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UNANTICIPATED CULTURAL RESOURCES DISCOVERY PROTOCOL MOHAWK SOLAR PROJECT, MONTGOMERY COUNTY, NY

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Introduction:

Mohawk Solar LLC (the Applicant), has proposed to construct a photovoltaic (PV) solar energy generating project (the Facility) in the Towns of Canajoharie and Minden in Montgomery County, New York. The proposed Facility will consist of PV panel fields and associated infrastructure, including inverters, an electrical collection system, a substation, a generation tie line (gen-tie), a switching station, access roads, an operations and maintenance (O&M) building, and temporary construction offices and laydown yards.

Environmental Design & Research, Landscape Architecture, Engineering, and Environmental Services, D.P.C. (EDR) conducted a Phase IB archaeological survey of the area of potential effect (APE) of the proposed Facility on behalf of the Applicant. The purpose of the Phase IB survey was to determine whether archaeological sites are located in areas where significant ground disturbance is proposed. In consultation with the New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP), the Applicant has sited the Facility to avoid and/or minimize impacts to archaeological sites identified during the Phase IB survey.

The Applicant recognizes that despite previous archaeological investigations, it is possible that unanticipated archaeological features and/or artifacts may be encountered during project construction or maintenance, even in areas regarded as possessing low archaeological sensitivity. In order to further minimize the risk that archaeological resources could be affected during construction of the Facility, EDR, on behalf of the Applicant, has prepared this Unanticipated Cultural Resources Discovery Protocol (the Protocol). The Protocol outlines the steps for dealing with unanticipated discoveries of cultural resources, including human remains, during the construction of the proposed Facility.

The Protocol:

1. Presents to regulatory and review agencies the protocol the Applicant and its contractors and consultants will follow to prepare for and deal with unanticipated cultural resource discoveries; and

2. Provides guidance and instruction to Mohawk Solar LLC personnel and its contractors and consultants as to the proper procedures to be followed in the event of an unanticipated cultural resource discovery.

The following terms are used throughout the Protocol:

- **The Facility:** As previously noted, the proposed Mohawk Solar Project is located in the Towns of Canajoharie and Minden in Montgomery County, New York. The proposed Facility will consist of PV panel fields and associated infrastructure, including inverters, an electrical collection system, a substation, a generation tie line (gen-tie), a switching station, access roads, and an O&M building, and construction offices and temporary laydown yards.
- **Unanticipated Discovery/Unanticipated Cultural Resource Discovery:** Any indications of the presence of archaeological materials including historic-period or Pre-Contact Native American artifacts, animal bone, and/or human remains. Common historic-period artifacts encountered may include bottles/glass, pottery/ceramics, stone foundations, hand-dug wells, brick, nails, miscellaneous metal fragments, or charcoal or ash-stained soils. Common Pre-Contact Native American artifacts encountered may include arrowheads/spearheads, stone chips or flakes, charcoal or ash-stained soils, rough gray, black, or brown pottery, and other stone tools/artifacts of obvious human origin.
- **Area of Potential Effect (APE) for Direct Effects:** All areas of potential soil disturbance associated with the construction and operation of the proposed Facility.

1.0 Training and Orientation

The Protocol includes the following measures to orient construction personnel regarding potential impacts to archaeological resources:

- 1.1 The Applicant will provide a summary presentation to contractor construction personnel of the relevant results/findings of the Phase IB archaeological survey. Instruction will also be provided as to the general cultural history of the Facility area so that personnel have a greater understanding of what cultural resources may be encountered and so that they can be more readily identified in the field.
- 1.2 The Applicant will assure that contractor construction personnel are made aware of the procedures they must follow in the event of an unanticipated discovery. All construction personnel, including operators of equipment involved in grading, stripping, or trenching activities, will be advised of the need to immediately stop work if they observe any indications of the presence of an unanticipated cultural resource discovery as defined above. Construction personnel will be instructed to immediately contact the Mohawk Solar Project Manager (see Attachment A) upon the observation of a potential unanticipated discovery as defined in the introduction.

- 1.3 The mapped locations of all identified archaeological sites within approximately 200 feet (61 meters) of proposed Facility-related impacts will be identified as “Environmentally Sensitive Areas,” or similar wordage, on Facility construction drawings and marked in the field by construction fencing with signs that restrict access. These areas will be regarded as off-limits but will not be identified as archaeological sites in order to protect the resources via discretion and confidentiality.
- 1.4 The Applicant will stress the necessity of compliance with this Protocol and special emphasis and attention will be given to potential circumstances involving human remains. The Applicant will stress the importance of treating any human remains, or potential human remains, encountered during construction of the Facility with the utmost dignity and respect (see Section 3.0 below concerning human remains as well as Attachments B and C).

2.0 Observed Resources

The Protocol includes the following measures in the event that potential archaeological resources are identified during construction of the Facility:

- 2.1 If any member of the construction workforce believes that potential archaeological materials/artifacts have been encountered, he or she will be required to stop work in the immediate vicinity of the find and notify the Mohawk Solar Project Manager (see Attachment A). If human remains are involved, the procedure described in Section 3.0 concerning human remains will be followed.
- 2.2 Archaeological features and/or artifacts will be left in place and not disturbed. No materials will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- 2.3 If the Applicant (or its contractors/consultants) believe that an unanticipated discovery has been made, all ground-disturbing activities within a 25-foot radius of the discovery will be stopped until such time as it is determined that construction in this area may continue. The Applicant will be responsible for taking appropriate steps to protect and secure the evidence of the discovery. Construction personnel will delineate the immediate area of the discovery with flagging tape and/or construction fencing. The area will be regarded as off-limits but will not be identified as an archaeological site in order to protect the resource via discretion and confidentiality. Vehicles and equipment may be permitted to traverse the area surrounding the delineated area if necessary; however, such movement will be minimized to the extent practical, and no vehicles or equipment will be permitted within the delineated area.
- 2.4 Upon the identification of a potential discovery, the Applicant will immediately notify the designated cultural resources consultant identified in Attachment A. Notification will be by telephone with additional notification via email, if necessary.

- 2.5 As soon as possible following the unanticipated discovery, a Registered Professional Archaeologist (RPA) will examine the discovery and determine if it is, in fact, an archaeological resource. If the archaeologist determines no archaeological resource is present, he/she will immediately advise the Mohawk Solar Project Manager that the Stop Work Order can be removed. The archaeologist will prepare and submit a letter including photographs of the (non-) discovery site to the Applicant within a reasonable timeframe.
- 2.6 If the archaeologist determines the discovery to be an archaeological resource, he/she will immediately notify the Mohawk Solar Project Manager. The U.S. Army Corps of Engineers (USACE) and the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) will be notified as soon as possible via email with follow-up correspondence via telephone if receipt of the initial notification cannot be confirmed via email. Notifications will be made within 48 hours of the determination that an archaeological resource has been discovered. USACE and NYSOPRHP contacts are in Attachment A. All ground-disturbing activities within the vicinity of the discovery will remain suspended until such time as it is determined that construction in this area may continue.
- 2.7 In many cases, it may be possible for the archaeologist to determine the nature of the unanticipated discovery remotely (i.e., through a review of photographs taken by on-site personnel and phone conversations with these personnel). If this is the case, a site visit will still be performed by the archaeologist, but initial notification of the discovery may be provided to the USACE and the NYSOPRHP prior to the visit.
- 2.8 If the archaeological resource is Native American in nature, the Applicant will request that the USACE and/or NYSOPRHP notify representatives of the appropriate Native American Tribal Nation(s) (see Attachment A).
- 2.9 If the archaeologist determines that an archaeological resource has been discovered, additional information will be provided to NYSOPRHP and USACE following the archaeologist's site visit. The additional information will either: (a) explain why the archaeologist believes the resource to be non-significant with respect to the State/National Register of Historic Places (S/NRHP); or (b) explain why the archaeologist believes the resource to be significant with respect to the S/NRHP and propose a scope-of-work for evaluating the significance of the resource and evaluating Facility-related impacts to it. In the latter case, the USACE and NYSOPRHP will be advised that unless an objection is received within five business days, the archaeologist will consider the proposed scope-of-work to have been accepted by the USACE and NYSOPRHP and proceed with its implementation. Unless otherwise directed by the USACE or NYSOPRHP, all work to evaluate the discovered archaeological resources will be restricted to the proposed Facility's APE for Direct Effects.
- 2.10 USACE or NYSOPRHP may invite interested Native American tribal representatives to observe any proposed work.

- 2.11 The Applicant will be responsible for notifying the USACE and NYSOPRHP by telephone or email when the evaluation of the archaeological discovery is complete, and if the resource is significant with respect to the S/NRHP in the opinion of the archaeologist. The archaeologist will provide the Applicant with a brief written memorandum assessing the significance of the resource with respect to the S/NRHP and make a recommendation for or against additional data recovery. The archaeologist will provide this report to the Applicant no later than five business days after the conclusion of the evaluation. If the archaeologist recommends additional data recovery in the memorandum, he/she will also submit a proposal for the additional data recovery work.
- 2.12 At this time, the Applicant may choose to prepare an analysis of alternative mitigation strategies in place of data recovery, if warranted.
- 2.13 The Applicant will submit the archaeologist's memorandum, data recovery proposal and/or mitigation alternatives analysis (if appropriate) to NYSOPRHP via email and the online Cultural Resources Information System (CRIS) and to the USACE and representatives of designated Native American Tribal Nations. If the proposed mitigation measures can reasonably be conducted concurrently with ongoing Facility construction, the submission to the USACE and NYSOPRHP will be accompanied by a request to resume construction in the area of the discovery. If the Applicant does not receive a response to the request to resume construction from the USACE and/or NYSOPRHP within five business days, the Applicant will assume the agencies concur with the request and resume construction.
- 2.14 Proposed mitigation measures will not proceed until the Applicant receives written authorization from USACE, following consultation with NYSOPRHP. The Applicant will notify the USACE and NYSOPRHP at the completion of all mitigation measures. If construction has been halted during mitigation, the Applicant will also request authorization from USACE and NYSOPRHP to resume construction at the conclusion of mitigation.
- 2.15 The Applicant will make a reasonable good-faith effort to accommodate any requests from Native American tribal representatives that they be present during the implementation of mitigation measures pertaining to Native American cultural resources.
- 2.16 The Applicant will submit a summary report describing the results of mitigation to the USACE and NYSOPRHP (and the designated Native American Tribal Nations if Native American cultural resources are involved) within a reasonable timeframe from the completion of mitigation fieldwork.
- 2.17 If archaeological data recovery is conducted, a full Phase III report will be submitted to USACE and NYSOPRHP (and to designated Native American Tribal Nations, if appropriate) based on a schedule to be established through consultation with USACE and NYSOPRHP.

3.0 Observed Skeletal Remains

The Protocol includes the following measures in the event that potential skeletal remains are identified during construction of the Facility:

- 3.1 The following protocol for dealing with skeletal remains will be followed during any circumstances in which any possible human skeletal remains are identified during construction activities (“skeletal remains” is defined as any articulated or disarticulated bones or teeth). If obviously non-human (i.e., animal) skeletal remains are discovered, the procedures outlined in Section 2.0 of this Protocol will be followed.
- 3.2 It is crucial that all human remains (or possible human remains) be treated with the utmost respect and dignity.
- 3.3 Any member of the construction team who believes an unanticipated discovery involving possible human skeletal remains has occurred is required to stop work within a 25-foot radius of the discovery and notify the Mohawk Solar Project Manager.
- 3.4 Human remains and associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- 3.5 If the Applicant believes that possible human skeletal remains have been discovered, they will immediately stop all work within 100 feet (31 meters) of the discovery location until it is confirmed that construction may resume. The area of the discovery will immediately be protected and secured by (at a minimum) the installation of flagging tape and/or construction fencing delineating the discovery location. The area will be regarded as off-limits but will not be identified as an archaeological site or the location of skeletal remains in order to protect the resource via discretion and confidentiality. Vehicles and equipment may be allowed to pass through the area surrounding the discovery, if necessary; however, such movement will be minimized, and no vehicles or equipment will be permitted within the delineated area around the discovery.
- 3.6 Upon the discovery of possible human remains, the Applicant will immediately notify the designated cultural resources consultants as well as the NYSOPRHP, the appropriate Tribal Nations, the involved State and federal agencies, the coroner, and local law enforcement listed in Attachment A via telephone and email. The cultural resources consultant will send an RPA to examine the remains as soon as possible, make a preliminary assessment of their nature (i.e., if they are human or non-human), and immediately notify the parties listed above of the results of the preliminary assessment.
- 3.7 As soon as possible following the discovery, an RPA will examine the skeletal remains at the site and determine if they are human. If the archaeologist is unable to determine if the skeletal remains are human, the Applicant will retain the services of a forensic anthropologist.

- 3.8 If the remains are determined to be animal (i.e., non-human), the archaeologist will assess whether they occur in an archaeological context. Additionally, if the remains are determined to be animal, the Applicant will immediately notify the parties listed in Section 3.6 that no human remains were identified.
- 3.9 If the remains are non-human and are determined to occur in an archaeological context, the procedures outlined in Section 2.0 of this Protocol will be followed.
- 3.10 If the remains are non-human and the archaeologist determines no archaeological resource is present, he/she will immediately advise the Mohawk Solar Project Manager that the Stop Work Order can be removed. The archaeologist will prepare and submit a letter including photographs of the (non-) discovery site to the Applicant within a reasonable timeframe.
- 3.11 If the archaeologist (or forensic anthropologist) determines the remains are human, the county coroner, local law enforcement, the USACE, NYSOPRHP, and appropriate Native American Tribal Nations will be notified immediately. No additional work or examination will occur until the county coroner and local law enforcement have arrived on the scene and made an official ruling on the nature of the remains (i.e., if they are forensic or archaeological in nature).
- 3.12 If the human remains are determined to be archaeological and if the archaeologist/forensic anthropologist identifies them as Native American in origin, the remains will be left in place and protected from further removal or disturbance until a plan is developed for their removal in consultation with appropriate Tribal Nations, the USACE, and NYSOPRHP. Note that avoidance is the preferred choice of the NYSOPRHP and the Tribal Nations (see Attachments B and C). The removal plan will be consistent with the applicable provisions of the Native American Graves Protection and Repatriation Act (NAGPRA). Photographs of Native American human remains and associated funerary objects should not be taken without consulting with the involved Tribal Nations.
- 3.13 If human remains are determined to be archaeological but non-Native American, they will be left in place and protected until a plan for avoidance or removal is developed through consultation with the USACE and NYSOPRHP. Note that avoidance is the preferred choice of the NYSOPRHP.
- 3.14 Proposals for site evaluation and/or mitigation will give special consideration to the presence of human remains. Proposals will also include provisions for evaluating the area for the presence of additional graves.
- 3.15 In cases involving Native American human skeletal remains, proposals, to the extent feasible, will incorporate any desires made known to the Applicant by Native American Tribal Nations regarding the treatment of human remains.
- 3.16 If the USACE and NYSOPRHP determine that the archaeological site associated with the human skeletal remains is not significant with respect to the NRHP, the Applicant will resume construction once human

remains have been removed to the satisfaction of the USACE, NYSOPRHP, and interested Native American Tribal Nations.

3.17 Any proposals for mitigation or human skeletal remains removal will identify steps to attempt to identify lineal descendants of the deceased, to the extent feasible.

3.18 If the unanticipated discovery of human skeletal remains is made after trenching (or other excavation) in the vicinity has already taken place, construction may proceed except within 100 feet (31 meters) of the identified human skeletal remains.

List of Attachments:

- Attachment A: Notification List
- Attachment B: New York State Office of Parks, Recreation and Historic Preservation Human Remains Discovery Protocol
- Attachment C: Haudenosaunee Protocol for Handling Discovery of Human Remains

Mohawk Solar Project – Unanticipated Archaeological Discovery Protocol
Attachment A – Anticipated Notification List

<p>Mohawk Solar Construction Project Manager (on-site) TO BE DETERMINED</p>	<p>Alternate TO BE DETERMINED</p>
<p>Cultural Resources Consultant/Archaeologist Environmental Design & Research Patrick Heaton, RPA Principal, Cultural Resources 217 Montgomery Street, Suite 1000 Syracuse, NY 13202 Phone: 315-471-0688 Email: pheaton@edrdpc.com</p>	<p>Alternate Environmental Design & Research Justin Sabino Project Archaeologist 217 Montgomery Street, Suite 1000 Syracuse, NY 13202 Phone: 315-471-0688 Email: jsabino@edrdpc.com</p>
<p>U.S. Army Corps of Engineers (USACE) John R. Connell Senior Project Manager New York District – Regulatory Branch Bldg. 10, 3rd Floor North, 1 Buffington Street, Watervliet Arsenal Watervliet, NY 12198-4000 Phone: (518) 266-6350 Email: john.r.connell@usace.army.mil</p>	<p>Alternate TO BE DETERMINED</p>
<p>New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) Nancy Herter Coordinator and Native American Liaison P.O. Box 189 Waterford, NY 12188-0189 Phone: 518-268-2179 Email: nancy.herter@parks.ny.gov</p>	<p>Alternate Philip Perazio Historic Preservation Program Analyst – Archaeologist P.O. Box 189 Waterford, NY 12188-0189 Phone: 518-268-2175 Email: philip.perazio@parks.ny.gov</p>
<p>Native American Representatives Saint Regis Mohawk Tribe Arnold L. Printup Tribal Historic Preservation Officer 412 State Route 37 Akwesasne, NY 13655 Phone: (518) 358-2272 arnold.printup@srmt-nsn.gov</p>	<p>Alternate Saint Regis Mohawk Tribe Ken Jock Director, Environmental Division 412 State Route 37 Akwesasne, NY 13655 Phone: (518) 358-5937 ken.jock@srmt-nsn.gov</p>
<p>Law Enforcement Agency Montgomery County Sheriff's Office Michael J. Amato Sheriff 200 Clark Drive P.O. Box 432 Fultonville, NY 12072 Phone: (518) 853-5533 mamato@sheriff.montgomery.ny.us</p>	<p>Alternate Montgomery County Sheriff's Office Robert A. Thomas, III Undersheriff 200 Clark Drive P.O. Box 432 Fultonville, NY 12072 Phone: (518) 853-5500 mamato@sheriff.montgomery.ny.us</p>
<p>County Coroner Joseph M. Riley, III Montgomery County Coroner 10 Summit Avenue Amsterdam, NY 12010 Phone: (518) 842-0310 jriley@mhonline.net</p>	<p>Alternate Susan L. Quackenbush Montgomery County Coroner 1 Waddell Avenue Fort Plain, NY 13339 Phone: (518) 221-0824 suequackenbush64@gmail.com</p>

**State Historic Preservation Office/
New York State Office of Parks, Recreation and Historic Preservation
Human Remains Discovery Protocol
(August 2018)**

If human remains are encountered during construction or archaeological investigations, the New York State Historic Preservation Office (SHPO) recommends that the following protocol is implemented:

- Human remains must be treated with dignity and respect at all times. Should human remains or suspected human remains be encountered, work in the general area of the discovery will stop immediately and the location will be secured and protected from damage and disturbance.
- If skeletal remains are identified and the archaeologist is not able to conclusively determine whether they are human, the remains and any associated materials must be left in place. A qualified forensic anthropologist, bioarchaeologist or physical anthropologist will assess the remains in situ to help determine if they are human.
- No skeletal remains or associated materials will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- The SHPO, the appropriate Indian Nations, the involved state and federal agencies, the coroner, and local law enforcement will be notified immediately. Requirements of the coroner and local law enforcement will be adhered to. A qualified forensic anthropologist, bioarchaeologist or physical anthropologist will assess the remains in situ to help determine if the remains are Native American or non-Native American.
- If human remains are determined to be Native American, they will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred option of the SHPO and the Indian Nations. The involved agency will consult SHPO and the appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance. Photographs of Native American human remains and associated funerary objects should not be taken without consulting with the involved Indian Nations.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred option of the SHPO. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.
- To protect human remains from possible damage, the SHPO recommends that burial information not be released to the public.

4.7 Protocol for Handling Discovery of Human Remains

	<u>Known Burials</u>	<u>Unidentified Burials</u>
When to contact?	Intentional excavation At the earliest time in decision-making process.	Inadvertent Discovery Upon discovery.
Which Nation to contact?	<p>If find is within existing Nation boundary, contact that Nation's Cultural Resource representatives.</p> <p>If the find is within the traditional land use area (fifty mile radius from the current nation territory, contact the closest Nation's Cultural Resource Representative.</p> <p>If the find is within the aboriginal territory of each nation, as shown on the attached map, contact the Nation within that territory. For finds located within fifty miles on either side of the boundary lines shown on the map, contact the Cultural Resource Representatives of both Nations.</p>	
Who to contact?	Haudenosaunee Cultural Resource Representatives HSCBRR.	Haudenosaunee Cultural Resource Representatives HSCBRR.
How to contact?	Contact list is provided.	
Information Required	<p>Brief description of the find or potential find; site map and any information on the known cultural history of the area and summary of nearby archaeological findings.</p> <p>Nation will send a representative to review the site.</p>	
Next steps	<p><i>Non-disturbance of burials is preferred.</i></p> <p>If after proper consultation, the remains must be removed, we prefer to have them reburied close to their original location as possible, provided the future sanctity of the grave can be assured. <i>No remains should be removed without proper cultural protocols.</i></p> <p>If no safe local burial ground can be offered, the Haudenosaunee will reclaim the remains for reburial at an undisclosed location. The local government /state agency/developer must pay all of the costs for such reburial.</p> <p>All objects associated with the original burial must be reburied as well. All of the soil in the immediate area of the burial should also be placed in the new grave.</p>	
Time Frame	30 to 45 days	As soon as possible