Town of Lenox (not including the Village of Canastota) are included in the OIN’s application. Of these 34 parcels, 34 parcels (100%) are located within fire districts, 20 parcels (58.8%) in water districts, 8 parcels (23.5%) in sewer districts, and 1 parcel (2.9%) in library districts. Based on recent tax data (see Appendix I), placement of the Town of Lenox parcels into trust would result in the cumulative loss of approximately \$11,761 in annual special assessment tax revenue to the Town.
- Town of Stockbridge. Based on information in Table 6, 48 parcels located in the Town of Stockbridge are included in the OIN’s application. Of these 48 parcels, 48 parcels (100%) are located within fire districts and 2 parcels (4.2%) in water districts. Based on recent tax data (see Appendix I), placement of the Town of Stockbridge parcels into trust would result in the cumulative loss of approximately \$2,707 in annual special assessment tax revenue to the Town.
- School Districts. Next to State and federal aid, real property taxes represent the second largest contribution to school district revenue. Simply stated, the difference between the annual district approved budget and State and federal aid must be made up predominantly through local property tax levies. When property owners such as the OIN do not pay their property taxes, the tax burden necessary to meet the required budgeted revenue is distributed over a smaller tax base resulting in higher property tax bills. Table 7 summarizes the potential impact of the trust application on school districts. The information is presented on a parcel basis in Appendix I.

Table 7 Oneida Indian Nation land trust impact on school districts.

School District	School Taxes (OIN Parcels) ¹
City of Oneida School District	\$504,000
City of Sherrill School District (VVS)	\$10,219,755
Canastota Central School District	\$146,220
Stockbridge Valley Central School District	\$140,275
Madison Central School District	\$11,064
Morrisville-Eaton Central School District	\$2,016
Notes	
1. Compiled from school tax data presented in Appendix I.	

Based on information provided in Appendix I, 231 OIN parcels included in the application are located within the City of Sherrill School District (Vernon-Verona-Sherrill or VVS) representing the largest single impact by the OIN application on a school district. Based on information provided by VVS, the total assessed value of property located within the school district is \$839,643,240. As of September 1, 2005, the assessed value of OIN-owned property within the district was \$404,177,300 or approximately 48% of the

total assessed property value in the VVS school district. On an annual basis, these parcels represent approximately \$10.2 million (see Table 7 and Appendix I) in school district revenue or 36.7% of the district's overall 2006 budget of \$27.8 million.

In addition to being significant, the financial impact to the VVS school district associated with non-payment of OIN real property taxes is also not static. As the OIN purchases additional lands within each district, the potential that additional property tax revenue associated with that land will go unpaid increases, thereby further diminishing the districts' future revenue base. Placement of the OIN land in trust will certainly formalize this presumption and further hinder each district's ability to meet its budget objectives and education mission. In addition, the "unlevel playing field" (see page 50) created by the OIN's non-payment of taxes and non-adherence to State and local regulations creates an economic disadvantage to non-OIN businesses within the districts. These non-OIN businesses, who are not eligible for the State's residential-based school tax relief (STAR) program, must pay 100% of their school property taxes, which puts them at a severe competitive disadvantage to the non-paying OIN businesses. The result is non-OIN business closures within, and relocations outside of, the district further eroding the school district tax base. This competitive disadvantage to non-OIN businesses has the potential to result in lower property values, which in turn could accelerate further OIN purchases and additional erosion of the school tax base, thereby increasing the tax levy to remaining properties and ultimately making the school district no longer attractive to potential residents when compared to other non-OIN affected districts, or potentially non-viable as a school district.

Cumulative impacts on the environment. A review of environmental resource information for the Group 3 properties has been presented herein. In addition, an analysis of the GIS data presented on Figures included in Appendices A and G was conducted to assess the cumulative impact on environmental resources associated with placing each group separately and collectively into trust. Notwithstanding the impacts from previous OIN development activities, the results of the analysis, presented in tabular format in Appendix J, confirm that the placement of lands into trust has the potential to impact a significant additional amount of State jurisdictional resources. Highlights of the analysis are presented below.

Group 1 (3,428± acres)

- 711± acres (20.7%) within NYS freshwater wetlands
- 803± acres (23.4%) within NYS freshwater wetland 100-foot buffers
- 1,161± acres (33.9%) of potential federally regulated wetlands⁴
- 1,229± acres (35.9%) within archaeologically sensitive areas
- 1,462± acres (42.6%) of prime farmland or farmland of Statewide importance
- 63,756± linear feet (lf) of streams

⁴ Based on presence of hydric soils and soils with potential hydric inclusions.

Group 2 (6,474± acres)

- 885± acres (13.7%) within NYS freshwater wetlands
- 1,041± acres (16.1%) within NYS freshwater wetland 100-foot buffers
- 512± acres (7.9%) within potential federally regulated wetlands
- 528± acres (8.2%) within 100-year floodplains
- 3,184± acres (49.2%) within archaeologically sensitive areas
- 464± acres (7.2%) within agricultural district boundaries (pre-2005)
- 2,695± acres (41.6%) of prime farmland or farmland of Statewide importance
- 83,616 lf of streams (including 3,475 lf of trout (C(t)) streams)

Group 3 (7,407± acres)

- 547± acres (7.4%) within NYS freshwater wetlands
- 606± acres (8.2%) within NYS freshwater wetland 100-foot buffers
- 2,695± acres (36.4%) within potential federally regulated wetlands
- 595± acres (8%) within 100-year floodplains
- 3,937± acres (53.2%) within archaeologically sensitive areas
- 3,872± acres (52.3%) within agricultural district boundaries (pre-2005)
- 4,219± acres (57.0%) of prime farmland or farmland of Statewide importance
- 113,296 lf of streams (including 16,431 lf of trout streams)

Cumulative Groups 1, 2 & 3 (17,309± acres)

- 2,143± acres (12.4%) within NYS freshwater wetlands
- 2,440± acres (14.1%) within NYS freshwater wetland 100-foot buffers
- 4,368± acres (25.2%) within potential federally regulated wetlands
- 1,123± acres (6.5%) within 100-year floodplains
- 8,350± acres (48.2%) within archaeologically sensitive areas
- 4,336± acres (25.1%) within agricultural district boundaries (pre-2005)
- 8,376± acres (48.4%) of prime farmland or farmland of Statewide importance
- 260,668 lf of streams (including 19,906 lf of trout streams)

This information provides a clear perspective on the potential magnitude of the cumulative environmental impacts of the land-into-trust application. Ongoing operations and future development conducted without oversight and control continue to place at risk those environmental resources on site and those that are integrated with off site properties. Wetlands are hydrologically and biologically connected and do not recognize property boundaries; other habitats similarly are not constrained by local jurisdictional definitions. Stream beds and flows that are modified impact the riparian lands formerly nourished, and modified drainage channels result in erosion, siltation, loss of topsoil, alterations in groundwater recharge patterns in a region where wells are used for water supplies, and a deterioration of surface water quality. As a result, the State's jurisdiction has developed to provide an umbrella of environmental protection that supercedes local jurisdictional lines, as does the environment itself.

As is evident from the analysis provided in Figure G-4, the environmental impact area of the properties is significant when assessed collectively, and likely is larger than depicted in the figure for purposes of this document. The loss or significant impairment of an

active State and local jurisdictional structure and function that is responsible for the protection of the environment and of the public health will not be replaced in whole or in part. It is not credible to assume that the cumulative environmental impacts of taking these properties into trust can otherwise be regulated, monitored or controlled. Therefore, the region's environmental resources and the public health may be severely and irreparably impacted over time. As described elsewhere herein, the actions of the OIN have established precedent, and defined future expectations, in this regard by its lack of accountability for environmental protection at its properties in the region.

Cumulative impact on community character. Community character is a broad term used to address the totality of human, social, economic, environmental and aesthetic experience within an area or region. Local governance provides for, in part, the mechanism by which communities identify, adopt and preserve a consensus-based community character – essentially what makes that community distinct. Through comprehensive planning and zoning, government on behalf of its citizens enacts and implements laws, regulations and processes by which the community character – municipal planning objectives, land uses, and resources is protected for the benefit of the community as a whole, rather than for a single entity or individual.

Under State law, community character building processes are not undertaken behind closed doors, but in open government with dialogue, analysis, and debate. Consequently, community character is often the result of significant time and monetary commitments. Because of this investment, projects of significance in and to the community are evaluated, in part, based on their impacts to community character. The potential placement of such a significant amount of land into federal trust most certainly requires such an evaluation. Furthermore, since “community” as a concept conveys a sense of cohesiveness, the lack of contiguity of the OIN parcels, as well as the lack of consensus-based planning by the OIN, and their impact on the cohesiveness of community should be an integral part of that evaluation. Under the State's SEQRA regulations, the impairment of community character is recognized as a significant adverse effect. SEQRA-related judicial reviews have consistently ruled that impacts on community character could include:

- the potential displacement of local residents and businesses and its effect on population patterns and neighborhood character;
- the potential acceleration of the displacement of local residents and businesses (including displacement in the community surrounding a project);

In addition, placement of land into trust could have the direct impact of manipulating the flow of private investment allowing an unregulated, untaxed OIN to advance its own economic master plan at the expense of the municipalities – plans that may be inconsistent (and potentially in conflict) with community character.

The issue of community character also intertwines and overlaps with issues such as noise, aesthetics, traffic, cultural resources, and public health and safety. These parcels are not islands with distinct resources and jurisdictions, but land, businesses, and people located within and interacting with other members and land uses of the community. No decision by the BIA should be taken in isolation without taking into account these complex cumulative impacts of the land in trust process for the Groups 1, 2 and 3 properties, as individual properties, as groups, and in total.

Case Study (Town of Vernon) – The Town of Vernon has a rich agricultural heritage. Beginning with the first permanent European settler to the area, Josiah Bushnell in 1794, the land that was to become the Town of Vernon was changed from virgin forest to open farms and rolling hills. Since then, dairy farming has been the largest continuous source of employment to the community. Even today, farmland remains as the largest land use in the Town of Vernon, with the dairy industry a driving force of the local economy.

Agriculture dominates the character of the community, comprising over half of the Town's total acreage, 55% or 14,610 acres. As illustrated in Appendix G (Figures G-25 and G-26), the Town is rich with an abundance of agricultural lands and desirable soils.

The Town of Vernon realized that it could benefit from the protection and further encouragement of agricultural operations and additional agribusiness. Through its comprehensive planning process the Town has determined that an agricultural/agribusiness presence must continue in the area. The Town's Comprehensive Plan⁵ encourages an economic climate that supports and promotes the retention and expansion of agribusiness and recognizes that such business is vital to the Town's economic stability.

Consistent with its agricultural heritage, the Town of Vernon has been shaped in the traditional New England style of development where the small town is surrounded by farms and great expanses of forests. The Town's landscape is varied and beautiful, and its natural resource base is plentiful. Consistent with this community character, past residents established a village green in the hamlet of Vernon Center, which was used for social gatherings as late as the 1940's, and which was designated as a Historic District and listed on the National Registry of Historic Places in 1985 (see Appendix G, Figure G-12).

To protect the agricultural industry in the town and throughout the county, Oneida County has instituted a Farmland Protection Program to encourage municipalities to make informed choices that will serve to enhance the profitability of the local agricultural operations.

However, the Town of Vernon in its Comprehensive Plan, also recognizes that there are forces that may be beyond its control. "Commercial, industrial and residential development pressures are likely to occur in the future as a result of spin-off development from the Turning Stone in Verona, it would still be desirable for the Town to promote agricultural awareness and economic development by taking advantage of their predominant resource – agriculture." This planning process ensures the involvement of the community in decision-making regarding the character of the community. Projects do not move forward in a vacuum, as has been the case on OIN properties.

⁵ Community Comprehensive Plan – Town of Vernon prepared by Barton & Loguidice, P.C. (September 2005).

Case Study (Town of Verona) – Based on information from the Town of Verona's zoning ordinance⁶, the Town is predominantly characterized by rural land uses with residential homes sparsely spread throughout the town. Through its zoning ordinance, the Town's objective has been to protect the rural community character. Throughout most of the town, except in those limited areas of commercial development, the Town has put protective ordinances in place to foster the viability of its agriculture, allowing limited residential and non-agricultural development only when the disruption to the existing agriculture and environment can be minimized. As an added protective measure, the Town has chosen to focus its residential and commercial development to the outskirts of the City of Oneida, near existing commercial development, the Town's activity centers along NYS Route 365, south of the Thruway, and in and around the hamlet of Verona. Any decision about the Town's character is made by the community in a framework of governmental process.

Case Study (Town of Lenox) – Situated at the northern end of Madison County, the quiet Town of Lenox is located halfway between the City of Syracuse and the combined Cities of Utica and Rome area. In contrast with these more metropolitan areas, major development in the Town is concentrated along NYS Route 5 or along the shoreline of Oneida Lake, with population projections assuming only 40 new houses annually.

Consistent with a longstanding plan⁷, the Town of Lenox has recognized the importance of Oneida Lake to the community, and has indicated a desire to preserve what is left of the shoreline's natural condition, recognizing that protected natural areas will lend to the overall attractiveness of the shoreline, as well as provide natural habitat and recreational opportunities. Little of the lakeshore remains undeveloped in the Town, making the remaining waterfront areas more valuable and worthy of protections.

In addition to the Oneida Lake shoreline, the Town has also established a goal to protect the natural and recreational resources throughout the Town. Within the boundaries of the Town current and potential parks and recreational areas exist, including the Erie Canal, several smaller parks along Oneida Lake and its tributaries, as well as trails along the Oneida Lake Canal, Erie Canal, and the Lehigh Valley Railroad Bed. Overall, the goal of the Town of Lenox is to allocate its resources in the best way possible, whether it is agricultural lands, lakeshore or open space. The potential loss of jurisdiction over the development of 34 parcels (824 acres) located within the town impairs the local government's ability to control growth, manage resources and maintain the local community character.

⁶Town of Verona Zoning Ordinance Revisions Project – Zoning Ordinance (2004).

⁷ Preliminary Town Plan for Town of Lenox, New York, Planning Board (April 1971).

REPORT

Comments on the
Oneida Indian Nation's
Land In Trust Application
(Group 3 Parcels)
Oneida & Madison Counties, New York

*State of New York Executive Chamber
Albany, New York*



Peter E. Greveling, P.E.
Senior Vice President

February 2006

