

**LETTER OF RESOLUTION
PURSUANT TO SECTION 14.09
OF THE NEW YORK STATE HISTORIC PRESERVATION ACT
REGARDING THE SHELBY CRUSHED STONE, INC. (13PR00334)
PERMIT MODIFICATION**

**AMONG
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
THE NEW YORK STATE OFFICE OF PARKS, RECREATION
AND HISTORIC PRESERVATION AND
SHELBY CRUSHED STONE, INC.**

WHEREAS, Shelby Crushed Stone, Inc, is seeking a modification to its Mined Land Reclamation Permit (DEC#8-3436-00007/00001, MLR: #80346), (NYSECL Article 23, Title 27) from the New York State Department of Environmental Conservation (NYSDEC) for a seven (7) acre expansion of its mine located at 10830 Blair Road, Medina, New York.

WHEREAS, the proposed mine expansion is located within, and contains archaeological components that are contributing elements to, the Shelby Fort Site (A07309.00001, UB340), a property that is eligible for listing in the State and National Register of Historic Places; and

WHEREAS, the granting of permits or approvals by state agencies requires compliance with Section 14.09 of the New York State Historic Preservation Act and its implementing regulations found at 9 NYCRR 428; and

WHEREAS, archaeological investigations have identified components of the Shelby Fort Site within the western portion of Area C of the proposed mine expansion; and

WHEREAS, OPRHP and NYSDEC have determined that mining in Area C will adversely impact a portion of the Shelby Fort Site which is important for the data it contains, by causing its destruction; and

WHEREAS, NYSDEC in consultation with the OPRHP has determined that additional archaeological investigations and other impact mitigation measures prior to the beginning of mining in Area C is appropriate.

NOW, THEREFORE, in accordance with the New York State Parks, Recreation and Historic Preservation Law, Article 14, Shelby Crushed Stone, Inc, the NYSDEC, and OPRHP agree that the project may proceed subject to the stipulations set forth below:

STIPULATIONS

NYSDEC shall make compliance with the terms of this Letter of Resolution a Special Condition of the Mined Land Reclamation Permit (DEC#8-3436-00007/00001, MLR: #80346) permit that may be issued for this project.

- A Phase III Data Recovery investigation consisting of the excavation of fifteen (15) 1m x 1m test units (TU) will occur within the "Limits of the Shelby Fort Site" located in Area C. We recommend that five (5) test units are placed in the vicinity of TU 30 and TU 31, five (5) test units are placed in the vicinity of TU 11 and TU 18 and five (5) test units are placed north of TU 2 and TU 3.
- Five (5) additional test units are placed in reserve and used, if necessary, to complete the excavation of archaeological features.
- A Phase III Data Recovery report is submitted to the DEC within six months of the completion of the Phase III archaeological fieldwork.
- The portion of the Shelby Fort earthwork plus a 30 foot buffer, owned by Shelby Crushed Stone, will be donated to an appropriate land trust, such as the Archaeological Conservancy, within twelve (12) months of the completion of the Phase III archaeological fieldwork. If for some reason the above does not come to pass, NYSDEC and OPRHP will work with Shelby Crushed Stone to make other arrangements for the long term protection of the site.
- All ground disturbing activities associated with the preparation of the portion of the Shelby Fort site located within the mining limits, will be monitored by a 36 CFR 61 qualified archaeologist and, at the request of the consulting Indian Nation, a Native American monitor.
- A monitoring/feature excavation protocol (Attachment 1) will implemented under the direction of a 36 CFR 61 qualified archaeologist as approved by DEC in consultation with the OPRHP and the consulting Indian Nations.
- If human remains or suspected human remains are encountered during mining operations, the OPRHP recommends that the OPRHP's *Human Remains Discovery Protocol* is followed by the mine owner.
- The Seneca Nation of Indians and the Tonawanda Seneca Indian Nation will be offered the right-of-first refusal of the Shelby Fort site artifact collection, owned by Shelby Crushed Stone. If the Nations refuse to curate the collection, it will be offered to a repository that meets the New York Archaeological Council Standards (1995), such as the Marian E. White Museum, SUNY-Buffalo or the New York State Museum.

UNANTICIPATED DISCOVERIES AND THE DISCOVERY OF HUMAN REMAINS

If during the course of project related activities, archaeological materials other than those addressed in this agreement come to light the Procedures for Unanticipated Discoveries found in Attachment 2 shall be followed.

If suspected human remains are encountered at any point during this project, OPRHP's Human Remains Discovery Protocol (Attachment 3) will be followed.

MONITORING AND CONSULTATION

OPRHP may monitor activities carried out pursuant to this agreement at its discretion. APPLICANT will cooperate with OPRHP with respect to such monitoring activities.

Whenever consultation with OPRHP or other consulting parties is required or suggested under this agreement, APPLICANT will provide OPRHP and other consulting parties with adequate information to make an informed judgment regarding the issue under consideration. Unless otherwise specified in this agreement, or explicitly agreed to by OPRHP and APPLICANT, OPRHP and other consulting parties will have two (2) weeks to respond. If OPRHP or other parties do not respond within the agreed time, the recommendations of the Archaeological Consultant will be followed with respect to the issue under consideration.

SIGNATURE PAGE FOLLOWS

New York State Office of Parks, Recreation and Historic Preservation

By: Luxia Puzant

Title: Dep Comm for Historic Preservation

Date: 12/9/14

New York State Department of Environmental Conservation

By: CSH

Title: AGENCY HISTORIC PRESERVATION OFFICER

Date: 12/9/14

Shelby Crushed Stone, Inc.

By: ADBS

Title: PRESIDENT

Date: 12/2/14

ATTACHMENT 1

**Soil Stripping Work Plan for the
Shelby Fort Site (A07309.00001, UB340)
Expansion Area C, Shelby Crushed Stone, Inc.
Town of Shelby, Orleans County
13PR00334**

The following monitoring plan was prepared to address the potential presence of archaeological features within the limits of the Shelby Fort site, located exterior to the earthworks in the western half of Mining Area C. The intent of this Plan is to outline procedures for the identification of archaeological feature that may be discovered during the top soil stripping operations.

General Monitoring Procedures

- a) All ground-disturbing activities related to clearing and grubbing and all top soil stripping within the limits of the Shelby Fort site, located exterior to the earthworks in the western half of Mining Area C, will be monitored by a 36 CFR 61 qualified archaeologist.
- b) Representatives from the Seneca Nation of Indians and Tonawanda Seneca Nation will be allowed to monitor all ground-disturbing activities related to clearing, grubbing and top soil stripping within the limits of the Shelby Fort site located exterior to the earthworks in the western half of Mining Area C. Monitors will be required to observe site safety procedures and protocols as directed by Shelby Crushed Stone (SCS).
- c) Prior to work commencing, Shelby Crushed Stone (SCS) will contact the New York State Police, Orleans County Sheriff and local police as well as the Orleans County Coroner regarding the potential to encounter Native American burials.
- d) A pre-construction meeting will be held with all parties (SCS, construction contractor, Indian Nation representatives and the archaeologist) to review this Work Plan, site safety procedures, and the anticipated work schedule. Contact information for the Native American monitors are as follows:

Tonawanda Seneca Nation:

Name: Chief Roger Hill Ph: (716) 542-4244

Email: tonseneca@aol.com

Seneca Nation of Indians:

Name: Melissa Bach Ph: (716) 945-1790, Ext. 3580

Email: melissa.bach@sni.org

e) Hand and power tools and low ground pressure construction equipment will be used for all clearing, grubbing and topsoil stripping.

f) The implementation of this Plan requires that SCS personnel and subcontractors fully cooperate with the archaeologist, who has the authority to interrupt, delay, and/or stop clearing, grubbing and soil removal should further archaeological investigation be necessary.

Field Monitoring Procedures

a) Care will be taken during tree stump removal to allow the archaeologist the opportunity to inspect the soil within the root balls of large vegetation and trees.

b) Depth of top soil stripping will be sufficient to expose the subsoil layer in order to determine whether or not archaeological features are present. This will be at the discretion of the archaeologist based upon site-specific conditions.

c) Should human remains be found during the clearing, grubbing or mechanical topsoil stripping process, work in the immediate vicinity of the find must cease and DEC, OPRHP and the Indian Nation contacts will be notified in accordance with the Human Remains Discovery Protocol dated October 2013 and the Letter of Resolution for this project. The immediate area of the find will be protected from the elements and further disturbance. Work may proceed in other areas.

d) It will be assumed that cremations, extended burials with grave goods, and flexed burials are Native American and that no examination of such remains will

be necessary to determine ethnic affiliation. If there is a need to determine ethnic affiliation all study will be conducted on site. No other study of the burial or burial feature is recommended.

e) A bioarchaeologist, qualified to identify of human remains, will be retained to determine if the remains are human or otherwise and for the purpose of ethnic identification, when necessary. No burial feature will be photographed. Every effort will be made to minimize publicity regarding any findings.

f) In accordance with the OPRHP Human Remains Discovery Protocol, dated October 2013, the OPRHP, DEC, the Indian Nations and SCS will consult to explore options as to the treatment and disposition of any human remains that may be found:

g) Features determined not be human burials will be excavated and recorded using appropriate archaeological techniques and in accordance with OPRHP and New York Archaeological Council Standards.

h) Given the history and archaeological significance of this site, if the archaeologist determines the human remains are archaeological, a forensic investigation will not be required. If the supervising archaeologist or bioarchaeologist determines the remains are not archaeological but forensic in nature, the investigation will be turned over to the law enforcement.

i) No destructive testing shall be performed on any known Native American human remains.

Land Owner and Contractor Responsibilities

Shelby Crushed Stone and its subcontractors are required to maintain a safe work area for the archaeologist and Indian Nation monitors in compliance with MSHA and other applicable standards. If excavation needs to proceed more than 5 feet (1.5m) below the ground surface, shoring will be provided. The archaeologist will be provided at least 72 hours notice prior to any activity that requires monitoring.

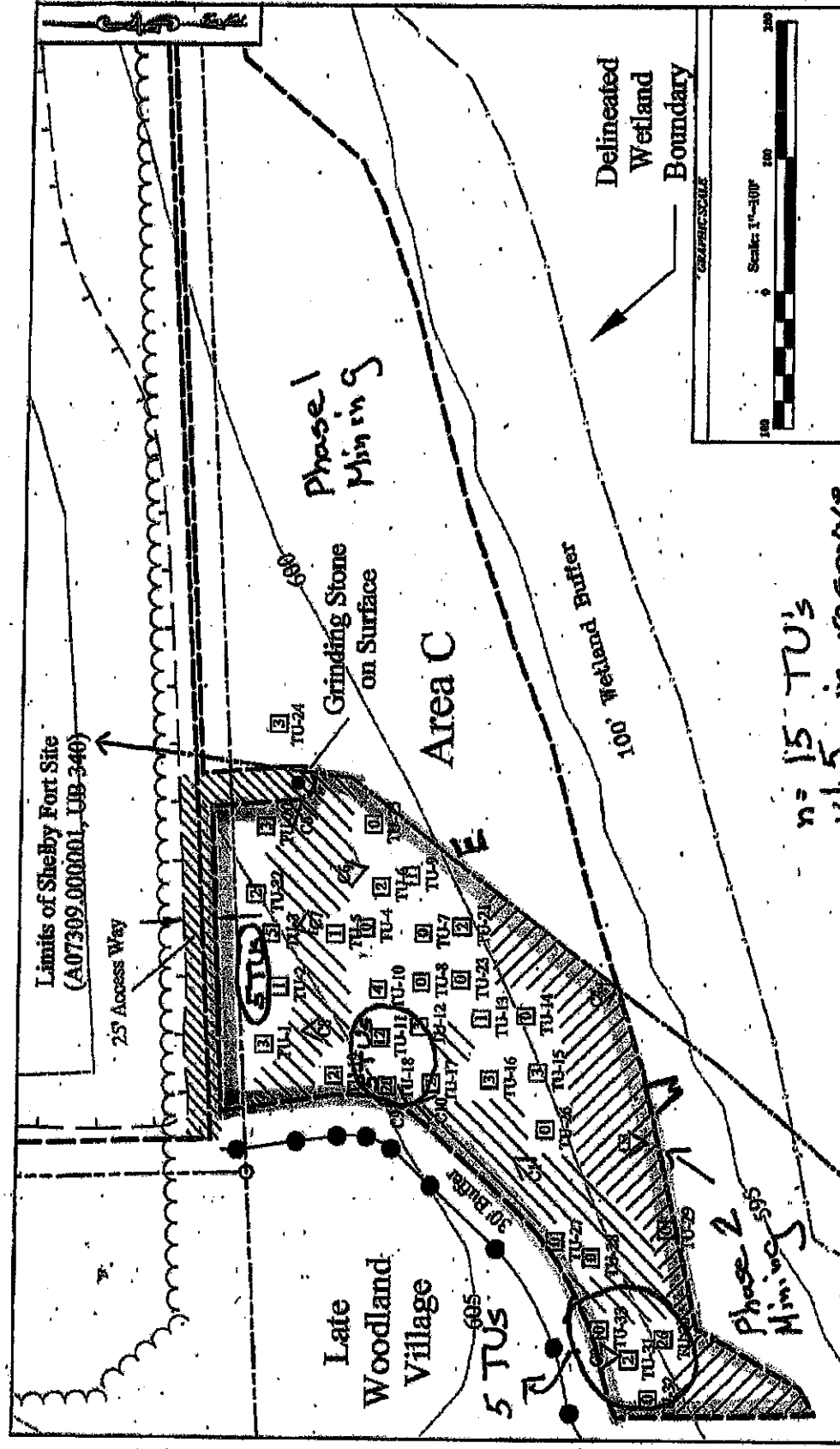
Archaeologist Responsibilities

The archaeologist will comply with the owner's health and safety plan for the project, which includes wearing appropriate safety gear, and only enter excavations deemed safe by qualified excavation personnel employed by SCS or their sub-contractor. The archaeologist will conduct monitoring and documentation in a time-efficient manner to minimize delays. The archaeologist shall cooperate with the Indian Nation monitors as appropriate. Archaeological field operations will be conducted in a professional manner in accordance with the professional standards of the New York Archaeological Council and the New York State Office of Parks, Recreation, and Historic Preservation.

Nation's Responsibilities

The Indian Nation monitors must observe all facility health and safety requirements and may be chaperoned by an SCS representative while on SCS property. The monitors will have access to all proposed investigation areas illustrated on Figure 1. The monitors shall have access to all information available to the archaeologist. The Indian Nation Monitors shall be provided at least 72 hours' notice prior to any activity that requires monitoring.

Figure 1



| | | | | | |
|---|--|--|--|---|--|
| <p>LEGEND</p> <p>Property Line [Symbol]</p> <p>Gravel Staps [Symbol]</p> <p>Top [Symbol]</p> <p>Edge of Water [Symbol]</p> <p>Edge of Wetland [Symbol]</p> <p>Trail Line [Symbol]</p> <p>5' Contour [Symbol]</p> <p>Photo Location [Symbol]</p> <p>Total Artifacts Found at Each Test Unit [Symbol]</p> <p>Late Woodland Village Boundary [Symbol]</p> <p>Limits of the Shelby Fort Site within the LOM [Symbol]</p> | | <p>ACREAGE SUMMARY</p> <p>Units to be added to the file of this site.</p> <p>Units currently within the file of this site.</p> <p>Areas of Contour or Photo Teststamps</p> <p>Areas of Power Site</p> | | <p>DETAILS</p> <p>Date: 11/7/94</p> <p>Scale: 1"=300'</p> <p>Contract Number: NA</p> <p>District: BSL</p> <p>USGS Sheet: Middle T.S.</p> <p>Project Manager: SMO</p> <p>Dredger: RWJ</p> <p>Created by: SMO</p> <p>Base Map: 8</p> <p>Map Date: 12/20/92</p> | |
| <p>MAP REVISIONS</p> <p>DATE: 11/7/94</p> <p>DESCRIPTION: Update map to reflect current status</p> | | <p>BY:</p> <p>SWR</p> | | <p>MAP REVISIONS</p> <p>DATE: 11/7/94</p> <p>DESCRIPTION: Update map to reflect current status</p> | |
| <p>SHELBY CRUSHED STONE, INC.</p> <p>Medina Mine Site</p> <p>1000 S. County, Orleans Parish, Louisiana</p> | | <p>ARTIFACT DENSITY & DISTRIBUTION IN AREA C</p> | | <p>Scale: 1"=300'</p> <p>0 100 200</p> | |
| <p>Limits of Shelby Fort Site (A07309.000001, UB-340)</p> <p>25' Access Way</p> <p>Phase 1 Mining</p> <p>Grinding Stone on Surface</p> <p>Area C</p> <p>100' Wetland Buffer</p> <p>Phase 2 Mining</p> <p>Late Woodland Village</p> <p>5 TUS</p> <p>n = 15 TUs w/ 5 in reserve</p> | | <p>5 TUS</p> | | <p>5 TUS</p> | |

ATTACHMENT 2

Procedures to Follow in the Event of an Unanticipated Discovery

The Permittee will immediately notify NYSDEC who will undertake additional notification of OPRHP and/or Indian Nations as appropriate.

2. The Permittee shall immediately cease all operations in the vicinity of the find and shall take steps to protect and secure the area from further disturbance.
3. The Permittee shall cooperate with NYSDEC and OPRHP to undertake a detailed assessment of the find directed toward determining its significance and the potential for project impacts.
4. The Permittee shall cooperate with NYSDEC and OPRHP in developing appropriate measures to avoid or mitigate project impacts to any resources found eligible for listing in the State or National Registers of Historic Places.
5. If the find is determined to be significant, and continuing construction may damage more of the site, NYSDEC will request recommendations from OPRHP and other appropriate parties regarding the proper measures for site treatment. These measures may include:
 - a. Formal archaeological evaluation of the site;
 - b. Modifications to the project to avoid or reduce impacts;
 - c. Preparation of a mitigation plan to be approved by NYSDEC, OPRHP and any other appropriate parties;
 - d. Implementation of the mitigation plan; and
 - e. Approval to resume construction following completion of the fieldwork component of the mitigation plan.
6. If the find is determined to be isolated or completely disturbed by prior activities, or found not to meet the criteria for listing in the State or National Registers, the Permittee can request authorization from NYSDEC to resume project activities. NYSDEC may grant such a request after consultation with OPRHP and other parties as appropriate.

ATTACHMENT 3

**State Historic Preservation Office/
New York State Office of Parks, Recreation and Historic
Preservation
Human Remains Discovery Protocol
(October 2013)**

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

- At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
- Human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- The county coroner/medical examiner, local law enforcement, the SHPO, the appropriate Indian Nations, and the involved agency will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archaeological.
- If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the SHPO and the Indian Nations. The involved agency will consult SHPO and appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance. Photographs of Native American human remains and associated funerary objects should not be taken without consulting with the involved Indian Nations.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the SHPO. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

March 1, 2017

Mr. Matt Griffiths
Environmental Analyst 1
NYS DEC
6274 East Avon - Lima Road
Avon, NY 14414

Re: DEC
Shelby Crushed Stone, 7 acre Mine Expansion
Town of Shelby, Orleans County
13PR00334

Dear Mr. Griffiths:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the *Phase III Archeological Data Recovery, Area C Proposed Shelby Crushed Stone Quarry Expansion Report*, prepared by Columbia Heritage and dated January 2017, in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on this review, the OPRHP has no further comments or concerns regarding the Phase III archaeology data recovery fieldwork or report.

If you have any questions, I can be reached at (518) 268-2179.

Sincerely,

Nancy Herter
Archaeology Unit Program Coordinator
e-mail: nancy.herter@parks.ny.gov

Division for Historic Preservation

P.O. Box 189, Waterford, New York 12188-0189 • (518) 237-8643 • www.nysparks.com



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

October 04, 2018

Mr. Scott Sheeley
Regional Permit Administrator
NYSDEC
R8 - Avon - Regional HQ
Avon, NY 14414

Re: DEC
Shelby Crushed Stone, 7-acre Mine Expansion
Town of Shelby, Orleans County, NY
13PR00334

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the maps and additional information submitted materials in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on this review, it is the opinion of the OPRHP that the Stipulation in the Letter of Resolution related to the long-term protection of the Shelby Fort Site has been satisfied with the transfer of the portion of the Shelby Fort earthwork plus a 30-foot buffer, owned by Shelby Crushed Stone, to the Archaeological Conservancy.

If you have any questions, I can be reached at (518) 268-2179.

Sincerely,

Nancy Herter
Archaeology Unit Program Coordinator