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UNANTICIPATED CULTURAL RESOURCES DISCOVERY PROTOCOL CASSADAGA WIND FACILITY, CHAUTAUQUA COUNTY, NY

April 11, 2016

Introduction:

Cassadaga Wind, LLC (a subsidiary of EverPower Wind Holdings, Inc. [EverPower]), has proposed to construct a wind generating facility (the Facility) in the Towns of Arkwright, Charlotte, Cherry Creek, and Stockton in Chautauqua County, New York. The proposed Facility will consist of up to 58 wind turbines and associated infrastructure, including access roads, aboveground and buried collection lines, an aboveground generator lead line, substations, meteorological towers, staging/laydown yards, and an operations and maintenance building.

Environmental Design & Research, Landscape Architecture, Engineering, and Environmental Services, D.P.C. (EDR) completed a Phase 1B archaeological survey of the area of potential effect (APE) of the proposed Project on behalf of EverPower. The purpose of the Phase 1B survey was to determine whether archaeological sites are located in the areas that may be affected by the proposed Facility. EverPower has intentionally sited the Facility to avoid impacts to archaeological sites identified during the Phase 1B survey.

In order to provide additional safeguards against the possibility that the proposed Facility might impact archaeological resources, EDR, on behalf of EverPower, 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 EverPower and its contractors and consultants will follow to prepare for and deal with unanticipated cultural resource discoveries; and
2. Provides guidance and instruction to EverPower 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:** the proposed Cassadaga Wind Facility in the Towns of Arkwright, Charlotte, Cherry Creek, and Stockton in Chautauqua County, New York. The proposed Facility will consist of up to 58 wind turbines

and associated infrastructure, including access roads, aboveground and buried collection lines, an aboveground generator lead line, substations, meteorological towers, staging/laydown yards, and an operations and maintenance building.

- **Unanticipated Discovery/Unanticipated Cultural Resource Discovery:** any indications of the presence of archaeological materials including historic or prehistoric artifacts, animal bone, and/or human remains. Common historic artifacts encountered may include bottles/glass, pottery/ceramics, stone foundations, brick, nails, miscellaneous metal fragments, or charcoal or ash-stained soils. Common prehistoric 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):** all areas of potential soil disturbance associated with the construction and operation of the proposed Facility.

1.0 Training and Orientation

- 1.1 EverPower will assure that construction contractor 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 EverPower Project Manager (see Attachment A) upon the observation of a potential unanticipated discovery as defined in the introduction.
- 1.2 EverPower will stress the necessity of compliance with this Protocol and special emphasis and attention will be given to potential circumstances involving human remains. EverPower will stress the importance of treating any human remains, or potential human remains, that may be encountered with the utmost dignity and respect (see Section 4.0 below concerning human remains and Attachment B).

2.0 Observed Resources

- 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 EverPower Project Manager (see Attachment A). If human remains are involved, the procedure described Section 4.0 concerning human remains will be followed.
- 2.2 If EverPower (or its contractors/consultants) believe that an unanticipated discovery has been made, all ground-disturbing activities within the vicinity of the discovery will be stopped until such time as it is determined that construction in this area may continue. EverPower 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. 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.
- 2.3 Upon the identification of a potential discovery, EverPower will immediately notify the designated cultural resources consultant identified in Attachment A. Notification will be by telephone with additional notification via email if necessary.
 - 2.4 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 EverPower 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 EverPower within a reasonable timeframe.
 - 2.5 If the archaeologist determines the discovery to be an archaeological resource, he/she will immediately notify the EverPower Project Manager. EverPower will be responsible for immediately notifying the US Army Corps of Engineers (USACE) and the New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP), by telephone and with written confirmation by email. Notifications will be made within 24 hours of the determination that an archaeological resource has been discovered. USACE and NYSOPRHP contacts are in Attachment A.
 - 2.6 If the archaeological resource is Native American in nature, EverPower will request that the USACE and/or NYSOPRHP notify representatives of the appropriate Native American Tribal Nation(s).
 - 2.7 If an archaeological resource has been discovered. The notifications to the USACE and SHPO will either:
(a) explain why the archaeologist believes the resource to be non-significant with respect to the National Register of Historic Places (NRHP); or
(b) explain why the archaeologist believes the resource to be significant with respect to the 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 USACE or NYSOPRHP, all work to evaluate the discovered archaeological resources will be restricted to the proposed Facility's direct APE.
 - 2.8 USACE or NYSOPRHP may invite interested Native American tribal representatives to observe the conduct of any proposed work.
 - 2.9 EverPower 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 resources is significant with respect to the NRHP in the opinion of the archaeologist. The archaeologist will provide EverPower with a brief written

memorandum assessing the significance of the resource with respect to the NRHP and making a recommendation for or against additional data recovery. The archaeologist will provide this report to Everpower 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 at this time.

- 2.10 At this time, EverPower may choose to prepare an analysis of alternative mitigation strategies to data recovery if warranted.
- 2.11 EverPower 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 submittal to the USACE and NYSOPRHP will be accompanied by a request to resume construction in the area of the discovery. If EverPower does not receive a response to the request to resume construction from the USACE and/or NYSOPRHP within five business days, EverPower will assume the agencies concur with the request and resume construction.
- 2.12 Proposed mitigation measures will not proceed until EverPower receives written authorization from USACE, following consultation with NYSOPRHP. EverPower will notify the USACE and NYSOPRHP at the completion of all mitigation measures. If construction has been halted during mitigation, EverPower will also request authorization from USACE and NYSOPRHP to resume construction.
- 2.13 EverPower 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.
- 2.14 EverPower 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.
- 2.15 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

- 3.1 The following protocol for dealing with skeletal remains will be followed during any circumstances in which any potentially 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 3.0 of this protocol will be followed.

- 3.2 It is crucial that all human remains (or potentially human remains) be treated with the utmost respect and dignity.
- 3.3 Any member of the construction team who believes an unanticipated discovery involving potentially human skeletal remains has occurred is required to stop work in the immediate vicinity of the discovery and notify the EverPower Project Manager.
- 3.4 If EverPower believes that potentially human skeletal remains have been discovered, they will stop all work within 100 feet of the discovery location until it is confirmed that construction may resume. The area will of the discovery will be protected and secured by (at a minimum) the installation of flagging tape and/or construction fencing delineating the discovery location. 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.
- 3.5 Upon the discovery of potential human remains, EverPower will immediately notify the designated cultural resources consultants listed in Attachment A via telephone and email.
- 3.6 As soon as possible following the discovery, an RPA will examine the potential skeletal remains and determine if they are human. If the archaeologist is unable to determine if the skeletal remains are human, EverPower will retain the services of a forensic anthropologist.
- 3.7 If the remains are determined to be animal (i.e., non-human), the archaeologist will assess whether they occur in an archaeological context.
- 3.8 If the remains are non-human and are determined to occur in an archaeological context, the procedures outlined in Section 2 of this Protocol will be followed.
- 3.9 If the remains are non-human and the archaeologist determines no archaeological resource is present, he/she will immediately advise the EverPower 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 EverPower within a reasonable timeframe.
- 3.10 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).
- 3.11 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 until a plan is developed for their removal in consultation with appropriate Tribal Nations, the USACE, and NYSOPRHP. The removal plan will be consistent with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA).
- 3.12 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.
- 3.13 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.
- 3.14 In cases involving Native American human skeletal remains, proposals, to the extent feasible, will incorporate any desires made known to EverPower by Native American Tribal Nations, regarding the treatment of human remains.
- 3.15 If the USACE and NYSOPRHP determine that the archaeological site associated with the human skeletal remains is not significant with respect to the NRHP, EverPower will resume construction once human remains have been removed to the satisfaction of the USACE, NYSOPRHP, and interested Native American Tribal Nations.
- 3.16 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.
- 3.17 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 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.

Cassadaga Wind Facility – Unanticipated Archaeological Discovery Protocol
Attachment A – Anticipated Notification List

<p>EverPower Construction Project Manager (on-site) TO BE DETERMINED</p>	<p>Alternate TO BE DETERMINED</p>
<p>Cultural Resources Consultant/Archaeologist Patrick Heaton, RPA Environmental Design and Research 217 Montgomery Street, Suite 1000 Syracuse, NY 13202 Phone: 315-471-0688 Email: pheaton@edrdpc.com</p>	<p>Alternate TO BE DETERMINED</p>
<p>US Army Corps of Engineers (USACE) TO BE DETERMINED</p>	<p>Alternate TO BE DETERMINED</p>
<p>New York State Office of Parks Recreation and Historic Preservation Nancy Herter Coordinator and Native American Liason PO Box 189 Waterford, NY 12188-0189 Phone: 518-237-8643 Email: nancy.herter@parks.ny.gov</p>	<p>Alternate Daniel Bagrow Scientist (Archaeology) PO Box 189 Waterford, NY 12188-0189 Phone: 518-237-8643 Email: daniel.bagrow@parks.ny.gov</p>
<p>Native American Representative(s) TO BE DETERMINED</p>	<p>Alternate TO BE DETERMINED</p>
<p>Law Enforcement Agency New York State Police 3081 N. Main Street Ext. Jamestown, NY 14701 Phone: 716-665-3113</p>	
<p>County Coroner Chautauqua County Medical Examiner and Coroner 7 North Erie Street Mayville, NY 14757 Phone: 716-753-4590</p>	

**State Historic Preservation Office/
New York State Office of Parks, Recreation and Historic
Preservation
Human Remains Discovery Protocol
(November 28, 2008)**

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

- At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
- Human remains or 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.
- The county coroner/medical examiner, local law enforcement, the SHPO, the appropriate Indian Nations, and the involved agency will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archaeological.
- If human remains are determined to be 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 choice of the SHPO and the Indian Nations. The involved agency will consult SHPO and appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance.
- 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 choice of the SHPO. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.