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**Also Admitted in Massachusetts & District of Columbia*

December 1, 2011

Via Electronic Mail

Hon. Jaclyn Brilling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 11-E-0351 – STONY CREEK ENERGY LLC

Dear Secretary Brilling,

As Stony Creek Energy LLC (Stony Creek) has previously reported to the Commission, applications for other permits required for the construction of the Stony Creek Wind Farm have been pending review and approval by the relevant agencies. With this letter, I am providing for the Commission's files the following:

1. Permit issued by the New York State Department of Environmental Conservation authorizing activities impacting freshwater wetlands and protected streams, including a water quality certification under Section 401 of the Clean Water Act;
2. United States Department of the Army determination of applicability of Nationwide Permit; and
3. Memorandum of Agreement for Mitigation of Adverse Impacts on Historic Properties among US Army Corps of Engineers, New York State Historic Preservation Office and Stony Creek.

With the recent issuance of these approvals and permits, construction of all aspects of the Stony Creek Wind Farm may commence once the Commission issues a Certificate of Public Convenience and Necessity.

Respectfully submitted,

John W. Dax

JWD:lmm

Enclosures

cc: Active Parties List (via email)

**Case 11-E-0351 – Stony Creek Energy LLC
Attachment 1**

Permit issued by the New York State Department of Environmental Conservation authorizing activities impacting freshwater wetlands and protected streams, including a water quality certification under Section 401 of the Clean Water Act



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:

STONY CREEK ENERGY LLC
51 MONROE ST STE 1604

ROCKVILLE, MD 20850
(301) 610-6412

Facility:

STONY CREEK WIND FARM
APPROX 14,000 ACRES BOUNDED BY
SYLER RD ON THE WEST; HERMITAGE
RD/ROUTE 238 ON THE EAST; ALMETER RD
ON THE SOUTH; GLOR RD ON THE NORTH
ORANGEVILLE, NY 14167

Facility Location: in ORANGEVILLE in WYOMING COUNTY **Village:** Orangeville

Facility Principal Reference Point: NYTM-E: 234 NYTM-N: 4738

Latitude: 42°44'54.3" Longitude: 78°15'00.4"

Project Location: Primarily Located on High Ridges and Hilltops in the Town of Orangeville

Authorized Activity: The proposed Stony Creek Wind Farm (Project) involves construction of up to 59 industrial wind turbine generators (WTG) over a 14,500 acre project area in the Town of Orangeville, Wyoming County. The Project will involve construction of approximately 14 miles of access roads, 30 miles of 34.5 kV electrical lines, one permanent 262 ft tall meteorological tower, an interconnection substation, a temporary construction staging area, and an O&M facility.

The following are specific authorized activities in association with the above Project:

A total of 0.16 acre of state-regulated freshwater wetlands will be temporarily impacted. A total of 0.08 acre of state-regulated freshwater wetlands will be permanently impacted. The permanent impacts are due to access roads and the temporary impacts are due to the electrical collection system (ECS). In addition, 5.89 acres of regulated 100-foot adjacent area will be impacted, including 3.45 acres of forested buffer and 2.44 acres of non-forested buffer. Most of the adjacent area impacts are permanent. The disturbances are largely due to the electrical collection system (ECS) but also include, to a lesser extent, access roads, crane roads, crane assembly areas, crane pads, and turbine foundations.

A total of 100 linear feet of class A streams will be permanently impacted due to five crossings and culvert installation stemming from access road construction. A total of 101 linear feet of class A streams will be temporarily impacted due to four crossings from build-out of electrical collection system (85 linear feet) involving open trenches that will later be filled in. In addition, one crossing involving a temporary impact is due to the construction of a temporary access road for a crane pad.

Permit Authorizations

Freshwater Wetlands - Under Article 24
Permit ID 9-5640-00044/00001



New Permit Effective Date: 12/1/2011 Expiration Date: 11/30/2021
Water Quality Certification - Under Section 401 - Clean Water Act
Permit ID 9-5640-00044/00002


New Permit Effective Date: 12/1/2011 Expiration Date: 11/30/2021
Stream Disturbance - Under Article 15, Title 5
Permit ID 9-5640-00044/00003

New Permit Effective Date: 12/1/2011 Expiration Date: 11/30/2021

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: CHRISTOPHER M HOGAN, Deputy Chief Permit Administrator
Address: NYSDEC HEADQUARTERS
 625 BROADWAY
 ALBANY, NY 12233

Authorized Signature:  Date 11 / 30 / 11

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITION

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: FRESHWATER WETLANDS; WATER QUALITY CERTIFICATION; STREAM DISTURBANCE

1. **Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by American Consulting Professionals of New York, PLCC.
2. **Conformance with Plans (continued)** All work shall be completed in accordance with the following plans and narratives:



Stony Creek Wind Farm Joint Permit Application (to include Stream Disturbance, 401 Water Quality Certification and Freshwater Wetlands Impact), Prepared by American Consulting Professionals of New York, PLLC , Dated August 8, 2011.

Final Environmental Impact Statement for the Stony Creek Wind Farm, Dated July 6, 2011.

Draft Environmental Impact Statement for the Stony Creek Wind Farm, Dated February 18, 2010.

Revised Map D08, "Wetland Impacts" (original version from Joint Permit Application), Per Invenergy Email Dated October 4, 2011

Revised Map D09, "Wetland Impacts" (original version from Joint Permit Application), Per Invenergy Email Dated October 4, 2011

Revised Tables 1 -3, "Stream Impacts", "Stream Crossings by Classification", and "Stream Crossings by Method." (original versions from Joint Permit Application), Per Invenergy Email October 31, 2011.

Revised Tables 5 and 6, "Impacts to NYS DEC Wetlands" and "Impacts to NYS DEC Wetland Buffers" (original versions from Joint Permit Application), Per Invenergy Email Dated October 4, 2011

Revised Vegetative Restoration Plan, Per Invenergy Email Dated 5 October 2011.

Invasive Species Control Plan. Appendix I of FEIS and Appendix G of the Joint Application.

Proposed Wetland Mitigation Plan for Stony Creek Wind Farm, Town of Orangeville, Wyoming County, NY. Prepared by Earth Dimensions, Inc. Dated 22 September 2011.

Revised NYS DEC Buffer Zone Mitigation Plan, Letter from Earth Dimensions Inc Addressed to NYS DEC (Charles Rosenburg and Rudyard Edick), Dated October 20, 2011.

Environmental Monitoring Plan, Stony Creek Wind Farm, Appendix to DEIS, Dated January 7, 2009.

3. Permit Conditions Permit Conditions take precedence over all plans, drawings, sketches, notes and project narratives made a part of this permit.

4. Submission of Materials Unless otherwise noted, all plans, reports or other materials requested by the Department under the terms of this permit shall be submitted to the Chief Permit Administrator, NYSDEC Headquarters, 625 Broadway, Albany, New York 12233-1750. Where it is specified that correspondence be directed to the DEC Region 9 Natural Resources Supervisor or Spill Engineer, it shall be submitted to DEC Region 9 Headquarters, 270 Michigan Avenue, Buffalo, NY 14203.

5. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the



State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

6. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

7. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

8. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

PRE-CONSTRUCTION REQUIREMENTS

9. Notice of Intent to Commence Work The permittee shall submit a Notice of Intent to Commence Work to the DEC Region 9 Natural Resources Supervisor, at least 48 hours in advance of the time of commencement and shall also notify him/her promptly in writing of the completion of work.

10. Final Environmental Monitoring Plan The permittee shall submit a Final Environmental Monitoring Plan to the Natural Resources Supervisor, DEC Region 9, 270 Michigan Avenue, Buffalo, NY 14203, at least five business days in advance of the time of commencement of work authorized under this permit and shall also notify him/her promptly in writing of the completion of work.

11. Spill Prevention, Control, and Countermeasures Plan Prior to the start of construction activities authorized under this permit, the permittee shall submit a Final Spill Prevention and Response Plan to cover the construction phase and associated activities. The plan must describe the following: measures of prevention, response to spills and reporting of spills. Prior to the Commencement of Operations the permittee must submit a Spill Prevention, Control, and Countermeasures Plan (SPCC) that covers the storage of materials, discharge potential, reporting, containment measures, monitoring and inspection of facilities. The plans must be approved and found acceptable to the Regional Spill Engineer. All measures and requirements included in the approved plans shall be enforceable conditions of this permit. If any unforeseen changes to construction or operations occur that require alterations to the Final SPRP and SPCC, a modified plan(s) should be submitted to, and reviewed by, the Regional Spill Engineer prior to proceeding with the change.

CONSTRUCTION REQUIREMENTS



12. Post Permit Sign The permit sign enclosed with this permit shall be posted in a conspicuous location, adequately protected from the weather, at the permittee's field headquarters, and copies posted at each worksite where a DEC-regulated activity is authorized by this permit.

13. Storage Tanks Fuel or other chemical storage tanks shall be contained and located at all times in an area greater than 100 feet landward of a regulated wetland, water body or water course.

14. Reporting of Spills Any spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the Department's Spill Hotline (1-800-457- 7362) within 2 hours.

15. Prevention and Reporting of Discharge of Concrete to Water All measures and precautions shall be employed to prevent the discharge of concrete to streams or wetlands. If a discharge does occur, all water shall be pumped to an upland area. If a discharge occurs, the DEC Spill Response Team shall be contacted within 2 hours and the DEC Region 9 Natural Resources Supervisor shall be contacted within 1 day.

16. Erosion and Sedimentation Prevention and Control During construction erosion control devices such as straw bales or a filter fabric fence shall be used to prevent erosion of the dredged material or disturbed soil along with other measures as described in the SWPPP and Erosion and Sedimentation Prevention Plan. The straw bales or filter fabric fence shall be installed in accordance with appropriate construction techniques, including placing the straw bales and filter fabric fence in a shallow trench, backfilling the toe of the filter fabric fence and securing the straw bales with stakes. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized. Straw shall be used rather than hay so as to minimize the risk of introduction of invasive species.

17. Invasive Species Management Plan (ISMP) The spread of invasive plant species within the project development area shall be prevented in accordance with the Invasive Species Management Plan (ISMP) described in the Joint Application for Permit. The goal of the ISMP is to prevent the expansion of invasive species within the project development area, and will be considered successful only when a zero percent net increase (compared with pre-construction conditions) in areal coverage of invasives is realized.

18. Fence and Sign Wetland Boundary The state-regulated freshwater wetland and/or adjacent area boundary, near construction, shall be conspicuously marked by the installation of snow fencing, plastic fencing (or other temporary, project limiting fencing) and "protected area" signs wherever necessary to prevent the intrusion of equipment into the protected area. The fencing shall be maintained until project completion and then removed.

19. Prevention of Siltation of Wetlands Siltation barriers shall be installed between the wetlands and the adjoining development, to prevent siltation into the wetlands.

20. Use of Straw in Wetlands and Adjacent Areas Straw shall be used rather than hay for erosion and sedimentation control purposes in all DEC regulated wetlands and their 100 foot adjacent areas so as to minimize the risk of introduction of invasive species.

21. Topsoil Segregation Topsoil removed within state-regulated freshwater wetlands and 100-foot adjacent areas as part of the authorized project shall be separated from subsoil and stockpiled. The top



soil removed from state regulated wetlands shall be used in the restoration and final grading of freshwater wetland areas.

22. Native Species Reseeding of disturbed areas in state-regulated freshwater wetlands and 100-foot adjacent areas shall be with native seed mixes.

23. Trench Across Stream/Wetland Any wetland or stream crossing trench shall be opened, installation accomplished and backfilled in one continuous operation.

24. Maintain Cover in Stream Buffer If any trees and shrubs growing within 50 feet of DEC-protected streams need to be cut in the process of constructing overhead power line crossings, they shall be cut off with at least two feet of the stump remaining, except where matted crossings are permitted. Stumps and root systems shall not be damaged to facilitate stump sprouting. All trees and shrubs cut within the 50 foot buffer area shall be left on the ground, except that those dropped into the stream or on bare gravel bars shall be pulled back into vegetated areas.

25. Clearing of Vegetation and Snags in Streams Clearing of natural vegetation shall be limited to that material which poses a hazard or hindrance to the construction activity. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion. Trees shall not be felled into any stream or onto the immediate stream bank.

26. Maintain Water Flow During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site.

27. Stabilize Disturbed Areas All disturbed stream banks below the normal high water elevation must be graded no steeper than 1 vertical to 2 horizontal slope, and adequately stabilized with stone riprap (native stone preferred). All other areas of soil disturbance above the ordinary high water elevation, or elsewhere, shall be seeded with an appropriate perennial grass seed and mulched with straw within two (2) days of final grading. Mulch shall be maintained until suitable vegetation cover is established. Destroyed bank vegetation shall be replaced with shrub willow or silky dogwood planting, or other suitable species.

28. Prevention of Sedimentation of Regulated Streams via Tributary Crossings Crossings of Class C streams that could result in sedimentation of DEC regulated streams shall be done in the dry. The first method for stream crossing in dry conditions will be to construct in intermittent and ephemeral streams at times of no flow. The second method will be to impede the water flow, using a device such as a cofferdam, and redirecting the water around the work site. Erosion and sediment control devices will be installed to prevent any downstream turbidity or erosion. Cofferdams shall consist of either prefabricated or of non-crodible material. Imported cofferdam material (stone, jersey barriers, sandbags, etc.) will be completely removed from the stream. Furthermore, downstream flows must be maintained to protect aquatic life.

29. Best Management Practices for Unregulated Streams Crossed Via Trenching Best management practices for crossing DEC unregulated streams via open trenching should include, but not be limited to, a) culverts should be installed in the dry - this may require pumping or piping the stream flow around the work area while protecting the bank from erosion; b) any temporary cofferdam shall be constructed of materials that will not contribute turbidity or siltation to the waterbody and will be removed completely upon completion of the work; c) temporary diversion channels, culverts, or pump-



around shall be constructed to prevent running water in the work area and shall be constructed of non-erodible materials and shall be completely removed upon completion of work with area restored to original conditions; d) discharges from dewatering operations shall be baffled or otherwise diffused to prevent sediment transport or scour; e) no turbidity resulting from dewatering operations shall be discharged directly or allowed to enter any wetland, stream, or water body within the project area; and f) all necessary measures shall be implemented to prevent any visible increase in turbidity or sedimentation downstream of the work site.

30. Erosion and Sediment Control for Horizontal Directional Drilling (HDD) Erosion and sediment control will be used at the point of drilling, so that sediment laden runoff shall not escape the drill site and enter streams or wetlands. The disturbed area will be restored to original grade and reseeded upon project completion.

31. Drilling Fluids Management for HDD Drilling fluid circulation shall be maintained to the extent practical. If inadvertent surface returns occur in upland areas, the fluids shall be immediately contained and collected. If the amount is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area (i.e. wetlands and water bodies) the returns shall be monitored and documented. Drilling operations must be suspended if the surface returns pose a threat to the resource or to public health and safety. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the resource. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area the Department shall be notified immediately and a monitoring report summarizing the location of surface returns, estimated quantity of fluid and summary of cleanup efforts shall be submitted within 48 hours of the occurrence.

32. Monitoring and Response Plans for HDD While HDD under wetlands, adjacent areas, and streams, the permittee will maintain close monitoring for possible "frac-outs" that would result in the release of drilling fluids to sensitive areas. The permittee will maintain a HDD spill response plan and the necessary response equipment will be kept on-site for the duration of the drilling.

MITIGATION

33. Wetland Mitigation Area (WMA)

Wetland mitigation is a mandatory condition of this permit and must be conducted in accordance with the September 22, 2011, "Proposed Wetland Mitigation Plan for Stony Creek" and the October 20, 2011 "Revised NYSDEC Buffer Zone Mitigation Plan". Prior to operation of the wind farm, a Final Mitigation Plan must be accepted by the NYS DEC and include: 1) a project construction timeline; 2) a conservation easement with participating landowners unless such an agreement can be shown to not be practical, in which case, a deed restriction may be employed; 3) a commitment to maintain an 85% survival rate of tree and shrub plantings with replacements in kind when the survival rate is not met (as specified in condition 35 below); and 4) an expanded invasive species management plan to include the specifications as follows. The wetland mitigation project will ensure no more than 5% areal cover shall be vegetated with the following species: *Lythrum salicaria*, *Rhamnus* spp., *Typha angustifolia* and *Typha x glauca*. And the wetland mitigation project will ensure that no more than 10% areal cover shall be vegetated by *Phalaris arundinacea*. Corrective measures shall be implemented to preclude the growth of the above listed species throughout the ten (10) year monitoring period should they appear within the wetland Mitigation areas. Moreover, there will be 0% tolerance for Japanese knotweed (*Polygonum*



cuspidatum), any swallow-wort species (*Cyanchum rossicum* & *C. louiseae*), and common reed (*Phragmites australis*).

34. WMA Monitoring The WMA shall be monitored during the first ten (10) years post construction, quarterly the first year and twice per year thereafter. The permittee shall provide the Bureau of Habitat, DEC Region 9, with a report by December 31 of each year detailing the status of the wetland mitigation and any measures taken to maintain the WMA or meet mitigation goals. Reports shall detail soil conditions, hydrology including water depths, and presence of water within 12 inches of the surface, plant survival and replacement, plant species and percent cover, and photographs taken during the growing season. Detection and removal of invasive species shall be included in the report as well as use of the WMA by waterfowl and other wildlife.

35. Replace Lost Plantings The permittee is responsible for maintaining an 85% survival rate of Wetland and Wetland adjacent area tree and shrub plantings in the WMA. The permittee shall annually replace, in kind, all trees and shrubs that die if the survival rate is not met. Substitution of species and numbers shall only be made after approval by the Natural Resources Supervisor, DEC Region 9. Inspection of plantings shall occur each year no later than August 31 and all replacement trees and shrubs shall be planted by October 15 of each year, for a period of ten (10) growing seasons.

36. Re-evaluate Mitigation Goals If after five (5) growing seasons, successful mitigation goals have not been met, the permittee shall re-evaluate the mitigation project in order to determine how to meet mitigation goals and submit plans to be approved by the Natural Resources Supervisor, DEC Region 9. If after five (5) growing seasons and prior to the termination of the ten (10) year monitoring term, successful mitigation goals have been met by creating a properly functioning wetland as proposed and meeting the 85% success rate on all mitigation plantings, then permittee will be released from any further mitigation monitoring requirements. Permittee must provide the DEC Region 9 Natural Resources Supervisor with a summary report and a detailed description on how this mitigation goal has been met. DEC, if concurring with results, will provide the permittee with a notice of release to this permit condition.

37. Nests of Listed Species Excluding Bald Eagles, if at any time an active nest of any state or federally-listed threatened or endangered bird species is discovered within an active construction, ground clearing or grading site, the regional NYSDEC Natural Resource Supervisor will be notified and the nest site will be marked. An area 500 (five hundred) feet in radius around the nest will be avoided until notice to continue construction at that site is granted by the regional NYSDEC Natural Resource Supervisor. If a Bald Eagle nest is located, the regional NYSDEC Natural Resource Supervisor will be notified prior to any disturbance of the nest or immediate area, and an area 750 feet in radius from the nest tree will be posted and avoided until notice to continue construction at that site is granted by the regional NYSDEC Natural Resource Supervisor. The nest tree will not be approached under any circumstances unless authorized by the regional NYSDEC Natural Resource Supervisor.

38. Record of Listed Species During construction, maintenance, and operation of the wind power project and associated facilities, and during post construction wildlife monitoring and wetland mitigation surveys, the permittee shall maintain a record of all observations of NYS threatened or endangered (TE) species that shall include the following information: species; observation date and time; GPS coordinates of the location of each individual observed; behavior observed; identification and contact information of observer; and the nature of and distance to any project construction/maintenance activities, if any, occurring nearby. These records shall be reported to the NYSDEC Region 9 Natural Resource Supervisor (NRS) on a monthly basis unless a TE avian species is demonstrating breeding



behavior in which case it should be reported to the NRS within 48 hours. Accordingly, Invenergy will train its construction crews and O&M staff to focus on identifying the following bird species: bald eagle, short-eared owl, northern harrier, and upland sandpiper. The environmental monitor and the party responsible for conducting the post-construction surveys shall be required to record observations of any listed species (not just the aforementioned species) while doing work in the project area. Measures shall be in place to ensure proper and complete documentation of all such observations.

39. Injury or Mortality of Listed Species During the term of this permit, if any dead, injured or damaged NYS listed threatened or endangered species, or their parts, eggs, or nests thereof are discovered within the PROJECT SITE (defined for the purpose of this condition as leased land or property parcels containing project components) by the permittee, their designated agents, or a third party that reports to the permittee, the permittee shall immediately (within one business day) contact the regional NYSDEC Region 9 Natural Resource Supervisor (716.372.0645) and United States Fish and Wildlife Service (607.753.9334) to arrange for recovery and transfer of the specimen(s). The following information pertaining to the find shall be recorded: species; the date the animal or nest was discovered; the GPS coordinates of the location of discovery, the name(s) and contact information of the person(s) involved with the incident(s) and find(s); and, if known, an explanation of how the mortality/injury/damage occurred. This record shall be kept with the container holding the specimen and given to the Department at the time of transfer. If the discovery is followed by a non-business day, the permittee shall ensure the location of the find is marked, GPS data recorded, detailed photographs of the carcass taken, and the specimen placed in a freezer until it can be retrieved by the proper authorities.

40. Grassland Habitat Restoration During construction, any temporary disturbance or modification of grassland habitat will be restored to preexisting grassland habitat conditions by re-grading and reseeded. These areas shall include, but are not limited to temporary roads, material and equipment staging and lay-down areas.

41. Avian/bat Monitoring and Mitigation The permittee shall conduct post-construction avian and bat monitoring studies to estimate the direct and indirect, and immediate and long-term impacts of the construction, operation, and maintenance of the project on birds and bats, with focus on state and federally-listed endangered, threatened, and at-risk species. Post-construction monitoring shall be conducted for a minimum period of three (3) years and shall include direct impact studies, habituation/avoidance studies, and begin within one (1) year of project operational start up. The details for post-construction studies will be described in a post-construction monitoring and adaptive management plan (hereby referred to as the Monitoring and Adaptive Management Plan) as developed by the permittee in consultation with the USFWS and approved by DEC. The final Monitoring and Adaptive Management Plan must be approved no later than 60 days prior to commencement of project operation. The final Monitoring and Adaptive Management Plan shall include an adaptive management strategy, to be approved by DEC and to be applicable for the life of the project, and include a written commitment from the permittee to employ necessary mitigation measures in the event that post-construction monitoring studies identify unexpected or significant adverse impacts to breeding, wintering, or migrating birds or bats from the operation of the wind energy facility. All measures and requirements included in the approved Monitoring and Adaptive Management Plan shall be enforceable conditions of this permit.

42. Site Access The Department and their representatives shall have access to the PROJECT SITE and all MITIGATION LANDS for future research and monitoring. All such access shall be coordinated through the permittee and shall be in accordance with permittee's rights under leases with private landowners.



43. Telemetry and Aerial Studies of Eagles The permittee will coordinate with the Department to conduct a satellite telemetry study of a pair of bald eagles as determined by the Department to be potentially impacted by the project. The permittee will provide two satellite-tracking transmitters designed for tracking bald eagles and all associated equipment and related fees. The Department will capture the eagles and install the transmitters. The permittee will collect telemetry data for up to two years and will provide the Department with collected data, in appropriate format, promptly as it is generated and downloaded at a minimum on a weekly basis. A work plan describing the details of this study will be drafted by the permittee and approved as final by the Department prior to the commencement of field work for the telemetry study. It shall be designed to provide information on how these adults interact with Stony Creek project turbines that can be incorporated into the adaptive management strategy of the Monitoring and Adaptive Management Plan. The applicant will also conduct aerial surveys, to be defined in the Monitoring and Adaptive Management Plan, to determine if any active bald eagle nests are located within or near the project area.

44. ISMP Monitoring Monitoring for invasive species shall be conducted during the first ten (10) years post-construction to ensure the success of the ISMP in meeting its goals. On or before December 31 of each year, the permittee shall provide a report to the DEC Region 9 Natural Resource Supervisor detailing the status of the ISMP and any measures taken to meet the goals of the plan.

45. Cultural Resources Mitigation The permittee shall continue consultation with the U.S. Army Corps of Engineers and the State Historic Preservation Office (SHPO) to develop and implement an historic resources mitigation plan. The permittee shall provide the Chief Permit Administrator, NYSDEC Headquarters, 625 Broadway, Albany, New York 12233-1750, with a report on approved cultural mitigation project(s) by March 31, 2012 and annually until the completion of the activities.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available



for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Deputy Chief Permit Administrator
NYSDEC HEADQUARTERS
625 BROADWAY
ALBANY, NY12233

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Freshwater Wetlands, Stream Disturbance, Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification



The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

**Case 11-E-0351 – Stony Creek Energy LLC
Attachment 2**

United States Department of the Army
determination of applicability of Nationwide Permit



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO

November 29, 2011

Regulatory Branch

SUBJECT: Transmittal of PROVISIONAL Department of the Army Permit No. 2010-01115, New York State Department of Environmental Conservation No. 9-5640-00044, Nationwide Permit No. 39 as Published in the Federal Register, Volume 72, No. 47, on Monday, March 12, 2007

Mr. David Groberg
Vice President
Stony Creek Energy LLC
51 Monroe Street, Suite 1604
Rockville, Maryland 20855

Dear Mr. Groberg:

I am writing to you in regard to your proposal to permanently fill approximately 0.2446 acres of wetlands and streams in association with the construction of the Stony Creek Wind Farm, located in the Town of Orangeville, Wyoming County, New York.

I have determined that your project satisfies the terms and conditions of the attached Nationwide Permit. However, your project may not conform with all conditions contained in the "generic" New York State Department of Environmental Conservation (DEC) Water Quality Certification (WQC) associated with this Nationwide Permit.

Before you can commence work under this Nationwide Permit you must obtain an activity specific WQC from the following DEC regional office:

Rudyard Edick
New York State Department of Environmental Conservation
625 Broadway 4th Floor
Albany, New York 12233-1750

Once you have successfully completed the state process, you must forward a copy of the project specific WQC to this office. The conditions of the project specific WQC will supersede the WQC conditions included with the NWP attached to this transmittal. If the project remains unchanged you may commence work under the attached Nationwide Permit without any further coordination with this office. However, if your project is modified during the DEC review you will need to contact this office to determine if the modified project is still authorized by the attached Nationwide Permit. If this situation arises, you may need to furnish a revised permit

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application, and you may not commence work until you receive Department of the Army authorization.

Verification of the applicability of this Nationwide Permit (NWP) is valid until March 18, 2012 unless the NWP authorization is modified, suspended or revoked prior to this date. This verification will remain valid during this period if the NWP authorization is reissued without modification or your activity complies with any subsequent modification of the NWP authorization. Please note in accordance with 33 CFR 330.6(b) that if you commence or are under contract to commence this activity in reliance of your Permit prior to the date this NWP expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the NWP, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of this NWP, unless this NWP has been subject to the provisions of discretionary authority.

It is your responsibility to remain informed of changes to the NWP program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil>. Finally, note that if your activity is not undertaken within the defined period or the project specifications have changed, you must immediately notify this office to determine the need for further approval or reverification.

In addition to the general conditions attached to the Nationwide Permit, your attention is directed to the following Special Conditions which are also appended at the end of the Nationwide Permit General Conditions:

1. That the Water Quality Certification issued for this project by the State of New York is part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.
2. That you are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.

Regulatory Branch

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3. Siltation barriers shall be installed between the wetlands and the adjoining development, to prevent siltation into the wetlands.
4. That during construction erosion control devices such as hay bales or a filter fabric fence shall be used to prevent erosion of the dredged material or disturbed soil. The hay bales or filter fabric fence shall be installed in accordance with appropriate construction techniques, including placing the hay bales and filter fabric fence in a shallow trench, backfilling the toe of the filter fabric fence and securing the hay bales with stakes.
5. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized.
6. That the disposal of trees, brush and other debris in any stream corridor, wetland or surface water is prohibited.
7. Temporary impacts/fill may not be in place greater than 120 days in any single project location. Construction shall be sequenced such that restoration is completed at each impact area immediately upon completion of construction work at that location.
8. That the SHPO MOA entitled "Stony Creek Fully Executed SHPO MOA," is hereby incorporated into and made part of the permit as Appendix A. The permittee shall implement the MOA in accordance with all its terms and stipulations.
9. That you shall immediately cease work and contact the Corps of Engineers in the event of any unanticipated discoveries of cultural resources. These resources include:
 - a. any human remains
 - b. any recognizable, potentially significant concentrations of artifacts, features or other evidence of human occupation in areas which were not previously examined.

Regulatory Branch

SUBJECT: Transmittal of PROVISIONAL Department of the Army Permit No. 2010-01115, New York State Department of Environmental Conservation No. 9-5640-00044, Nationwide Permit No. 39 as Published in the Federal Register, Volume 72, No. 47, on Monday, March 12, 2007

10. The mitigation plan entitled "Proposed Wetland Mitigation Plan for Stony Creek Wind Farm", in the Town of Orangeville, Onondaga County, New York and as dated, September 22, 2011 is hereby incorporated into and made part of the permit as Appendix B. The permittee shall implement the mitigation in accordance with the plan, drawings and any following conditions.
11. The Environmental Monitoring Plan is hereby incorporated into and made part of the permit as Appendix C. The permittee shall implement the Environmental Monitoring Plan in accordance with all its terms and conditions.
12. The Vegetation Restoration Plan is hereby incorporated into and made part of the permit as Appendix D. The permittee shall implement the Vegetation Restoration Plan in accordance with all its terms and conditions.
13. The Invasive Species Control Plan is hereby incorporated into and made part of the permit as Appendix E. The permittee shall implement the Invasive Species Control Plan in accordance with all its terms and conditions.
14. The permittee has submitted a schedule outlining the construction timeframes for the project activities and the mitigation construction (Appendix F). As outlined in the schedule the permittee shall begin acquisition of the mitigation property in March 2012 and complete the acquisition of the mitigation property by April 2012. The permittee must begin construction of the mitigation area by April 2012. All construction and planting of the mitigation areas must be completed by May 30, 2012 or by an approved extension date.
15. A baseline report shall be forwarded to this office by December 31 in the year of completion of all mitigation construction activities, or by an approved extension. For purposes of this special condition, "completion" means all activities associated with site grading and seeding and/or planting. The baseline report must include the following:
 - a. An "as-built" topographic survey of the mitigation area at 0.5 foot contour intervals.
 - b. Photographs from fixed locations with a photolocation map.

Regulatory Branch

SUBJECT: Transmittal of PROVISIONAL Department of the Army Permit No. 2010-01115, New York State Department of Environmental Conservation No. 9-5640-00044, Nationwide Permit No. 39 as Published in the Federal Register, Volume 72, No. 47, on Monday, March 12, 2007

- c. A list of plants introduced through seeding and/or planting.
 - d. Water depth and date of measurement from representative locations within the mitigation area. The sample points will be fixed locations and shall be plotted on a map.
 - e. A list of any modifications that were made from the original mitigation plan.
16. Annual monitoring and/or compliance reports for the mitigation project must be submitted to this office for the first five years following completion of the mitigation construction based upon data collected during each monitored year between June and October. The first annual report is due by December 31 in the year following completion of mitigation construction, or by an approved extension date. Subsequent reports must be submitted by December 31 of the subsequent four years, or by an approved extension date. These reports must include:
- a. An "as-built" topographic survey of the mitigation area at 0.5 foot contour intervals, including a delineated boundary of the wetland and wetland acreage determination.
 - b. Photographs from fixed locations with a photolocation map.
 - c. A plant species list which give USFWS Wetland Indicator Status and strata. Dominant plants should be highlighted and the percent cover is to be noted. Plants introduced through seeding or planting shall also be indicated. The date of field inspection is to be noted.
 - d. Water depth and date of measurement from representative locations within the mitigation area during the growing season. The sample points will be fixed locations and shall be plotted on a map.
 - e. Fish and wildlife observations on the mitigation site.
 - f. A summary statement regarding the perceived success of the wetland creation project. The report will evaluate the goals as set forth in the permit or mitigation and monitoring plan as well as current wetland functions. These reports must also address any potential problem areas and include suggestions and timetable for correction if it is anticipated that projected goals may not be met.
17. The mitigation area shall be vegetated with a minimum of 85% areal cover of hydrophytic vegetation, with no more than 50% of one species by the end of the third growing season following construction of the mitigation area.

Regulatory Branch

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18. The mitigation area shall be vegetated with a minimum of 80% areal cover of hydrophytic vegetation, with no more than 50% of one species by the end of the fifth growing season following construction of the mitigation area.
19. At least 50% of the dominant vegetation shall have a wetland indicator status of FACW or wetter, with at least one OBL species by the end of the third growing season following construction of the mitigation area.
20. No more than 5% areal cover shall be vegetated with the following species: *Lythrum salicaria*, *Phalaris arundinacea*, *Phragmites australis*, *Rhamnus spp.*, *Typha angustifolia* and *Typha x glauca*. Corrective measures shall be implemented to preclude the growth of the above listed species throughout the 5 year monitoring period should they appear within the wetland mitigation areas.
21. The wetland created must meet the vegetative and hydrology requirements specified in the 1987 Corps of Engineers Wetland Delineation Manual and the Northcentral/Northeast Regional Supplement to the Corps of Engineers Wetland Delineation Manual.
22. The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine the compensatory mitigation to be unsuccessful. In the event that the mitigation area does not meet the criteria set forth in this permit, the permittee may be required to undertake additional mitigative measures. These actions may include, but are not limited to corrective actions on-site including regrading or replanting.
23. As mitigation for impacts to 0.2446 acres to federal wetlands/streams, the permittee shall place either perpetual deed restrictions or a conservation easement on the area as identified on the Mitigation Plan and Preservation Map Sheet 12 of 12 to guarantee its preservation for wetland and wildlife resources. As depicted on Sheet 12 of 12, 0.5 acres of wetland creation, 9.067 wooded preservation area, 23.73 acres of wetland preservation, 27.153 acres of NYSDEC upland buffer and 3.45 acres of planted NYSDEC 100 foot buffer are to be included in the deed restrictions area or conservation easement. The restrictions contained in the deed restriction or conservation easement shall specifically state that the mitigation area will not be adversely impacted by construction or structural

Regulatory Branch

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modifications. The proposed draft deed restriction language or draft conservation easement shall be submitted to the U.S. Army Corps of Engineers, Buffalo District, Office of Counsel, 1776 Niagara Street, Buffalo, New York 14207 for review and approval. Once the permittee has received approval from this office of the language contained in the deed restriction or conservation easement document, the permittee shall execute and record the signed deed restriction or conservation easement at the Wyoming County Recorder of Deeds. A certified copy of the recorded deed restriction or conservation easement document shall be forwarded to this office no later than July 1, 2012, or by an approved extension date.

24. That permanent monuments or signage shall be installed along the wetland mitigation boundary site to ensure that future property owners are aware of the location and restrictions associated with this area. Plans for the monuments or signage shall be submitted to this office for approval prior to implementation.
25. At the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, the permittee shall allow access to the project site and the mitigation parcel to determine compliance with the conditions of this permit.
26. All reports required under this permit shall be submitted to Mr. Harold Keppner, Chief, Monitoring & Enforcement Section, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199 unless otherwise specified no later than December 31 in the year the work authorized by this permit commenced, or by an approved extension date.

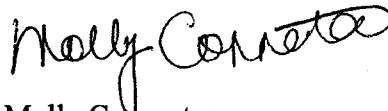
A copy of this correspondence has been sent to Erik Duncan of Invenergy LLC and Rudyard Edick of the NYSDEC Region 5 Division of Permits.

Regulatory Branch

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Questions pertaining to this matter should be directed to me at (716) 879-4304, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: molly.a.connerton@usace.army.mil

Sincerely,

A handwritten signature in black ink that reads "Molly Connerton". The signature is written in a cursive, flowing style.

Molly Connerton
Biologist

Enclosures

**Case 11-E-0351 – Stony Creek Energy LLC
Attachment 3**

Memorandum of Agreement for Mitigation of Adverse Impacts on
Historic Properties among US Army Corps of Engineers,
New York State Historic Preservation Office and Stony Creek

FIVE 71

**MEMORANDUM OF AGREEMENT FOR
MITIGATION OF ADVERSE EFFECTS ON HISTORIC PROPERTIES
FROM THE STONY CREEK WIND FARM,
TOWN OF ORANGEVILLE, WYOMING COUNTY, NEW YORK**

Among

**UNITED STATES ARMY CORPS OF ENGINEERS, BUFFALO DISTRICT,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE, AND
STONY CREEK ENERGY LLC.**

WHEREAS, Stony Creek Energy LLC (“Stony Creek”) proposes to construct a wind-powered electric generating facility (“Project”) in the Town of Orangeville, Wyoming County, New York occupying 115 acres and consisting of up to 59 turbines (GE model 1.6-100 or equivalent), a buried 34.5-kilovolt (kV) electrical collection system, a new electrical substation, access roads to allow vehicular access during project construction and operation, an 80-meter (262-foot) permanent meteorological tower, and an Operations and Maintenance facility for project offices, garages, workspace, and storage; and

WHEREAS, pursuant to Section 404 of the Clean Water Act (33 USC 1344), an application (**Permit Application No. 2010-01115**) was submitted to the United States Army Corps of Engineers, Buffalo District (“USACE”), on July 20, 2011 for permits to authorize activities in wetlands in support of the construction of the Project; and

WHEREAS, the USACE consulted with the New York State Historic Preservation Office (“SHPO”) and the Advisory Council on Historic Preservation (“ACHP”) in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and its implementing regulations “Protection of Historic Properties” (36 CFR Part 800), USACE regulations 33 CFR Part 325, Appendix C, and “Interim Guidance for Implementing Appendix C of 33 CFR Part 325” with the Advisory Council on Historic Preservation Regulations 36 CFR Part 800; and

WHEREAS, the USACE has notified the ACHP of the Project and its anticipated impacts to historic properties, as required by 33 CFR Part 325 Appendix C(7)(d) and 36 CFR Part 800.6 and the ACHP declined to participate (Exhibit A); and

WHEREAS, the USACE has notified the Seneca Nation of Indians, the Tonawanda Seneca Nation and the Seneca-Cayuga Tribe of Oklahoma of the Project and its anticipated impacts to historic properties, as required by 33 CFR Part 325 Appendix C (7) (d) and 36 CFR Part 800.6 and the Nations declined to participate (Exhibit B); in addition, Stony Creek had notified the Seneca Nation of Indians and the Tonawanda Seneca Nation of the Project (Exhibit B1); and

WHEREAS, the USACE and SHPO concur that the Area of Potential Effect (“APE”) for visual effects on historic properties (structures and landscapes) is defined as the area from which the Project will be visible within a five-mile radius from each turbine location; and

WHEREAS, effects of the Project on cultural, historical and archeological resources have been evaluated by Stony Creek in consultation with USACE and SHPO; and

WHEREAS, Stony Creek conducted an archaeological reconnaissance of areas to be directly affected by the Project and, as a result, no archaeological sites were identified and SHPO has determined that the Project will not have an adverse effect on archaeological resources (Exhibit C); and

WHEREAS, based on review of the archaeological and architectural survey reports, SHPO has determined that the introduction of the wind turbines in this agrarian landscape will permanently alter and change the rural setting and will create visual impacts; and SHPO has concluded that the undertaking would have an adverse effect on cultural resources primarily as a result of the visual effects on National Register listed and eligible structures (Exhibit D); and

WHEREAS, the USACE concurs with SHPO's findings and has determined that the undertaking would have an adverse effect on cultural resources primarily as a result of visual effects on National Register listed eligible structures; and

WHEREAS, USACE, Stony Creek, and SHPO agree, that it is not feasible to mitigate the visual impacts on historic properties through conventional methods and Stony Creek initiated discussions with the Supervisor of the Town of Orangeville ("Town") for the purposes of identifying mitigation offset projects; and

WHEREAS, USACE, Stony Creek and SHPO agree that Stony Creek will offset the project effects through the establishment of an historic cemetery restoration and maintenance fund which will provide initial restoration and maintenance over a 20-year period; and

WHEREAS, USACE, SHPO, the Town, and Stony Creek agree that implementation of the proposed Cemetery Restoration and Maintenance program will mitigate to the maximum extent practicable, the visual effects of the Project on the historic properties; and

WHEREAS, the USACE, SHPO, the Town, and Stony Creek (the "parties") agree that a grant from Stony Creek to the Town in the total amount of \$141,600.00 is sufficient to mitigate all potential adverse effects on historic resources resulting from the Project; and

NOW THEREFORE, the parties enter into this Memorandum of Agreement ("MOA" or "Agreement") pursuant to 36 CFR 800.6(b)(2), with the understanding that the undertaking covered by this MOA shall be implemented in accordance with the following stipulations in order to avoid, minimize and mitigate the effect of the undertaking on historic properties as is required by 36 CFR 800.6(a) and with the understanding that the execution and implementation of this MOA satisfies the USACE's responsibilities under Section 106.

STIPULATIONS

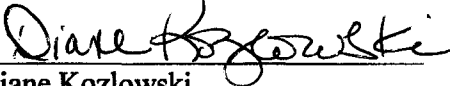
1. As set forth in the attached cemetery restoration and maintenance plan (Exhibit E), Stony Creek agrees to provide a one-time lump sum grant to the Town to be deposited in a separate mitigation account in the total amount of \$141,600.00 as mitigation of the effects of the Project on historic resources. Such grant shall be provided in two parts: half on the first anniversary of the date the Project first begins delivering electricity to the grid, the Commercial Operation Date (“COD”), and half on the second anniversary of the COD.
2. Stony Creek’s obligation to provide this grant shall be enforced by the USACE and shall be included as a special condition of a USACE permit, if a permit is issued. The SHPO further agrees to verify that the Town spends the grant money in compliance with the following stipulations and subject to the submission and of final design proposals. The Town will provide yearly progress reports no later than October 15th of each year to the USACE and SHPO offices describing the activities that occurred during the previous year and a list of expenses spent during the year and remaining funds presented in a balance sheet.
3. Archeological Resources: Stony Creek shall follow the protocols attached as Exhibit F entitled, “Plan for Unanticipated Discoveries” and “State Historic Preservation Office/New York State Office of Parks, Recreation and Historic Preservation Human Remains Discovery Protocol.”
4. Reporting: Stony Creek shall provide USACE and SHPO with evidence of payment of the grant to the Town.
5. Dispute Resolution: Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the USACE and/or the SHPO may request the participation of the ACHP to assist in resolving the dispute.
6. Term of the Memorandum of Agreement: This MOA shall remain in force until evidence of payment of the grant required under Section 1 is provided to SHPO and the USACE.
7. Amendment, Modification and Termination to the Memorandum of Agreement: Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement. If the Stipulations are not implemented within two years of the execution of this MOA, it shall be updated and submitted to the SHPO for review. Upon the mutual written consent of all signatories, revisions to the Stipulations above shall be adopted and implemented, without necessitating amendments to this agreement.
8. Notification: The parties shall be responsible for informing independent contractors, employees, agents, and assigns of their responsibilities to comply with this MOA, including all stipulations, while acting as their agent with respect to the activities covered

by this MOA. Such persons shall be subject to the same sanctions for violations of the MOA as those prescribed for the parties.

9. The parties to this MOA agree that by execution and implementation of this MOA, the USACE has satisfied its responsibilities under Section 106 of the NHPA, 16 USC 470f.

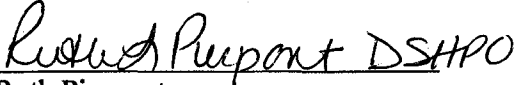
SIGNATURES for:

U.S. ARMY CORPS OF ENGINEERS
BUFFALO DISTRICT

BY: 
Diane Kozlowski
Chief Regulatory Branch

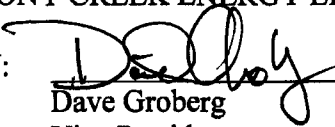
29 Nov 2011
Date

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION ACTING AS STATE HISTORIC PRESERVATION OFFICE

BY: 
Ruth Pierpont
Director, State Historic Preservation Office

11/18/11
Date

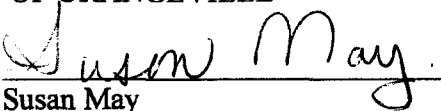
STONY CREEK ENERGY LLC

BY: 
Dave Groberg
Vice President

11/9/11
Date

CONSULTING PARTY for

TOWN OF ORANGEVILLE

BY: 
Susan May
Town Supervisor

11/23/2011
Date

Exhibit A

Documentation that ACHP declined to participate

Exhibit B

Letters from USACE to the Seneca Nation of Indians, Tonawanda Seneca Nation and Seneca-Cayuga Tribe of Oklahoma;

Exhibit B1

Letter from Seneca Nation of Indians to Stony Creek (note: this is not a government-to-government communication), no response was received by Stony Creek from the Tonawanda Seneca Nation

Exhibit C

Email from Nancy Herter, Archaeological Reviewer, NYSHPO; AND

Letter from John Bonafide, Historic Preservation Services Coordinator, NYSHPO

Exhibit D

Letter from John Bonafide, Historic Preservation Services Coordinator, NYSHPO

Exhibit E

Cemetery Restoration and Maintenance Plan

Exhibit F

Unanticipated Discoveries and Human Remains Protocols

Exhibit A

Documentation that ACHP declined to participate



Preserving America's Heritage

November 2, 2011

Molly Connerton
Biologist
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

Ref: *Proposed Stony Creek Wind Power Project*
Orangeville, Wyoming County, New York
Department of the Army Application No. 2010-01115

Dear Ms. Connerton:

The Advisory Council on Historic Preservation (ACHP) has received the additional documentation transmitted in response to our letter of September 22, 2011, regarding the referenced undertaking. Based upon the information provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the New York State Historic Preservation Office (SHPO), and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect and the additional information we requested. If you have any questions or require further assistance, please contact Mr. Anthony G. Lopez at 202-606-8525, or via e-mail at alopez@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Exhibit B

**Letters from USACE to the Seneca Nation of Indians, Tonawanda
Seneca Nation and Seneca-Cayuga Tribe of Oklahoma;**



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO

August 26, 2011

Regulatory Branch

SUBJECT: Proposed Stony Creek Wind Power Project, Application No. 2010-01115

Ms. Kathleen Mitchell
Tribal Historic Preservation Officer
Seneca Nation of New York
467 Center Street
Salamanca, New York 14779

Dear Ms. Mitchell:

This is in reference to the proposed Stony Creek Wind Farm Project by Stony Creek Energy, LLC. The project in question is located within the Town of Orangeville, Wyoming County, New York. The proposed project will result in minor impacts to waters of the United States, including wetlands, and these impacts will require Department of the Army authorization under Section 404 of the Clean Water Act.

The New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) has determined that the proposed project will have an Adverse Effect on properties listed or eligible for listing on the National Register of Historic Places. The specific Adverse Impact identified by the NYSOPRHP is the change/alteration of the existing rural setting of the project. The rural setting is a significant element of the survey area and serves as the backdrop of the architectural and cultural heritage of the community.

A Phase 1B archaeological surveys were completed in the project locations as requested by NYSOPRHP. In the attached letter dated July 11, 2011, NYSOPRHP indicated that no additional archeological work was required.

The Corps will include a Special Condition on any Department of the Army authorization requiring that work immediately be stopped and the Corps contacted in the event that any human remains or any recognizable, potentially significant concentrations of artifacts, features or other evidence of human occupation are discovered during the course of the project. The Corps will then consult with your office and the NYSOPRHP to determine the appropriate path forward.

In accordance with our regulations, I am hereby requesting any comments or concerns you may have regarding the proposed project. I have included a brief narrative of the project, including

Regulatory Branch

SUBJECT: Proposed Stony Creek Wind Power Project, Application No. 2010-01115

proposed turbine locations and a sample turbine drawing. I have also included correspondence between the NYSOPRHP and the project sponsor (Invenergy, LLC), which discusses NYSOPRHP recommendations for minimization and or avoidance options and potential mitigation options for the project impacts.

Please respond to me by September 12, 2011 if you wish to review this project. If I do not hear from you within this time frame, I will assume that you have no objection to the project and will proceed accordingly.

Questions pertaining to this matter should be directed to me at (716) 879-4304, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: molly.a.connerton@usace.army.mil

Sincerely,



Molly A. Connerton
Biologist

Enclosures



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3189

REPLY TO

August 26, 2011

Regulatory Branch

SUBJECT: Proposed Stony Creek Wind Power Project, Application No. 2010-01115

Mr. Darwin Hill
Tribal Clerk
Tonawanda Seneca Nation
7027 Meadville Road
Via Basom, NY 14013

Dear Mr. Hill:

This is in reference to the proposed Stony Creek Wind Farm Project by Stony Creek Energy, LLC. The project in question is located within the Town of Orangeville, Wyoming County, New York. The proposed project will result in minor impacts to waters of the United States, including wetlands, and these impacts will require Department of the Army authorization under Section 404 of the Clean Water Act.

The New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) have determined that the proposed project will have an Adverse Effect on properties listed or eligible for listing on the National Register of Historic Places. The specific Adverse Impact identified by the NYSOPRHP is the change/alteration of the existing rural setting of the project. The rural setting is a significant element of the survey area and serves as the backdrop of the architectural and cultural heritage of the community.

A Phase 1B archaeological surveys were completed in the project locations as requested by NYSOPRHP. In the attached letter dated July 11, 2011, NYSOPRHP indicated that no additional archeological work was required.

The Corps will include a Special Condition on any Department of the Army authorization requiring that work immediately be stopped and the Corps contacted in the event that any human remains or any recognizable, potentially significant concentrations of artifacts, features or other evidence of human occupation is discovered during the course of the project. The Corps will then consult with your office and the NYSOPRHP to determine the appropriate path forward.

In accordance with our regulations, I am hereby requesting any comments or concerns you may have regarding the proposed projects. I have included a brief narrative of the project, including proposed turbine locations and a sample turbine drawing. I have also included correspondence

Regulatory Branch

SUBJECT: Proposed Stony Creek Wind Power Project, Application No. 2010-01115

between the NYSOPRHP and the project sponsor (Invenergy, LLC), which discusses NYSOPRHP recommendations for minimization and or avoidance options and potential mitigation options for the project impacts.

Please respond to me by September 12, 2011 if you wish to review this project. If I do not hear from you within this time frame, I will assume that you have no objection to the project and will proceed accordingly.

Questions pertaining to this matter should be directed to me at (716) 879-4304, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: molly.a.connerton@usace.army.mil

Sincerely,



Molly A. Connerton
Biologist

Enclosures



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO

August 26, 2011

Regulatory Branch

SUBJECT: Proposed Stony Creek Wind Farm Project No. 2010-01115

Business Committee
Seneca-Cayuga Tribe of Oklahoma
R2301 E. Steve Owens Blvd.
P.O. Box 1283
Miami, OK 74355

Dear Sir or Madam:

This is in reference to the proposed Stony Creek Wind Farm Project by Stony Creek Energy, LLC. The project in question is located within the Town of Orangeville, Wyoming County, New York. The proposed project will result in minor impacts to waters of the United States, including wetlands, and these impacts will require Department of the Army authorization under Section 404 of the Clean Water Act.

The New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) has determined that the proposed project will have an Adverse Effect on properties listed or eligible for listing on the National Register of Historic Places. The specific Adverse Impact identified by the NYSOPRHP is the change/alteration of the existing rural setting of the project. The rural setting is a significant element of the survey area and serves as the backdrop of the architectural and cultural heritage of the community.

A Phase 1B archaeological surveys were completed in the project locations as requested by NYSOPRHP. In the attached letter dated July 11, 2011, NYSOPRHP indicated that no additional archeological work was required.

The Corps will include a Special Condition on any Department of the Army authorization requiring that work immediately be stopped and the Corps contacted in the event that any human remains or any recognizable, potentially significant concentrations of artifacts, features or other evidence of human occupation are discovered during the course of the project. The Corps will then consult with your office and the NYSOPRHP to determine the appropriate path forward.

In accordance with our regulations, I am hereby requesting any comments or concerns you may have regarding the proposed project. I have included a brief narrative of the project, including proposed turbine locations and a sample turbine drawing. I have also included correspondence

Regulatory Branch

SUBJECT: Proposed Stony Creek Wind Power Project, Application No. 2010-01115

between the NYSOPRHP and the project sponsor (Invenergy, LLC), which discusses NYSOPRHP recommendations for minimization and or avoidance options and potential mitigation options for the project impacts.

Please respond to me by September 12, 2011 if you wish to review this project. If I do not hear from you within this time frame, I will assume that you have no objection to the project and will proceed accordingly.

Questions pertaining to this matter should be directed to me at (716) 879-4304, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: molly.a.connerton@usace.army.mil

Sincerely,

A handwritten signature in black ink that reads "Molly Connerton". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Molly A. Connerton
Biologist

Enclosures

Exhibit B1

Letter from Seneca Nation of Indians to Stony Creek (Note: this is not a government-to-government communication), No response was received by Stony Creek from the Tonawanda Seneca Nation.



SENECA NATION OF INDIANS
TRIBAL HISTORIC PRESERVATION OFFICE
90 OH:YO' WAY
SALAMANCA, NY 14779
PHONE: (716) 945-1790 FAX: (716) 945-8133



June 10, 2011

Michael Cinquino
Panamerican Consultants, Inc.
2390 Clinton Street
Buffalo, NY 14227

Re: **Stony Creek Wind Farm**
Town of Orangeville, Wyoming County, NY
OPRHOP #09PR6111

Dear Mr. Cinquino,

Thank you for providing the information for the above referenced project. Pursuant to Section 106 of the National Historic Preservation Act (36 CFR § 800) as a consulting party, the Seneca Nation of Indians Tribal Historic Preservation Office has a finding of "No Effect" on historical properties eligible for or included on the National Register of Historic Places. We concur with the recommendations of the Phase IA/IB Cultural Resource Investigations submitted by Panamerican Consultants, Inc. and do not require any further archaeological investigations.

We have no further issues if the proposed plans are followed. However, if at any time your scope of work changes or you become aware of any archaeological items, pre-historical/historical sites, or cultural resources which might be affected by the proposed work, please notify our office as soon as possible. Thank you.

Sincerely,

Lauren Waldinger
Tribal Archaeologist
Lauren.Waldinger@sni.org

THPO Reference #11-3701

Exhibit C

**Email from Nancy Herter
Archaeological Reviewer, NYSHPO**

AND

**Letter from John Bonafide,
Historic Preservation Services Coordinator, NYSHPO**

From: "Herter, Nancy (PEB)" <Nancy.Herter@oprhp.state.ny.us>
To: "'Michael Cinquino'" <mcinquino@panamconsultants.com>
Subject: Stony Creek Windfarm, Wyoming County (09PR6111)
Date: Friday, July 08, 2011 1:27 PM

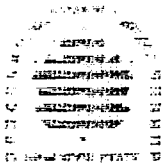
Dear Mike,

I am writing to confirm that the State Historic Preservation Office (SHPO) has reviewed and accepted the Panamerican Phase IA/IB Cultural Resources Investigation Report for the Stony Creek Windfarm. We have no further archaeology concerns with this project.

Sincerely,
Nancy

Nancy Herter
Scientist, Archaeology
New York State Historic Preservation Office
PO Box 189, Peebles Island
Waterford, New York 12188-0189
(518) 237-8643 ext. 3280
(518) 233-9049 (fax)

No virus found in this message.
Checked by AVG - www.avg.com
Version: 10.0.1388 / Virus Database: 1516/3751 - Release Date: 07/08/11



OFFICE OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION
STATE OF NEW YORK
609 WEST COAST STREET, ALBANY, NEW YORK 12242-1200
TEL: 518-474-2100 FAX: 518-474-2101

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

July 11, 2011

Erik Duncan
2028 Benedict Circle
St. Albans, WV 25177
(via e-mail only)

Re: CORPS, DEC, PSC
Stony Creek Wind Farm/59 Turbines/88MW
Multiple Sites/ORANGEVILLE, Wyoming County
09PR06111

Dear Mr. Duncan:

We are in receipt of the alternatives analysis recently submitted by Panamerican Consultants. We have reviewed this information in accordance with Section 106 of the National Historic Preservation Act of 1966.

Based on the materials submitted we concur that efforts to minimize the effects of the undertaking through visual screening would not be successful. Furthermore, the removal of some units as the result of utilizing larger turbines would lessening but not eliminate the overall impacts to historic resources in the area of potential effect.

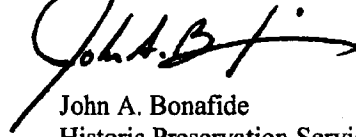
As such, we would recommend that you work with the local communities directly impacted by this undertaking to develop lists of possible off set mitigation for historic/cultural resources. Projects should involve public or institutional resources that the community has access to. They should also directly involve historic properties.

Lastly, at this point in time we have also completed our archeological assessment for this undertaking. As noted in our e-mail of July 8, 2011 to Dr. Cinquino of Panamerican, no additional archaeological work is required.

Once you have established an appropriate mitigation funding amount the next step will be to work with the communities and interested groups to establish a list of potential preservation mitigation projects. Please be aware that any mitigation must be approved by the lead federal agency and will be commented on by the involved Section 106 consulting parties.

If I can be of any further assistance do not hesitate to contact me at (518) 237-8643, ext. 3263.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bonafide". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John A. Bonafide
Historic Preservation Services
Coordinator

cc: Michael Cinquino, Panamerican *(via e-mail)*
Eric Miller, Invenergy *(via e-mail)*
Steve Metivier, ACOE *(via e-mail)*
Andrew Davis, PSC *(via e-mail)*

Exhibit D

**Letter from John Bonafide
Historic Preservation Services Coordinator, NYSHPO**



New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

June 2, 2011

Michael Mulcahey
Stony Creek Energy LLC
51 Monroe Street, Suite 1604
Rockville, MD 20850
(via e-mail only)

Re: CORPS/NYSDEC/NYPSC
Stony Creek Wind Farm/59 Turbines/88.5 MW
Orangeville, Attica, Bennington, Gainsville, Java,
Middlebury, Sheldon, Warsaw, Wethersfield, Wyoming
County
09PR06111

Dear Mr. Mulcahey:

The Office of Parks, Recreation and Historic Preservation (OPRHP) is responding to Invenergy's project submission of May 2011, which included the report titled: Architectural Survey (Five-Mile APE) for the Proposed Stony Creek Wind Farm, Orangeville, Wyoming County, New York (June 2010). We reviewed this material under Section 106 of the National Historic Preservation Act due to the involvement of the U.S. Army Corps of Engineers.

First, I would like to confirm that the survey work undertaken by Panamerican for the above noted report conformed to our agency's *generic wind farm survey guidance (2006)*. The evaluated survey area, as defined by our guidance, was a five-mile ring drawn around each of the individual turbine sites. The outer edges of these circles are connected thus producing a five-mile survey area around the entire project. It was also recommended that for an analysis of potential visual impacts to historic resources that the next step was to determine sight lines based on topographic features and the locations and maximum heights of each turbine. Please be aware that the involved federal agency has yet to define the Area of Potential Effect (APE) for this project. As such, they may choose an APE larger than the survey area covered by the report. If this occurs, additional survey work may be required.

The submitted report identified a total of 140 resources. These included 3 individual properties and 1 historic district previously *listed* in the National Register of Historic Places.¹ Also included are 65

¹ The Warsaw Post Office (Warsaw), The Masonic Temple/Warsaw Academy (Warsaw), Monument Circle Historic District (21 primary resources listed in Appendix A) and the Attica & Arcade Railroad.

previously identified National Register *eligible* resources and 50 newly identified historic resources including the Attica State Housing Historic District (15 contributing buildings; 1 non-contributing buildings) and 1 unevaluated resource. A full list of evaluated properties is attached to this letter as *Appendix A*. In addition to the resources identified in the report, several National Register properties fall just outside the 5-mile survey boundary or are in areas that are defined by topographic survey as having no visual connection to the wind farm. These include Trinity Episcopal Church (Warsaw) and the Seth Gates House (Warsaw).

The eligible and listed resources identified in the survey report are diverse in nature and their physical settings. Properties that will be in the view shed of the project include those in established smaller scale hamlet/village settings as found in the village of Warsaw as well open rural landscape and agricultural settings. With few exceptions the scale of the building stock is limited to the height of single and two-story residential, commercial and agricultural buildings with few non-agricultural elements, with the exception of church spires, breaking the treetops in the project area.

Within the identified group of National Register Listed/Eligible resources 10 National Register listed properties have been identified in your project's visual assessment report.² This report states (Table 6) that only 1 of the 10 identified cultural resources will have views of turbines or portions of turbines.³ Unfortunately, this assessment was undertaken prior to this office having had an opportunity to provide some level of input or direction as to what key receptors would have been helpful for the cultural resources portion of the environmental review and the Section 106 process. While the village settings appear to have little visual link to the undertaking broad sections of the rural setting and identified historic agricultural resources will have strong visual impacts. We should point out that the Visual Analysis Report's Visual Impact Conclusion (page 61) does not include in its discussion potential impacts to the 116 other properties that were determined eligible for inclusion in the National Register of Historic Places.

Based on what has been provided in both the resource survey and visual analysis reports the NYSHPO has determined that under Section 800.5 (1) and (2.v) of National Historic Preservation Act regulations (36CFR Part 800), the undertaking will have an *Adverse Effect* on cultural resources. The introduction of the sleek, ultramodern, approximately 400 foot tall kinetic wind turbines (59 proposed) throughout this largely agrarian landscape forever alters and changes the rural setting, which itself is a significant element in much of the survey area and serves as the backdrop of the architectural and cultural heritage of these communities.

We have reviewed the applicant's Visual Analysis Report (Section 4.0 Mitigation Program Overview) and agree that screening, camouflage, or structural redesigns are not viable options. In addition, the use of non-spectral off white color, removal of all advertising or logos, and minimized FAA lighting requirements are now fairly standardized aspects of all projects in New York and do not lessen the overall impacts to historic resources. Appropriate methods to minimize effects should include an assessment of whether or not the turbine field can be reduced by utilizing higher megawatt units. We would recommend that only after an assessment of minimization or avoidance options have been established should potential mitigation options be discussed. All consultation regarding minimization and/or avoidance options as well as potential mitigation options should involve those federal/state agencies directly associated with the permitting/ approval process for this project.

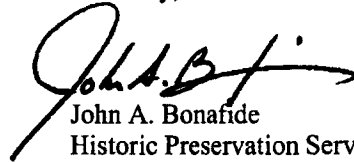
Lastly, the archaeological component of this review has been progressed separately and comments will continue to be provided as the archaeological survey work progresses.

² Stony Creek Wind Farm Visual Resources Assessment, January 14, 2010, Saratoga Associates received by the NYSHPO May 24, 2011.

³ Only 4 of the listed Cultural Resource Receptors are identified as being within the 5-mile historic resources survey area. These resources are designated with an (*) in Appendix A of the letter.

At this point in time we have concluded our evaluation of eligible resources and the potential impacts to those resources associated with this project. If you should have questions regarding our evaluation process or the basis for our effect recommendation, please do not hesitate to contact me at 518-237-8643, ext.3263.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bonafide". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

John A. Bonafide
Historic Preservation Services
Coordinator

cc: Steve Metivier, CORPS *(via e-mail)*
Michael Cinquino, Panamerican *(via e-mail)*
Andrew Davis, NYPSC *(via e-mail)*
Jeff Meyers, NYS OPRHP *(via e-mail)*

enc: Historic Resources List, Appendix A

Appendix A

Map Point	Number of Turbines Visible	Distance to Nearest Turbine (mi)	Property Name	Address	Town/Village/Hamlet	NRHP Status
1	20	3.38	Farmhouse	1128 Attica Gulf Road	Attica (T)	Recommended NRE
2	37	1.32	South Attica Cemetery	Exchange Street	Attica (T)	Recommended NRE
3	3	4.9	Attica Correctional Facility	639 Exchange Street	Attica (T)	NRE(I)
4	3	4.69	Wyoming County Parole Office	1 Hunt Boulevard	Attica (T)	Attica Housing HD (N/C)
5	2	4.71	Attica State Housing	2 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
6	1	4.71	Attica State Housing	4 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
7	0	4.68	Attica State Housing	5 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
8	1	4.71	Attica State Housing	6 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
9	0	4.69	Attica State Housing	7 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
10	1	4.72	Attica State Housing	8 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
11	1	4.68	Attica State Housing	9 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
12	2	4.72	Attica State Housing	10 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
13	1	4.69	Attica State Housing	11 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
14	3	4.72	Attica State Housing	12 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
15	2	4.69	Attica State Housing	13 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
16	3	4.72	Attica State Housing	14 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
17	1	4.69	Attica State Housing	15 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
18	3	4.73	Attica State Housing	16 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
19	3	4.72	Attica State Housing	20 Hunt Boulevard	Attica (T)	Attica Housing HD (C)
20	3	4.71	Former Railroad Depot	716 NY 98	Attica (T)	Unevaluated
21	3	4.32	Farmstead	848 NY 98	Attica (T)	Recommended NRE
22	15	2.69	Attica Center Baptist Church	Attica Gulf Road	Attica Center (h)	Recommended NRE
23	12	2.67	Attica Center Cemetery	Jillson Road	Attica Center (h)	Recommended NRE
24	8	3.25	Dale Cemetery	Pflaum Road	Middlebury (T)	Recommended NRE
25	44	0.42	Williams Cemetery	Buffalo Road	Orangeville (T)	Recommended NRE
26	57	0.44	Wilcox Cemetery	Buffalo Road	Orangeville (T)	Recommended NRE
27	28	0.46	Orangeville Town Hall	US 20A	Orangeville (T)	NRE(I)
28	31	0.55	Farmstead	3504 US 20A	Orangeville (T)	Recommended NRE
29	34	2.21	Johnsonburg Cemetery	Centerline Road	Sheldon (T) Johnsonburg (h)	Recommended NRE
30	51	2.29	Johnsonburg Railroad Depot	2428 Centerline Road	Sheldon (T) Johnsonburg (h)	Recommended NRE
31	42	3.21	Wilder Road Cemetery	Wilder Road	Warsaw (T)	Recommended NRE
32	3	3.84	Queen Anne	30 Butternut Street	Warsaw (V)	Recommended NRE
33	6	3.67	Queen Anne	35 Elm Street	Warsaw (V)	Recommended NRE
34	7	3.69	Italianate	43 Elm Street	Warsaw (V)	Recommended NRE
35	7	3.7	Queen Anne	44 Elm Street	Warsaw (V)	Recommended NRE
36	1	3.71	Greek Revival	35 Genesee Street	Warsaw (V)	Recommended NRE
37	1	3.71	Queen Anne	36 Genesee Street	Warsaw (V)	Recommended NRE
38	1	3.72	Italianate	43 Genesee Street	Warsaw (V)	Recommended NRE
39	3	3.73	Greek Revival	51 Genesee Street	Warsaw (V)	Recommended NRE
40	5	3.74	Italianate	59 Genesee Street	Warsaw (V)	Recommended NRE
41	6	3.77	Queen Anne	71/75 Genesee Street	Warsaw (V)	Recommended NRE
42	3	3.79	Italianate	10 Grove Street	Warsaw (V)	Recommended NRE

43	3	3.81	Italianate	14 Grove Street	Warsaw (V)	Recommended NRE
44	8	3.84	Queen Anne	28 Grove Street	Warsaw (V)	Recommended NRE
45	8	3.86	Queen Anne	34 Grove Street	Warsaw (V)	Recommended NRE
46	10	3.87	Queen Anne	41 Grove Street	Warsaw (V)	Recommended NRE
47	1	3.74	Home of Judge Conables	38 Jefferson Street	Warsaw (V)	Recommended NRE
48	1	3.74	Italianate	18 Livingston Street	Warsaw (V)	Recommended NRE
49	6	3.79	Bronson-Toner House	38 Livingston Street	Warsaw (V)	Recommended NRE
50	1	3.59	Soldiers' & Sailors' Monument*	North Main at Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	Warsaw Public Library*	130 North Main Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	Augustus Frank House*	140 North Main Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	Wyoming County Courthouse*	143 North Main Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	County Sheriff and Jail*	149 North Main Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	United Methodist Church*	6 West Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	6 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	12 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	18 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	24 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	27 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	30 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	37 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	41 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	42 East Court Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	30 Park Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	Charles Ketchum House*	38 Park Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	Rev. Joseph Nassau House*	46 Park Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	Whitley-Ramsey House*	50 Park Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	*	58 Park Street	Warsaw (V)	Monument NRL District (C)
50	1	3.59	George W. Frank House*	66 Park Street	Warsaw (V)	Monument NRL District (C)
51	1	3.57	Montgomery House	170 North Main Street/ NY 19	Warsaw (V)	NRE(I)
52	1	3.57	Sutherland-Munroe House	180 North Main Street/ NY 19	Warsaw (V)	NRE(I)
53	1	3.67	Lewis W. Thayer House	188 North Main Street/ NY 19	Warsaw (V)	NRE(I)

54	24	3.74	Warsaw Downtown Historic District	US 20A/West Buffalo Street & North/South Main Street	Warsaw (V)	NRE
55	5	4.02	Warsaw Depot (Buffalo, Rochester & Pittsburgh RR)	116 Park Street	Warsaw (V)	Recommended NRE
56	1	3.7	Gill-Prentice Farmhouse	South Main Street/ NY 19	Warsaw (V)	NRE(I)
57	5	3.9	First Baptist Church	South Main Street/ NY 19	Warsaw (V)	NRE(I)
58	6	3.95	Warsaw Cemetery	South Main Street/ NY 19	Warsaw (V)	NRE(I)
59	4	3.9	Warsaw Cemetery Chapel	South Main Street/ NY 19	Warsaw (V)	NRE(I)
60	7	4.01	St. Michael's Cemetery	South Main Street/ NY 19	Warsaw (V)	NRE(I)
61	1	3.68	Warsaw Post Office*	35 South Main Street/ NY 19	Warsaw (V)	NR Listed
62	1	3.7	Masonic Temple/ Warsaw Academy*	73 South Main Street/ NY 19	Warsaw (V)	NR Listed
63	1	3.76	Warsaw Grange #1088	177 South Main Street/ NY 19	Warsaw (V)	NRE(I)
64	2	3.85	Shedd-Hutton House	273 South Main Street /NY 19	Warsaw (V)	NRE(I)
65	3	3.85	Safford House	281 South Main Street/ NY 19	Warsaw (V)	NRE(I)
66	2	3.62	Queen Anne	21 State Street	Warsaw (V)	Recommended NRE
67	16	3.72	Queen Anne	49 State Street	Warsaw (V)	Recommended NRE
68	2	3.78	B&O Freight Station	12 Washington Street	Warsaw (V)	NRE(I)
69	2	3.79	Queen Anne	15 Washington Street	Warsaw (V)	Recommended NRE
70	6	3.87	Queen Anne	43 Washington Street	Warsaw (V)	Recommended NRE
71	3	2.78	Lindsey Farm	1331 NY 98	Attica (T)	NRE(I)
72	5	4.99	Welker Homestead	2033 Clinton Street	Bennington (T)	NRE(I)
73	56	3.53	Federal	1874 French Road	Bennington (T)	NRE(I)
74	48	4.96	Farmstead	1609 Poland Road	Bennington (T)	NRE(I)
75	21	3.91		Green Bay Road	Gainesville (T)	NRE(I)
76	35	4.6	North Gainesville Cemetery	Miller Road	Gainesville (T)	NRE(I)
77	50	4.53	North Gainesville United Methodist Church	Miller Road	Gainesville (T)	NRE(I)
78	42	3.74	North Java Pioneer Cemetery	NY 98	Java (T)	NRE(I)
79	7	3.42	Warren Farm	4041 NY 98	Java (T)	NRE(I)
80	14	3.7	Craftsman (commercial building)	4265 NY 98	Java (T)	NRE(I)
81	36	3.79	Craftsman	4315 NY 98	Java (T)	NRE(I)
82	48	3.79	St. Nicholas Church Convent	4316 NY 98	Java (T)	NRE(I)
83	N/A	N/A	Arcade & Attica Railroad*	Reisdorf Road	Java (T)	NR Listed
84	54	3.97	Silver Maple Cemetery	Serene Road	Java (T)	NRE(I)
85	51	2.61	Union Corners Pioneer Cemetery	Youngers Road	Java (T)	NRE(I)
86	3	3.47	Queen Anne	2102 Wethersfield Road	Java (T)	NRE(I)
87	12	2.1	School House	Gay Road	Middlebury (T)	NRE(I)
88	5	4.23	Fisher Farm	Bug Road	Orangeville (T)	NRE(I)
89	11	4.3	Fisher Road Cemetery	Fisher Road	Orangeville (T)	NRE(I)

90	18	1.52	Wyoming County Almshouse-Boxler	2706 US 20A	Orangeville (T)	NRE(I)
91	15	0.35		2399 Orangeville Center Road	Orangeville (T)	NRE(I)
92	22	0.37	Quaker Settlement Cemetery	Quakertown Road	Orangeville (T)	NRE(I)
93	21	0.62	Family Cemetery	2853 Quakertown Road	Orangeville (T)	NRE(I)
94	42	0.87	Pleasant View Cemetery	Exchange Street	Orangeville (T) Dutch Flats (h)	NRE(I)
95	11	1.7	Vernacular	2647 Centerline Road	Orangeville (T) Johnsonburg (h)	NRE(I)
96	8	1.63	Queen Anne	2672 Centerline Road	Orangeville (T) Johnsonburg (h)	NRE(I)
97	4	1.55	Greek Revival Farmhouse	2700 Centerline Road	Orangeville (T) Johnsonburg (h)	NRE(I)
98	3	1.64	Farm Complex	3110 Royce Road	Orangeville (T) Johnsonburg (h)	NRE(I)
99	23	1.64	Varysburg Hotel	2486 Main Street/ US 20A	Sheldon (T) Varysburg (h)	NRE(I)
100	14	1.64	Queen Anne	2521 Main Street/ US 20A	Sheldon (T) Varysburg (h)	NRE(I)
101	18	1.65	Queen Anne	3064 Main Street/ US 20A	Sheldon (T) Varysburg (h)	NRE(I)
102	26	1.59	Varysburg Cemetery	US 20A	Sheldon (T) Varysburg (h)	NRE(I)
103	12	1.64	Varysburg Gospel Church	2442 US 20A	Sheldon (T) Varysburg (h)	NRE(I)
104	18	1.65	Greek Revival	2444 US 20A	Sheldon (T) Varysburg (h)	NRE(I)
105	2	1.57	Greek Revival	NY 98, opposite 2352 NY 98	Sheldon (T) Varysburg (h)	NRE(I)
106	9	1.44	Craftsman	2298 NY 98	Sheldon (T) Varysburg (h)	NRE(I)
107	3	1.54	Italianate	2341 NY 98	Sheldon (T) Varysburg (h)	NRE(I)
108	55	4.93	Colonial Revival	2640 Bauer Road	Warsaw (T)	NRE(I)
109	5	1.93	Farm Complex	2612 Blackhouse Road	Warsaw (T)	NRE(I)
110	1	1.42	Maple Grove Farm	4636 Buffalo Road	Warsaw (T)	NRE(I)
111	22	1.59	Hatch Cemetery	4699 Buffalo Road	Warsaw (T)	NRE(I)
112	3	3.99	Oatka Creek Bridge	NY 19	Warsaw (T)	NRE(I)
113	44	1	German Cemetery/ Emmanuel UM Cemetery	US 20A	Warsaw (T)	NRE(I)
114	25	2.19	Farm Complex	4751 US 20A	Warsaw (T)	NRE(I)
115	10	3.39	Twin Brooks Tree Farm	3392 Truesdell Road	Warsaw (T)	NRE(I)
116	1	2.62	Vernacular	1116 US 20A	Warsaw (V)	NRE(I)
117	9	2.58	Queen Anne	1129 US 20A	Warsaw (V)	NRE(I)
118	2	3.56	Wethersfield District 3 Schoolhouse	Mote Road	Wethersfield (T)	NRE(I)
119	41	1.85	Union Park/St. Clements Cemetery	Hermitage Road	Wethersfield Springs (h)	NRE(I)
120	26	1.98	Reuben Doolittle House	4213 Hermitage Road	Wethersfield Springs (h)	NRE(I)

Exhibit E

Cemetery Restoration and Maintenance Plan

Cemetery Restoration and Maintenance Plan

Town of Orangeville, Wyoming County, New York

Stony Creek Wind Farm – Stony Creek Energy, LLC

Prepared by: Panamerican Consultants, Inc.

August 22, 2011

Stony Creek Energy LLC (Stony Creek) is planning to construct a wind-powered electric generating facility in the Town of Orangeville, Wyoming County, New York. As currently proposed, the project entails the installation and operation of up to 59 wind-turbine generators (WTG) for the purpose of generating electricity for distribution through the New York power grid. Specifically the project includes:

- Construction and operation of up to 59 WTG. The project will use General Electric model 1.6-100, or equivalent, WTG;
- Construction of a 34.5-kilovolt (kV) electrical collection system consisting of buried cables that will connect all WTG and deliver electricity to an electrical substation;
- Construction of a new electrical substation on Centerline Road where the project will interconnect to an existing transmission line owned by New York State Electric and Gas (NYSEG);
- Construction of gravel access roads to allow vehicular access to the WTG during project construction and operation;
- Construction of an Operations and Maintenance (O&M) facility for project offices, garages, workspace and storage area for parts, tools and materials;
- One 80-meter (262-foot) permanent meteorological tower; and

Since it is not feasible to mitigate the visual impacts on historic properties through conventional methods, Stony Creek is proposing to offset the project effects through the establishment of an historic cemetery fund which will provide initial restoration and maintenance over a 20 year period. Five cemeteries have been proposed for initial inclusion in the program:

- Wyoming County Almshouse Cemetery
- Pleasant View Cemetery
- Orangeville Center Cemetery
- Williams Cemetery
- Wilcox Cemetery

Other cemeteries within the Town may be included in the program at the discretion of the Town and availability of funds or if access to any of the five is not feasible. Stony Creek will provide \$141,600 to fund the program. A description of the cemeteries follows.

Wyoming County Almshouse Cemetery

The Almshouse was established in 1843 and consisted of a home and farm. For a time, the mentally ill were housed in a separate structure on the grounds. The cemetery, essentially a potter's field, is located about 2500 feet south of the farm complex on the east side of Royce Road. The cemetery consists of 300 graves arranged in a uniform grid and marked by upright stones that are marked with numbers only. Three of the stones indicate names and one stone on the back row (290s) had a date in the 1950s. The ascending order of the numbers is left to right and front to back. The cemetery is surrounded, in part, by a low, loose (unmortared) stone fence. There is some encroachment from adjacent agricultural fields.



View of the former Wyoming County Almshouse site and cemetery, facing south.

National Register of Historic Places Status: NRHP eligibility of the cemetery has not been determined, however; the site meets the eligibility criteria. The farm complex which includes the former Almshouse has been determined eligible (individually).

Restoration needs: Research to determine, if possible, the names of individuals associated with each of the 297 unnamed burials. Preliminary research indicates that information on the cemetery may be available at the NY State Archives. Restoration should also include righting and stabilization of stones, restoration of the stone fence with an increase in height and construction of a weather-proof placard to provide a key for identifying individual burials (if the background research is successful).

Maintenance needs: Tree trimming, grass mowing, and encroachment prevention.

Pleasant View Cemetery

The cemetery is in two locations, one on either side of Exchange Street (Road). The new cemetery is on the East side and the old cemetery is on the West side. In the old cemetery, only approximately half of the stones were readable due to breakage and weather erosion. Dates in the older section range from the mid to late 19th century.



View of the Pleasant View cemetery, facing north.

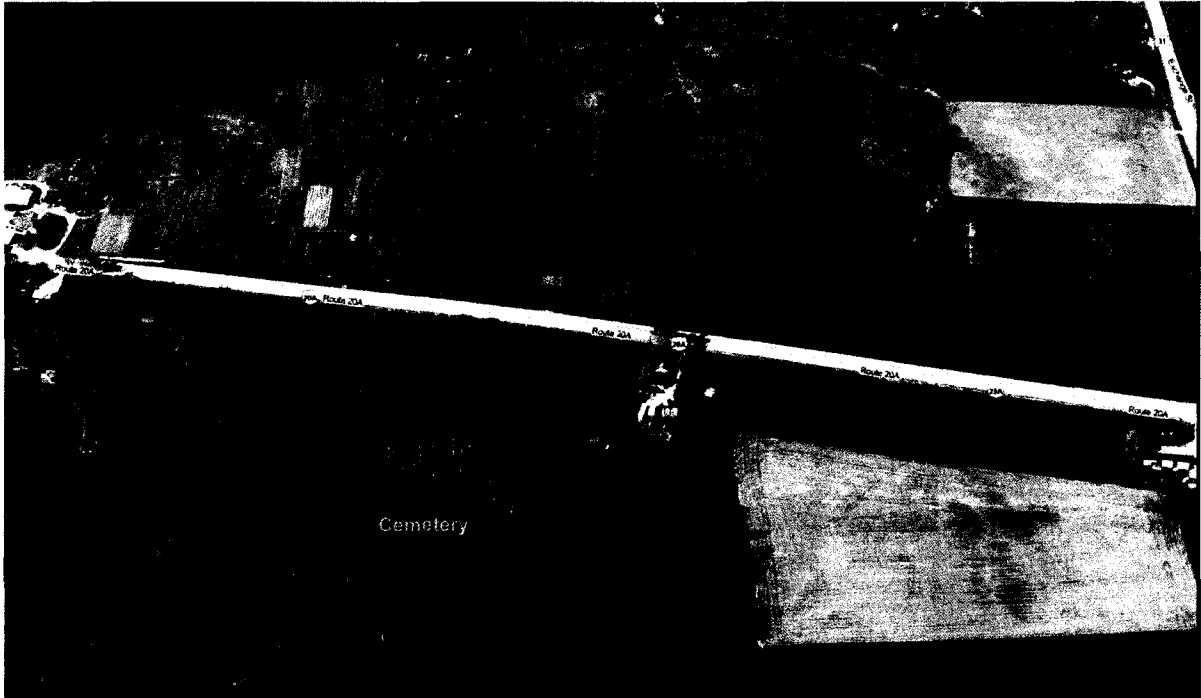
National Register of Historic Places Status: National Register eligible (individually)

Restoration needs: Righting, repair (where feasible) and stabilization of stones.

Maintenance needs: Periodic mowing.

Orangeville Center Cemetery

The Orangeville Center Cemetery is located in the town of Orangeville, Wyoming County, New York on the south side of Route 20A, ½ mile west of Exchange Street. It is not visible from 20A, but there is a path/driveway which provides entry. Burials range from the early to late 19th century with a portion dating to the 20th century.



View of the Orangeville Center cemetery, facing north.

National Register of Historic Places Status: NRHP eligibility of the cemetery has not been determined, however; the site may meet the eligibility criteria.

Restoration needs: Righting, repair (where feasible) and stabilization of stones.

Maintenance needs: Tree trimming, grass mowing, and encroachment prevention.

Williams Cemetery

Williams Cemetery (ca. 1834-ca. 1900) is located on the south side of Buffalo Road, west of Krotz Road at Williams Corners in the Town of Orangeville. It is a small rural cemetery set on a knoll surrounded by woods and agricultural fields. Adjacent to the cemetery is a large farm which can be seen from the interior of the cemetery itself. The cemetery is encapsulated by trees of various ages. No fence is present around the property, nor is there a designated entrance.

Most of the gravestones are in disrepair as is the property itself. The grave markers include tombstone, die on base, ledger and one obelisk and most are executed in granite and marble. Marker conditions range from extreme weathering to cracked, loose, broken and unattached stones. At least one Civil War veteran, Isaac Williams, is buried in the cemetery. The earliest gravestone observed is that of Matilda M. Childs who died in 1834.



View of the Williams cemetery, facing north.

National Register of Historic Places Status: Previously recommended as National Register eligible.

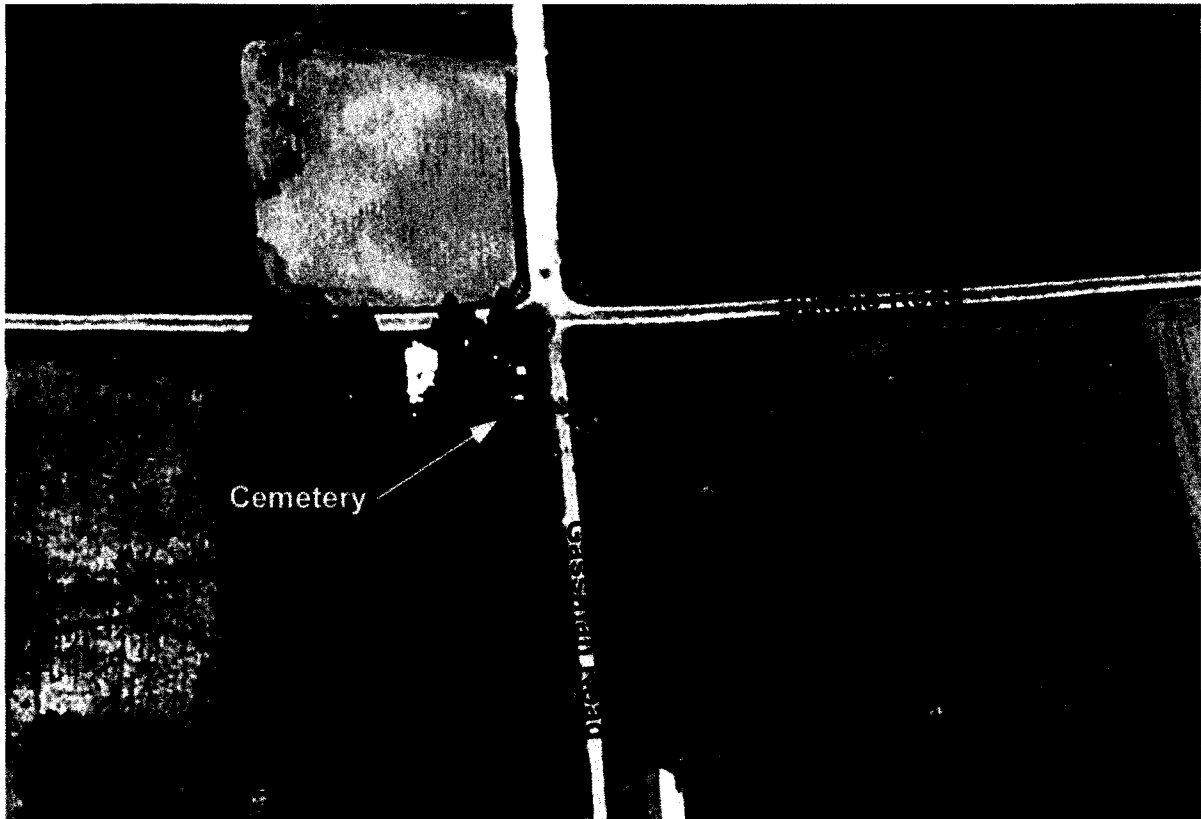
Restoration needs: Righting, repair (where feasible) and stabilization of stones. Construction of a stairway to provide access.

Maintenance needs: Tree trimming, underbrush removal, grass mowing, and encroachment prevention.

Wilcox Cemetery

Wilcox Cemetery (ca. 1842-present) is located on the south side of Buffalo Road and the west side of Gassman Road in the Town of Orangeville. It is a small family cemetery that sits on a small knoll surrounded by woods and agricultural lands. A former schoolhouse which is now a family residence lies adjacent to the grounds.

The cemetery appears to be fairly well maintained but there are some grave markers, mostly older in age, that are cracked, loose or broken. Weathering and staining also appear on a number of stones. Monument forms include tombstone, tab in socket, die on base, simple plaque markers and an obelisk. Marble and granite are the marker materials most observed. The earliest grave marker observed is dated 1842.



View of the Wilcox cemetery, facing north.

National Register of Historic Places Status: Previously recommended as National Register eligible.

Restoration needs: Righting, repair (where feasible) and stabilization of stones.

Maintenance needs: Periodic mowing.

Cost Summary

Restoration to include research, stairway and fence construction, underbrush removal, righting, repair and stabilization of stones	\$90,000
Maintenance including necessary equipment purchases over 20 years at ~\$2,600 per year	\$51,600
Total Program Cost	\$141,600

Exhibit F

Unanticipated Discoveries and Human Remains Protocols

UNANTICIPATED ARCHAEOLOGICAL DISCOVERY PLAN

PROPOSED STONY CREEK WIND FARM

TOWN OF ORANGEVILLE, WYOMING COUNTY, NEW YORK

I. Prior to construction, in the Area of Potential Effect (APE), of the Stony Creek Wind project, Stony Creek Energy LLC (Stony Creek) will identify a Site Manager/Construction Manager, responsible for daily supervision of construction, and who is expected to be present on-site during all phases of construction. The Site Manager will be informed that there is a potential for discovering unrecorded cultural resources within the APE. Examples of cultural resources that may be unearthed in below-surface layers of artifact-bearing soils including but are not limited to:

- Prehistoric shell middens, lithic and ceramic artifacts
- Human and animal bone
- Historic artifacts, for example, green, aqua, or blue glass; lead, copper, and iron items; wheels; and barrels, among others.
- remnants of brick or rock walls of historical structures;
- wooden beams beneath brick walls;
- old paved surfaces (e.g., cobble, flagstone, or wooden planking);

Stony Creek will inform the Site Manager of the possibility that prehistoric and historical resources identified above are potentially important, and that they may be protected by law. A Project Archaeologist should be on call to evaluate any potentially National or State Register eligible resources inadvertently discovered during the construction process.

If prehistoric or historical artifacts or features are discovered the following actions will be taken:

1. The Site Manager will immediately suspend all construction/excavation activities in the area of the discovery, and will notify Stony Creek's Project Manager.
2. The Project Manager will notify the Project Archaeologist; and the Project Archaeologist, Project Manager, and Site Manager will discuss a course of action via conference call. During this discussion, the Project Archaeologist will gather information as to the significance of the discovered resource. If the Project Archaeologist determines that the resource merits a professional examination, he or she will go to the project location as promptly as possible and evaluate the discovery.
3. The Project Archaeologist will assess the discovered resource by personal examination. In the course of this examination the Project Archaeologist may request the Site Manager to use available on-site machinery (e.g., backhoe) to expose a larger section of the resource. This additional exposure will be of limited scope. If, at this point, the Project Archaeologist determines the resource to be insignificant, construction may resume immediately. If, on the other hand, the resource is judged to be potentially significant, construction will remain suspended,

the Project Archaeologist will notify the New York State Historic Preservation Office (SHPO), and a determination will be made of the need for additional examination.

4. Depending on what New York SHPO decides, resumption of construction may be allowed, with continued monitoring during construction activities. In such case, the Project Archaeologist will remain on site for the duration of any operations that may expose or damage cultural resources. The Project Archaeologist will have the opportunity to collect further information during construction by means of photographs and various measurements, staying in contact with the New York SHPO throughout the evaluation process. If, at the end of such monitoring, and in consultation with the New York SHPO, the resource is determined to be ineligible for NHRP listing, the Project Archaeologist will submit to Stony Creek and New York SHPO a letter documenting the results of the monitoring, descriptions of the investigated resources, and the photographic record.

If, after initial consultations, the New York SHPO determines that the resource requires an archaeological investigation (whether a Phase I survey or Phase II evaluation), the scope, methods, and reporting requirements of this investigation will be determined based on circumstances.

II. Unanticipated Human Remains.

The probability of encountering human remains in the project area is low. However, if such remains are encountered, the State Historic Preservation Office/New York State Office of Parks, Recreation and Historic Preservation Human Remains Discovery Protocol will be followed as presented below.

State Historic Preservation Office/ NY State Office of Parks, Recreation and Historic Preservation Human Remains Discovery Protocol

In the event that human remains are encountered during construction or archaeological investigations, the State Historic Preservation Office (SHPO) requires 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 and local law enforcement as well as the SHPO 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 archeological. If the remains are archeological in nature, a bioarchaeologist will confirm the identification as human.

- 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. The involved agency will consult SHPO and appropriate Native American groups 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 Euro-American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.