

LETTER OF RESOLUTION
AMONG

THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION, AND THE BRIARCLIFF SOLAR NORTH LLC, BRIARCLIFF
SOLAR SOUTH LLC,

REGARDING

DEMOLITION AND SOLAR PANEL FARM INSTALLATION AT
345 SCARBOROUGH ROAD, VILLAGE OF BRIARCLIFF MANOR,
WESTCHESTER COUNTY (22PR01760)

WHEREAS, the Briarcliff Solar North LLC, Briarcliff Solar South LLC ("Briarcliff Solar"), is seeking to undertake a project ("the Proposed Project") at property located at 345 Scarborough Road, Briarcliff Manor, Westchester County, New York (Tax Map Nos. 97.16-1-1 and 97.12-1-9), (the "Subject Property"); and

WHEREAS, Briarcliff Solar is proposing to establish a solar panel farm on approximately 47.6 acres within the approximately 95.5-acre parcel on the Subject Property; and

WHEREAS, the Proposed Project requires permits issued by the New York State Department of Environmental Conservation ("NYSDEC") for the Proposed Project; and

WHEREAS, the Briarcliff Solar has consulted with the New York State Office of Parks, Recreation and Historic Preservation Office ("OPRHP") in accordance with Section 14.09 of the New York State Historic Preservation Act of 1980, 9 NYCRR Part 428; and

WHEREAS, the Subject Property is the location of the Philips Research North America Campus ("Campus"), eligible to be listed on the State and National Registers of Historic Places;

WHEREAS, the Proposed Project will include demolition of all structures on the Subject Property, which constitutes an Adverse Impact on historic architectural resources under Section 14.09 of the New York Parks, Recreation and Historic Preservation Law; and

Whereas, it has been determined by the involved agencies/parties that no prudent or feasible alternatives exist that would avoid or lessen the adverse impacts to the historic resources and district associated with this undertaking; and

WHEREAS the purpose of this Letter of Resolution ("LOR") is to ensure that the proper mitigation measures are undertaken and incorporated into the Proposed Project to mitigate the Adverse Impact; and

NOW, THEREFORE, NYSDEC, and OPRHP in accordance with Section 14.09 of the York State Historic Preservation Act of 1980, the Parties agree to the following stipulations specified below.

STIPULATIONS:

1. PERMITTING

NYSDEC shall require compliance with the terms of this LOR a Special Condition of any permit issued for this Proposed Project.

2. DOCUMENTATION

Documentation of the Subject Property will be prepared prior to demolition by Briarcliff Solar. The documentation will include an architectural description and historical narrative, select historic drawings/photographs, and digital photographs (following the attached OPRHP Property Documentation guidelines dated January 25, 2019) on using a ten (10) megapixel or greater digital SLR camera and TIFF or RAW formatting).

Final Documentation shall be distributed as follows:

New York State Office of Parks, Recreation, and Historic Preservation / NYS Archives

- One (1) report printed on archival paper
- One (1) complete set of digital photographs produced on fiber-based paper and packaged in archival sleeves; photographs accompanied by photo location map
- One (1) archival Gold CD containing a digital copy of the complete report in Adobe PDF format

New York State Department of Environmental Conservation

- One (1) archival Gold CD containing a digital copy of the complete report in Adobe PDF format

Westchester County Historical Society/Westchester County Records Center, Elmsford, NY

- One (1) archival Gold CD containing a digital copy of the complete report in Adobe PDF format

Briarcliff Manor – Scarborough Historical Society

- One (1) archival Gold CD containing a digital copy of the complete report in Adobe PDF format

3. CONSTRUCTION PROTECTION

A Construction Protection Plan (CPP) will be developed to protect any historic resources located within 90 feet of any construction activity. The CPP will be implemented by a licensed professional engineer. The CPP will be submitted to OPRHP for review and approval prior to implementation. The CPP should follow the National Park Service's Tech Note; Temporary Protection #3, Protecting A Historic Structure during Adjacent Construction
<https://www.nps.gov/orgs/1739/upload/tech-note-temporary-protection-03-during-construction.pdf>

4. SALVAGING OF COMPONENTS

1. Briarcliff Solar, in coordination with the contractor and the Briarcliff Manor – Scarborough Historical Society, shall salvage remaining Philips Research North America Campus building components and/or signage, that are identified and requested prior to demolition. A re-use endowment will be provided to the Briarcliff Manor – Scarborough Historical Society by Briarcliff Solar.
2. Documentation of the proposed components to salvage shall be submitted to OPRHP for review and approval prior to demolition.

5. UNANTICIPATED DISCOVERIES PLAN AND THE DISCOVERY OF HUMAN REMAINS

If, during project-related activities, archaeological material comes to light, the Unanticipated Discovery Plan (“UDP”) shall be followed. The UDP is attached as a part of the LOR; a copy of the UDP shall be maintained on site throughout the duration of the Proposed Project.

Although not anticipated, if suspected human remains are encountered at any point during the Proposed Project, the UDP and the OPRHP’s Human Remains Discovery Protocol, which is appended to the UDP, shall be followed.

6. DISPUTE RESOLUTION, OBJECTIONS

Should any signatory to this LOR object at any time to the way the terms of this LOR are implemented, the NYSDEC shall consult with others NYSDEC deems appropriate to resolve the objection. Prior to reaching a final decision on the dispute, the NYSDEC shall prepare a written response that considers any timely advice or comments from the signatories regarding the dispute and provide each with a copy of this written response. The NYSDEC will then proceed according to its final decision.

7. AMENDMENTS

Any amendment must be agreed to in writing by all signatories and will take effect on the date it is signed by the last signatory. Signature pages may be scanned and transmitted to the other signatories by email. The Agreement may be amended to add other State agencies as parties if it is subsequently determined they also have jurisdiction for this undertaking.

8. DURATION

This LOR will expire if the Proposed Project is not completed within five (5) years from the date of its execution by Briarcliff Solar. Prior to expiration, the NYSDEC may consult with the signatories to reconsider its terms and propose amendments in accordance with Stipulation 7. The duration of this LOR may be extended only upon approval of all signatories.

9. TERMINATION

If any signatory to the LOR determines that its terms will not or cannot be carried out, that signatory shall immediately confer with the others to attempt to resolve a dispute or develop an amendment per Stipulation 7 above. If within thirty (30) days a dispute cannot be resolved or an agreement on an amendment cannot be reached, any signatory may terminate the LOR upon written notification to the other signatories.

10. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase in this LOR is, for any reason, held to be unconstitutional, invalid, or ineffective, such decision shall not affect the validity or effectiveness of the remaining portions of this LOR.

11. COUNTERPARTS

This LOR may be executed in counterparts, with a separate page for each signatory. This LOR will become effective upon the date of the final signature. The OPRHP will ensure that each signatory is provided with a complete copy of the final LOR.

SIGNATURE PAGES FOLLOW

NEW YORK STATE OFFICE OF PARKS, RECREATION
& HISTORIC PRESERVATION

By: R. Daniel Mackay

Title: R. Daniel Mackay, Deputy Commissioner, State Historic Preservation Officer

Date: 11/25/2022

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 
Title: Charles Vandrei, Agency Historic Preservation Officer
Date: November 17, 2022

BRIARCLIFF SOLAR NORTH LLC, BRIARCLIFF SOLAR SOUTH LLC
(“BRIARCLIFF SOLAR”)

By: Nadia Jagdat

Title: Development Associate

Date: November 23, 2022

Property Documentation

The photographic and historical documentation of a historic property to be demolished, relocated, or substantially altered is standard practice in the field of historic preservation, and is intended to provide a record of the property in perpetuity as mitigation for adverse impacts. Federal documentation guidelines are provided under the Historic American Building Survey/Historic American Engineering Record/Historic American Landscape Survey (HABS/HAER/HALS) program. This sheet provides state-level guidance for producing digital and hard-copy documentation reports to be held by our office (the State Historic Preservation Office/SHPO) and by the New York State Archives. Historic properties are to be documented using the following format:

Photographs*

- Photographs should be clear, well composed, and should provide an accurate visual representation of the property and its significant features. Submit as many photographs as needed to depict the current condition and character-defining features of the property.
- Digital photographs should be taken using a ten (10) megapixel or greater digital SLR camera.
- Images should be saved in Tag Image File format (TIFF) or RAW format images. This allows for the best image resolution. RGB color digital TIFFs are preferred.
- Selected images for the hard-copy documentation package should be printed as follows: one to three 8x10-inch views of the overall property. Sufficient 5x7-inch supplemental images to fully document the present condition of all aspects of the property (important site features, all façade elevations, major architectural features and details, and representative views of the interior spaces).
- Historical photos (if available) depicting the property should be reprinted at 5x7-inch size and included in the documentation.
- Images should be printed on a high quality color printer using compatible high quality photographic paper stock (HP printer use HP Paper, Epson printer use Epson paper)
- Each photograph must be numbered and that number must correspond to the photograph number on an accompanying Photo Log or Key. For simplicity, the name of the photographer, photo date, etc. may be listed once on the Photo Log or Key and doesn't need to be labeled on every photograph.
- Write the label information within the white margin on the front of the photograph using a photo labeling pen. Label information can also be generated by computer and printed directly in the white margin (adhesive labels are not recommended).
- Do not print information on the actual image – use only the photo margin or back of the photograph for labeling.
- At a minimum, photographic labels must include the following information: Photograph number, name or address of the property, date photograph was taken, and the county the property is located in.
- Photos should be placed in folders or photo sleeves.

Historical Narrative**

A narrative description should be prepared and should include the relevant historical context, a discussion of the development and construction history of the property, and a summary of the property's historical significance. Copies of primary source documentation (such as historic photographs, archival records, original architectural plans, and maps), if available, should be included, appropriately labeled, and referenced in the narrative text (e.g., Figure 1, Figure 2).



Parks, Recreation, and Historic Preservation

1/25/19

Plans/Drawings***

Copies of existing recent or current construction plans, if available, should be included.

Final Report

Two bound or boxed hard copies of the final documentation report (including photographs, historical narrative, and drawings) are requested: one copy of the report should be submitted to the SHPO for forwarding to the New York State Archives, and one copy of the report should be provided directly to an appropriate local repository. A digital copy of the report (saved on a thumb drive, CD or DVD) shall accompany the SHPO hard copy. **Completed documentation reports are to be submitted prior to demolition/relocation/renovations.**

PLEASE NOTE:

*Large-format (4 by 5) film photography may be warranted for National Historic Landmarks and properties possessing a high level of local significance, or statewide or national significance.

**Creation of as-built drawings may be warranted, and could be done using traditional drawing methods, CAD-type programs, or laser scanning.

***A useful model for the historical narrative is the HABS/HAER narrative report form, equivalent to HABS Level 2 documentation. The HABS Historical Report Guidelines can be found on the web at: https://www.nps.gov/history/local-law/arch_stnds_6.htm#guide AND

<https://www.federalregister.gov/documents/2003/07/21/03-18197/guidelines-for-architectural-and-engineering-documentation>

NOTICE: This form is meant to be used as general guidance. Requirements may vary depending on the historic property and project in question. Property-specific requirements such as number of buildings/structures may be called out in the Letter of Resolution (LOR) agreement document or as a modification of this document appended to an LOR.

UNANTICIPATED DISCOVERIES PLAN

BRIARCLIFF SOLAR

- **Notification Procedures during Construction for Unanticipated Archaeological Discoveries**

The following procedures will be adhered to in the event of a potential discovery of archaeological remains during construction:

1. Possible archaeological remains may be discovered by the contractor's construction personnel. In the event that suspected artifacts or archaeological features are uncovered during a construction activity, that activity shall immediately be halted in the vicinity of the discovery until it can be determined whether the materials are cultural and, if so, whether they represent a potentially significant site.
2. If artifacts are identified, activities that could affect the integrity of the deposit(s) will be suspended immediately and the contractor's construction foreman will be notified immediately. The foreman, in turn, will notify Briarcliff Solar's Site Manager. Notification will include the specific construction area in which the potential archaeological site is located. The Briarcliff Solar's Site Manager will notify the New York State Office of Historic Preservation/Office of Parks, Recreation and Historic Preservation (OPRHP) and the NYS Department of Environmental Conservation (DEC).
3. If an OPRHP site visit is necessary, the Briarcliff Solar's Site Manager will have an archaeologist on site within 24 hours after notification.
4. The location of any site-related materials, features, etc., will be identified on Project maps, along with the date on which they were identified.
5. If on-site archaeological investigations are required, the Briarcliff Solar's Site Manager will inform the construction contractor. No construction work at the site that could affect the cultural deposits will be performed until the archaeologist reviews the site. The site will be flagged as being off-limits for work, but will not be identified as an archaeological site *per se* in order to protect the resources.
6. The archaeologist will conduct a review of the site and will survey the site as necessary, in accordance with the OPRHP's standards and guidelines. Since the area will have already been partially disturbed by construction activities, the objective of any cultural resource investigations will be to evaluate data quickly and provide notification to the OPRHP and DEC.
7. The archaeologists will determine on the basis of the artifacts, cultural deposits, and general cultural sensitivity of the area whether the site is potentially significant and if the DEC and OPRHP require immediate notification by telephone. If not, data regarding the site will be e-mailed to the DEC and the OPRHP in order to ensure a quick site clearance.
8. Once site clearance is received from the DEC and OPRHP, Briarcliff Solar's Site Manager will notify the construction contractor that work may proceed.
9. If the archaeological site is determined to be potentially significant by either the archaeologist or the appropriate Tribal Historic Preservation Officer (THPO), the archaeologist will notify the OPRHP and the DEC by phone to arrange a meeting, preferably on-site within 48 hours, to discuss the next steps. After conferring with the OPRHP, DEC, and THPO, the Briarcliff Solar's Site Manager will move forward on an approved plan for the treatment of the discovery.
10. If Human Remains or possible Human Remains are identified, the following OPRHP guidelines will take effect.

**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.