

Appendix 20-3:

New York State Office of Parks, Recreation and Historic Preservation
Project-Related Correspondence

June 3, 2019

Daniel Mackay, Deputy Commissioner/Deputy SHPO
New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island Resource Center, PO Box 189
Waterford, NY 12188-0189

RE: Request for Consultation: Proposed Excelsior Energy Center Project, Town of Byron, Genesee County, New York

Dear Mr. Mackay,

Excelsior Energy Center, LLC (Excelsior Energy Center), proposes to construct the Excelsior Energy Center Project (Project) under Article 10 of the Public Service Law (PSL). The Project will have a generating capability of 280 megawatts (MW) of power located in the Town of Byron, Genesee County, New York (**Figure 1**).

The proposed Project will consist of an approximately 280 MW solar energy center with energy storage located on land leased or purchased from owners of private property. Proposed components include commercial-scale solar arrays, access roads, buried (and possibly overhead) electric collection lines, energy storage system, and electrical interconnection facilities. The final solar array specification, as well as locations of arrays, will be finalized as part of micro-siting efforts.

TRC Companies, Inc. (TRC) has been retained by Excelsior Energy Center to provide environmental review and licensing services in support of the Project. The purpose of this letter is to initiate formal consultation with your agency in determining potential impacts to cultural resources that could result from the Project. TRC will also be undertaking cultural resource studies/surveys (Archaeology and Historic Architecture) that will be required in support of Project review. To that end, TRC plans to conduct Phase IA and IB, [if required as determined in consultation with New York State Office of Parks, Recreation and Historic Preservation (OPRHP)] archaeological studies and a historic architectural survey in advance of proposed construction to identify cultural resources.

Archaeology

The objective of the Phase IA study will be to identify the archaeological sensitivity of the Project Area through review of known archaeological data, archival data, site file information, and previous cultural surveys. The goal of this review will be to identify where archaeological field testing (Phase IB) may be needed to identify archaeological resources within the Area of Potential Effect (APE). For archaeological resources, the APE is defined as a location where significant ground disturbances may occur, including the construction of access roads, work spaces, buried electric collection lines, and electrical interconnection facilities. It is anticipated that the installation of posts for solar panels, as well as fencing, will be conducted by pile-driver or similar device and not constitute a significant ground disturbance. Should a Phase IB survey be determined necessary, Excelsior Energy Center will conduct these studies following the *New York Archaeological Council's Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State (1994)*, and the *State Historic Preservation Office Phase I Archaeological Report Format Requirements (2005)*.

Based on a review of CRIS, there are 11 previously recorded archaeological sites within the Project Area and 31 additional previously recorded archaeological sites within a one-mile radius of the Project Area (**Figure 2**). One of the 11 previously recorded archaeological sites recorded within the Project Area (Site 03706.000035) is eligible for inclusion in the National Register of Historic Places (NRHP); the NRHP eligibility of the remaining 10 sites within the Project Area is undetermined.

Historic Architecture

The APE for above-ground structures is defined as the geographic area or areas within which the undertaking may directly or indirectly cause changes in the character or use of historic properties. The APE is determined in relation to the scale of the undertaking, including new construction, improvements, or demolitions to be made during operation and maintenance of the Project. Based on a review of CRIS, there are three previously recorded, above ground, historic architectural resources within the project area; all have been determined not eligible for NRHP listing. Three previously recorded cemetery resources are located within a one-mile radius of the Project. The NRHP eligibility of the cemeteries is undetermined. There are no NRHP-listed historic districts or individual properties within the Project Area. In addition, review of historic maps indicates the Project Area is known to contain eight farm complexes, two historic railroads, two agricultural related structures, and one building; however, the Project is expected to have no physical impacts on above-ground resources.

The APE for indirect (visual, atmospheric, or audible) effects includes those areas removed in distance, where Project components will be visible and where there is a potential for a significant visual effect. Per the guidelines set forth in 16 NYCRR § 1000.2 (ar), the study area to be used for above-ground resource analysis is anticipated to comprise those areas within five miles of the proposed Project and that fall within the potential Project viewshed (i.e., those areas from which the Project is potentially visible). The final APE will be determined in consultation with the OPRHP. The five-mile-radius above-ground resource study area for the Project includes parts of the towns of Bergen, Le Roy, Stafford, Bethany, Batavia, Elba, Byron, and South Byron in Genesee County. Multiple historic districts that have been listed in the NRHP and individually listed buildings and structures are present.

We look forward to continued consultation with your office, as well as submittal of detailed cultural resource work plans, as needed, in support of the licensing process. Should you have any questions or require additional information, please do not hesitate to contact me at (301) 276-8040, or tsara@trccompanies.com.

Sincerely yours,



Timothy R. Sara, RPA
Program Manager, Cultural Resources

cc: William Boer, NextEra Energy Resources, LLC
Kaitlin McCormick, TRC

file 328808.0000.0000

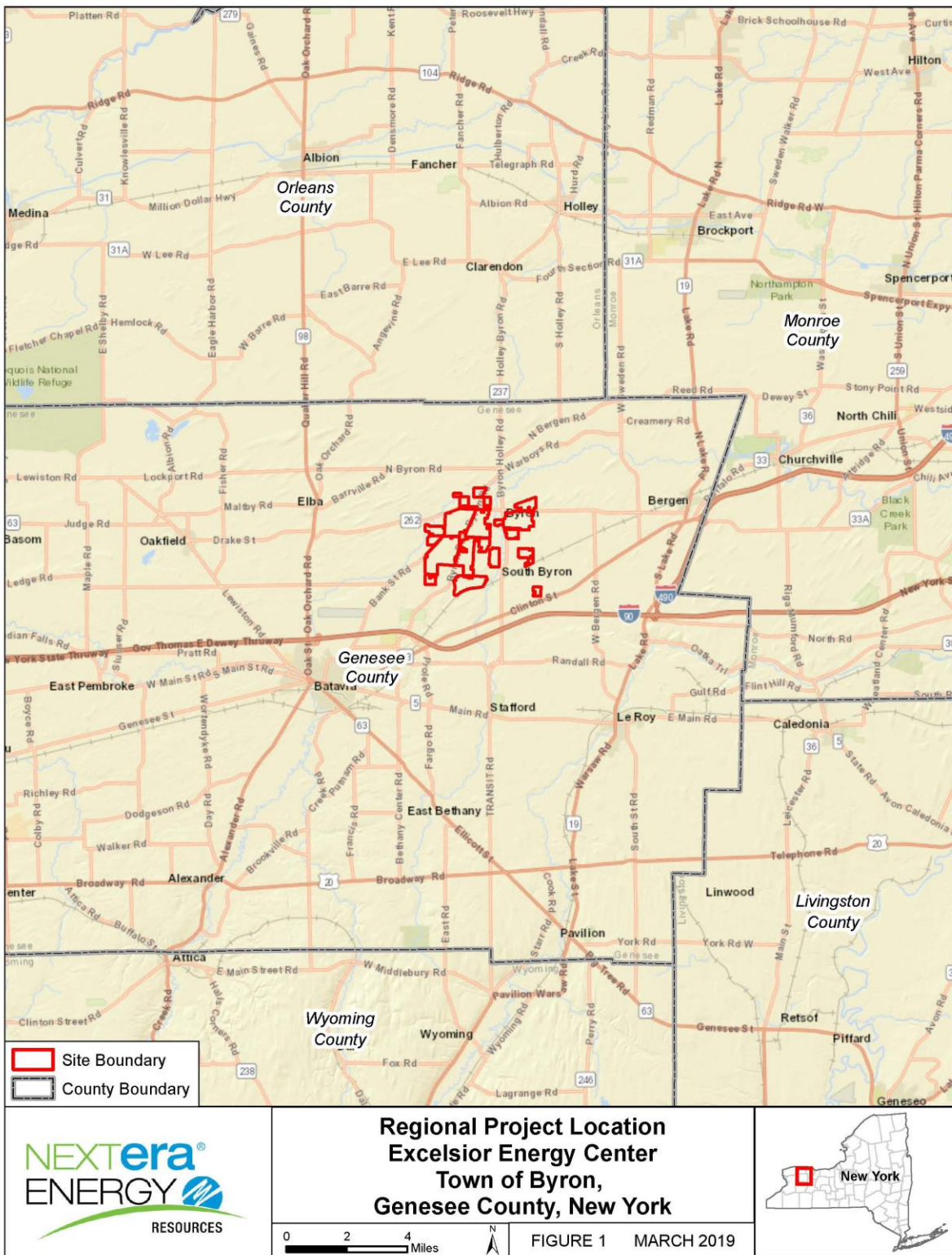


Figure 1: General project location in Genesee County, New York

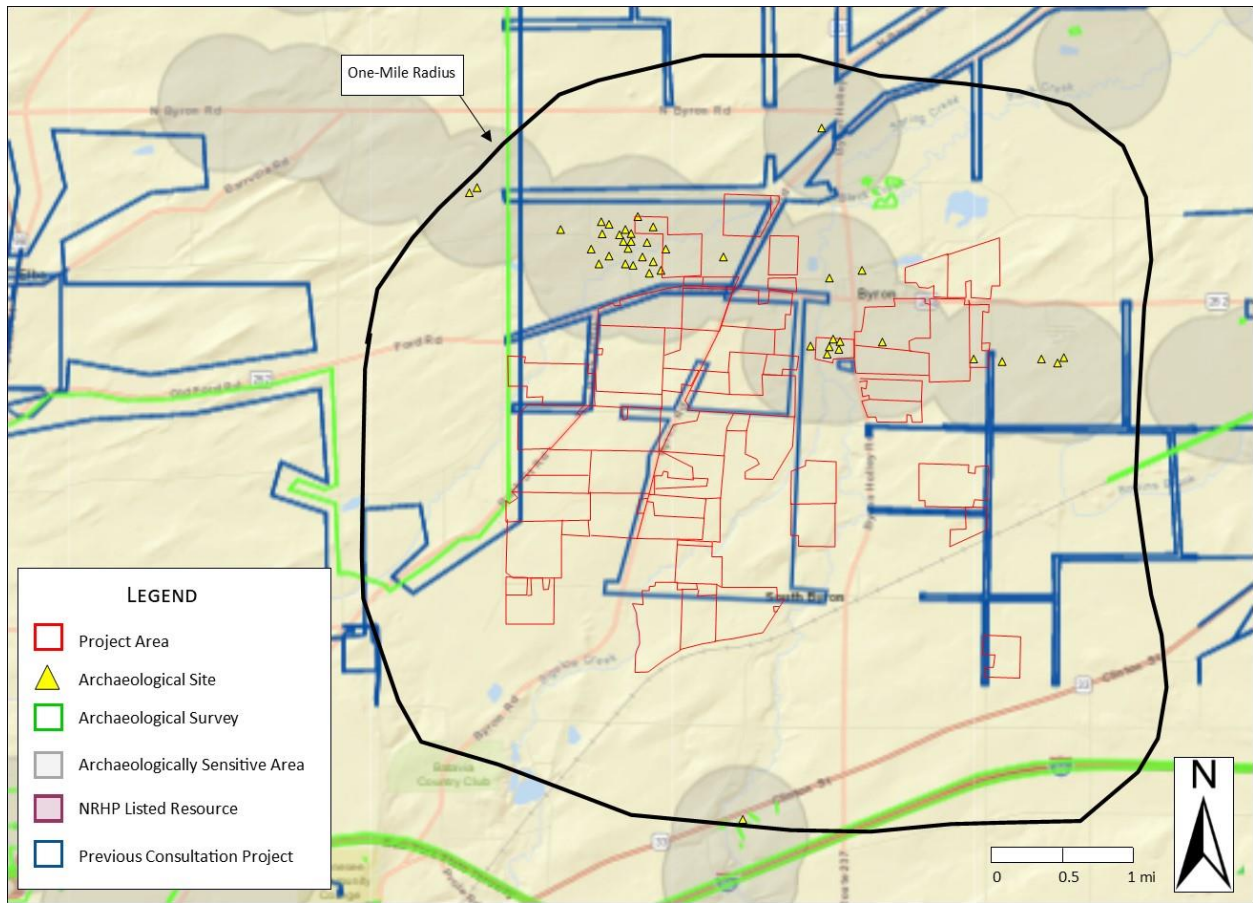


Figure 2: Project Area superimposed over OPRHP Cultural Resources Information System (CRIS) Webviewer (accessed May 2019).



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Acting Commissioner

June 11, 2019

Mr. Timothy Sara
TRC
4425-B Forbes Boulevard
LANHAM, MD 20706

Re: PSC
Excelsior Energy Center Construction Project
Towns of Byron, Elba & Stafford, Genesee County, NY
19PR03747

Dear Ms. Gollup:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). The Archaeology Unit has reviewed the submitted materials in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Archaeology Unit of the Division for Historic Preservation and *relate only to Archaeological Historic/Cultural resources*. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and its implementing regulations (6NYCRR Part 617).

Based on available information, your project is located in an archaeologically and environmentally sensitive area, that includes the potential to impact Precontact and Historic archaeological sites. OPRHP recommends that a Phase IA Archaeological Sensitivity and Background Study be conducted for all portions of the project that may involve ground disturbance **to be performed and reviewed by OPRHP in advance of the Phase IB**. OPRHP offers the following comments to this end:

A Phase IA survey is a literature search and sensitivity assessment, designed to help assess the significance of, and overall sensitivity for cultural resources within your project area, or Area of Potential Effect (APE), and determine areas and degrees of previous disturbance. This study will subsequently be used to make recommendations regarding whether any further subsurface investigations are warranted. To that end, OPRHP recommends that the proposed project APE be sensitized not only relative to previously identified archaeological sites, but also taking into account environmental and resource factors within or adjacent to the project APE that may have been attractive to Native American Peoples, as well as extant historic structures and Map Documented Structures (MDSs).

...2

Division for Historic Preservation

P.O. Box 189, Waterford, New York 12188-0189 • (518) 237-8643 • parks.ny.gov

Mr. Timothy Sara
June 11, 2019
Page 2.

The Phase IA archaeological survey report must include a concise project area description that clearly outlines all related project impacts, its location, a review of historic maps and archaeological site information, and the extent and reason(s) for recommending or not recommending testing within the project APE. The areas of proposed testing versus non-testing must also be illustrated in map form for our review.

Please note that in areas with alluvial soils or fill, archaeological deposits may exist below the depth of superficial disturbances (such as pavement or even deeper disturbances), depending on the thickness of the alluvium or fill. Evaluation of the possible impact of prior disturbance on archaeological sites must consider the depth of potentially culture-bearing deposits and the depth of planned disturbance by the proposed project.

Also, please note that wetlands may have areas of higher elevation that were suitable for habitation and/or the staging of temporary resource procurement camps. In addition, past climatic variations or modern changes in hydrology may have inundated areas formerly available for occupation.

If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition. Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many significant sites have been identified in previously cultivated land.

The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archaeologist should be retained to undertake the Phase I survey. Many archaeological consulting firms advertise their availability in the yellow pages. The services of qualified archaeologists can also be obtained by contacting local, regional, or statewide professional archaeological organizations.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archaeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State, you should contact the SED before initiating survey activities. The SED contact is Dr. Christina Reith and she can be reached at (518) (518) 402-5975. Section 233 permits are not required for projects on private land.

Additionally, please verify all state and/or federal agencies involved in this project, from which permits, permissions and/or funding are being sought, and provide the OPRHP with the appropriate contact information (including email), for each involved agency.

...3

Mr. Timothy Sara
June 11, 2019
Page 2.

Please continue to consult with OPRHP's Survey & Evaluation Unit pertaining to above ground historic cultural resources, and their concerns for potential impacts to these resources.

Please refer to the project number (PR) noted above in all future correspondence regarding this project. If you have any questions, I can be reached at 518-268-2218 or via email at Josalyn.Ferguson@parks.ny.gov.

Sincerely,



Josalyn Ferguson, Ph.D.
Scientist Archaeology

via e-mail only

c.c. Jasmine Gollup, TRC
c.c. Jason Dickey, TRC
c.c. Kaitlin McCormick, TRC
c.c. Matthew Hyland, TRC



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

November 4, 2019

Ms. Cassandra Partyka
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: DPS
Excelsior Energy Center Construction Project
Towns of Byron, Elba & Stafford, Genesee County, NY
19PR03747.004

Dear Ms. Partyka:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the report prepared by TRC entitled "Phase IA Archaeological Survey and Sensitivity Assessment Excelsior Energy Center, Town of Byron, Genesee County, New York" (Gollup et al. September 2019), in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based upon our review of the above noted report, OPRHP recommends the following revisions to the report and offers the following comments:

1. Please change the "Early Settlement" heading on page 28 to "Early Euro-American Settlement."
2. Please specify the discussion of the history and development of the Iroquois Confederacy (Iroquois League) and include a discussion of the Haudenosaunee people.
3. Please indicate on the front page of this document that it contains sensitive and privileged information, not for public distribution.
4. It appears that minimally Sodom Cemetery and the Byron Cemetery are within the proposed survey area boundary. Please confirm and include a discussion of the history of cemeteries.
5. Please add a column to "Table 3-2. Previously Recorded Sites within One Mile of the Project Area," indicating the relative certainty of site location based on archaeological sites forms and survey report information.

...2

6. Please include an examination of additional historic maps (i.e., 1876, 1904 historic Atlases), and provide a corresponding Table numbering and recording of the Historic Standing Structures (SS) and no-longer-extant Map Documented Structures (MDS) within the project's Area of Potential Effects (APE)/Survey boundary only from those maps and include owner name (if applicable) by map year. Please also include the MDS's and SS's numbers on the sensitivity map (Figure 4-7).

Please submit a copy of the revised Phase IA report to OPRHP for review.

7. It is OPRHP's understanding that the specific locations of direct ground disturbing effects for the Excelsior Energy Center Construction Project have yet to be determined. As was demonstrated in the report, this project's APE is sensitive to Precontact and Historic archaeological sites. OPRHP concurs with the report's recommendation that a Phase IB Subsurface Archaeological Investigation is warranted.

Once the buildable APE has been determined and the locations of all direct ground disturbing impacts have been ascertained, Phase IB subsurface investigations **ARE** warranted either by systematic shovel testing (ST) or pedestrian walkover (with supplemental (ST) as appropriate, for the following impacts in the High and Moderate Archaeological Sensitivity zones as illustrated on Figure 4-7: all locations of proposed access roads, collection substations, Point-of-Interconnect (POI) Switch Yards, retention ponds/basins, drainage ditches/tiles over a foot wide, staging areas/temporary laydown yards, parking lots, structures, utility trenches /electrical collections systems over a foot wide, and areas of grubbing and grading.

OPRHP recommends that impacts to/within previously reported archaeological sites locations be avoided and a fifty-foot (50) buffer zone be established around each site. The locations and extents of previously established sites on the landscape will likely need to be reestablished in order determine areas of avoidance. If avoidance is not an option, an assessment of whether Phase II Site Examinations are warranted will need to be presented.

OPRHP does **NOT** recommend Phase IB archaeological testing for areas for panel arrays, perimeter fencing and utility poles if their associated posts are driven into the ground and no grubbing or grading is involved. However, if the installation of the panel array supports, fencing, utility lines or poles, etc., requires excavation over 1-foot wide or if grubbing and grading is to occur, then Phase IB archaeological testing is recommended.

Please submit the Phase IB survey report to OPRHP for review using the enclosed survey token.

8. With the completion of the Phase IB Survey, please submit an updated zipped polygon (not polyline) shapefile of the project's Archaeological Survey boundary, using the appropriate CRIS token.

With the completion of our initial review of the Phase IA Archaeological Survey, OPRHP is initiating Indian Nation Consultation with the Seneca Nation of Indians and the Tonawanda Seneca Nation on behalf of DPS and are requesting completion of their review and submission of their comments by Wednesday December 4, 2019.

...2

Ms. Cassandra Partyka
November 4, 2019
Page 3 of 3.

These comments are specific to potential impacts to archaeological cultural/historic resources. Please continue to consult with Mr. James Finelli of OPRHP's Survey and Evaluation Unit concerning potential concerns for impacts to structural or architectural cultural/historic resources.

If you have any questions, I can be reached at (518) 268-2218 or via e-mail at Josalyn.Ferguson@parks.ny.gov.

Sincerely,



Josalyn Ferguson, Ph.D.
Scientist Archaeology

via e-mail only

c.c. Jasmine Gollup, TRC
c.c. Jason Dickey, TRC
c.c. Joe Stahlman, Seneca Nation of Indians
c.c. Kaitlin McCormick, TRC
c.c. Karen Gaidasz, DEC
c.c. Matthew Hyland TRC
c.c. Natasha Snyder, NextEra Energy
c.c. Timothy Sara, TRC



**Parks, Recreation,
and Historic Preservation**

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

January 9, 2020

Ms. Cassandra Partyka
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: DPS
Excelsior Energy Center Solar Construction Project
Towns of Byron, Elba & Stafford, Genesee County, NY
19PR03747

Dear Ms. Partyka:

The Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP) is in receipt of the revised report prepared by TRC entitled "Phase IA Archaeological Survey and Sensitivity Assessment Excelsior Energy Center, Town of Byron, Genesee County, New York" (Gollup et al January 2020). We have reviewed the revised report in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

This letter confirms that the requested revisions to the original Phase IA report have been satisfactorily completed by TRC.

OPRHP continues to note that it is our office's understanding that the proposed project's buildable Area of Potential Effects (APE) and direct ground disturbing impacts have yet to be determined. In addition to our November 4, 2019 recommendations for Phase IB subsurface investigations associated with particular types of ground disturbing impacts, OPRHP wishes to stress that it is our office's recommendation that all previously identified Undetermined or Eligible archaeological sites, and any newly identified archaeological sites within the proposed project's APE be avoided, and fifty-foot buffers be placed around each of them. Additionally, Site Avoidance Plans for each site are to be submitted to, and reviewed by our office.

If avoidance of a site identified during this project's Phase IB investigations is not feasible, Phase II Site Examinations are not to proceed prior to OPRHP's review of the Phase IB Report. OPRHP will need to consult with the Indian Nations prior to Phase II investigations. Please note that OPRHP may request a scope of work for Phase II Site Examinations.

If avoidance of a previously identified site (identified prior to this project) is not feasible, then OPRHP recommends the re-identification of previously identified undetermined sites and Phase II Site Examinations be conducted in order to determine their eligibility to the State and National Registers of Historic Places. If the SR/NR Eligible ANR 63A Glazier Terrace Site (USN 03706.000035), or any other sites determined by OPRHP to be eligible are unable to be avoided, Phase III Data Recovery Plans (DRP) are to be submitted to our office for review and comment. A Letter of Resolution (LOR) agreement document will subsequently need to be developed and signed by all involved parties prior to excavations.

...2

Ms. Cassandra Partyka
January 9, 2020
Page 2.

Please continue to consult with OPRHP and keep our office informed of any changes to the project as it progresses.

If you have any questions, I can be reached at (518) 268-2218 or via e-mail at Josalyn.Ferguson@parks.ny.gov.

Sincerely,



Josalyn Ferguson, Ph.D.
Scientist Archaeology

via e-mail only

c.c. Alex Page, Berkey Williams
c.c. Jasmine Gollup, Jason Dickey, Kaitlin McCormick, Matthew Hayland & Timothy Sara, TRC
c.c. Joe Stahlman, Seneca Nation of Indians
c.c. Karen Gaidasz, DEC
c.c. Natasha Snyder, NextEra Energy
c.c. Chief Hill & Christine Abrams, Tonawanda Seneca Nation (under separate cover)