

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

THE LANDMARKS SOCIETY OF GREATER
UTICA, JOSEPH BOTTINI,
#NOHOSPITALDOWNTON, BRETT B. TRUETT,
JAMES BROCK, JR., FRANK MONTECALVO,
JOSEPH CERINI, AND O'BRIEN PLUMBING &
HEATING SUPPLY, a division of ROME
PLUMBING AND HEATING SUPPLY CO. INC.,

**AFFIRMATION OF
KATHLEEN M.
BENNETT, ESQ. IN
SUPPORT OF MOTION
TO DISMISS**

PETITIONERS-PLAINTIFFS,

-against-

INDEX NO. 02797-19
RJI No.

PLANNING BOARD OF THE CITY OF UTICA,
NEW YORK STATE OFFICE OF PARKS,
RECREATION, AND HISTORIC PRESERVATION,
ERIK KULLESEID, ACTING COMMISSIONER,
DORMITORY AUTHORITY OF THE STATE OF
NEW YORK AND, MOHAWK VALLEY HEALTH
SYSTEM

RESPONDENTS-DEFENDANTS.

KATHLEEN M. BENNETT, an attorney duly admitted to practice law in the
State of New York, affirms under penalty of perjury pursuant to CPLR § 2106 as follows:

1. I am a member of the law firm of Bond, Schoeneck & King, PLLC, attorneys for Respondent Mohawk Valley Health System ("MVHS") in the above captioned matter.
2. I have personally represented MVHS in connection with its proposal to construct a new Health Care Campus in the City of Utica, including the acquisition of property, the environmental review process, and land use approval and eminent domain processes. As such, I am familiar with the facts, circumstances and proceedings in this case.
3. I respectfully submit this Affirmation in support of Respondent MVHS's motion to dismiss the hybrid Article 78 petition/Declaratory Judgment action.

4. The proposed Health Care Campus includes a 670,000± sf hospital, central utility plant, parking facilities (one municipal parking garage and multiple surface lots), medical office building (by private developer), campus grounds, utility/pedestrian bridge (over Columbia Street) and helipad (the “Project”).

5. MVHS submitted an application to the Oneida County Local Development Corporation (OCLDC) requesting certain financial assistance related to the Project.

6. The MVHS application to OCLDC included Part 1 of the full Environmental Assessment Form (EAF), pursuant to the New York State Environmental Quality Review Act (SEQRA).

7. Based on its review of the EAF, the OCLDC determined the Project to be a Type I action under SEQRA, thereby requiring establishment of a Lead Agency that would conduct a coordinated review. However, the OCLDC felt that it had limited jurisdiction over the Project and opted not to act as Lead Agent.

8. The full EAF submitted by MVHS to OCLDC identified the City of Utica Planning Board (Planning Board), which must issue site plan approval for the Project, as an Involved Agency making it eligible to act as the Lead Agency.

9. Given the professional planning staff at its disposal and the knowledge base required to properly conduct coordinated review for the Project, OCLDC expressed a desire for the Planning Board to act as Lead Agent.

10. At the February 22, 2018 Meeting, the Planning Board declared its intent to serve as Lead Agency and sent notice of that intention to all other involved and interested agencies.

11. After providing additional time for objections and having received no objections, on May 7, 2018, the Planning Board declared itself lead agency, identified the Project as a Type I action, and issued a Positive Declaration requiring the preparation of an environmental impact statement to assess potential adverse environmental impacts and to identify possible mitigation and/or alternatives to avoid or minimize those potential impacts.

12. On May 17, 2018, MVHS submitted a draft scoping document to focus the draft environmental impact statement on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or nonsignificant; and

13. The Planning Board held a duly noticed public scoping hearing on June 7, 2018 and accepted written comments on the draft scoping document until June 20, 2018.

14. The Planning Board adopted a final scoping document on July 19, 2018.
15. MVHS submitted a draft environmental impact statement (DEIS) to the Planning Board on October 26, 2018.
16. At a regular meeting of the Planning Board held on November 15, 2018, the City of Utica Economic and Urban Development staff and the Board members discussed the scope and content of the DEIS using the final scoping document and the standards contained in Section 617.9 of the Regulations to pass a resolution accepting the DEIS, dated October 2018, as adequate with respect to its scope and content for the purpose of commencing public review.
17. The Planning Board held a public hearing on the DEIS, pursuant to 6 NYCRR 617.8(f), on December 6, 2018, at 5:00 p.m. at the New York State Office Building, 207 Genesee St., Utica, NY, and accepted written public comments until December 27, 2018.
18. Based on the comments received from the public, at the request of the Planning Board, MVHS's environmental and engineering consultants prepared a Final Environmental Impact Statement ("FEIS"), dated March 2019 in accordance with the Regulations for review by the Board, acting as SEQRA lead agency for the Project.
19. At its regular meeting on March 21, 2019, the Planning Board, acting as the SEQRA lead agency for the Project resolved to accept the FEIS as accurate and adequate with respect to its scope and content pursuant to the standards contained in Section 617.9(b)(8) of the Regulations.
20. Notice of the Planning Board's acceptance of the FEIS was published in the Environmental Notice Bulletin and appears on the City of Utica website.
21. At its regular meeting on April 18, 2019, the Planning Board, acting as the SEQRA lead agency for the Project resolved to issue a written findings statement that found the Project in the downtown location as proposed by MVHS is the alternative that best minimizes impacts to the environment while providing significant beneficial impacts in terms of revitalizing a blighted area, secondary economic growth, and better serving the populations most in need of healthcare, as well as meeting MVHS's goals and objectives for the Project.
22. The SEQRA findings statement is a written document that is prepared following the acceptance of a final EIS that declares all SEQRA requirements for making decisions on an action have been met. Specifically, a positive findings statement, such as that issued by the Planning Board, means only that the Project can be approved, not that it actually will be

approved.

23. Although issuance of the SEQRA findings statement concludes the environmental review process for the Planning Board, it is not the final action for the Planning Board, which still has to consider a site plan application for the Project. If and when that site plan application is submitted to the Planning Board, the Planning Board may deny, approve, or approve with modifications the site plan. Modifications may alter the size, design, landscaping, and/or engineering of the project – all or some of which could address the Petitioners’ concerns.

24. Moreover, the SEQRA findings statement issued by the Planning Board is not even the final step in the SEQRA process for this Project. Rather, each involved agency also must prepare its own SEQRA findings statement and is free to reach its own conclusions. If an involved agency reaches a different conclusion in its findings statement, then the Project cannot proceed until those differences are worked out.

25. None of the involved agencies in this case, including DASNY and NYSDOH, have issued a SEQRA findings statement. Findings by those other agencies could impose additional conditions that have an impact on the Project and alleviate Petitioners’ concerns.

26. Moreover, if and when those involved agencies issue their respective SEQRA findings, the issuance of those findings is only a preliminary step in the review process of those other involved agencies. DASNY would still need to consider any application for the issuance of bonds and NYSDOH still needs to issue the master grant contract.

27. Accordingly, the Petitioners’ “claimed harm may be prevented or significantly ameliorated by further administrative action.” As such, “the matter is not ripe.” Matter of Adirondack Council, Inc. v. Adirondack Park Agency, 92 A.D.3d 188, 190 (3d Dep’t 2012).

The Letter of Resolution and the State Historic Preservation Act

28. The Office of Parks, Recreation and Historic Preservation (“OPRHP”) administers programs authorized by both the National Historic Preservation Act (NHPA) of 1966 and the New York State Historic Preservation Act (SHPA) of 1980. Under Section 106 of the NHPA and Section 14.09 of the New York SHPA, state agencies which undertake activities affecting historic properties, including those properties which have been determined to be eligible for listing on the State or National Registers, must consult with OPRHP when any aspect of the proposed undertaking may or will cause any change, beneficial or adverse, in the quality of any eligible or registered property in the project impact area.

29. OPRHP's role in the review process is to ensure that effects or impacts on eligible or listed properties are considered and avoided or mitigated during the Project planning process. If OPRHP finds an adverse impact, there are three possible outcomes:

- If OPRHP and the undertaking agency agree on a course of action it should be set forth in the Letter of Resolution (LOR) and at the conclusion of the undertaking the agency must certify in writing that the undertaking was completed in accordance with the LOR.
- If the undertaking agency determines that there are no feasible and prudent alternatives, but determines it is in the public interest to proceed, it may unilaterally terminate the consultation process by providing written notice to OPRHP of this conclusion and its supporting reasons.
- If the undertaking agency and OPRHP both agree that there are no alternatives, but that it is in the public interest to proceed and they may make a joint written declaration to this effect.

30. NYSDOH and DASNY have the obligation to consult with OPRHP prior to NYSDOH's issuance of the master grant contract or DASNY's issuance of tax exempt bonds for the Project. As a result, DASNY required MVHS, as the Project Sponsor, to engage in the consultation process with OPRHP early in the planning process. MVHS made an initial submission to OPRHP's Cultural Resource Information System (CRIS) in September 2016. The ensuing process, which included multiple points of coordination and consultation between DASNY, OPRHP and MVHS, is outlined in Section 3.6 of the DEIS.

31. Based on that consultation and in support of the impact evaluation process, two cultural resource investigations were performed by MVHS to identify the potential presence and/or likelihood of historic and archaeological resources within the Project footprint. Those evaluations, which included a Phase 1A Cultural Resource Investigation and an Architectural Inventory, were summarized in and appended to the DEIS as Appendix E.

32. Based on OPRHP's review of those investigations, it was concluded by OPRHP that the Project could impact resources listed or eligible for listing (some based solely on age of the structure) on the National Register of Historic Places, as well as areas with known or suspected sensitivity to the presence of archaeological resources. Those resources were clearly defined in OPRHP's correspondence, which was also appended to the DEIS as part of Appendix

E.

33. Consistent with SEQRA and SHPA, the consultation process, regardless of site control, resulted in an identification of baseline conditions and potential Project-related impacts on existing cultural resources. Throughout the consultation process, MVHS has been clear in its intentions that, consistent with the need to meet its Project objectives, the Project may require demolition of existing buildings within the Project footprint – that is the magnitude of the impact, which was identified and assessed in the DEIS and during the mandated consultation process with OPRHP.

34. In accordance with SHPA, to mitigate these potential impacts, MVHS signed a LOR with OPRHP and DASNY. A copy of the LOR is attached to this affirmation as Exhibit A.

35. The LOR states that appropriate mitigation measures/stipulations will be implemented to offset any loss to historic resources. The agreed upon mitigation measures include (1) exploration of the potential reuse of existing structures located outside of the hospital building and parking structure's footprints, deemed retainable and adaptable for a productive hospital-associated use, provided sufficient resources to complete the Project remain; (2) where buildings cannot be retained the Applicant will follow SHPO's standard resource documentation process; and (3) other appropriate mitigation for the loss of historic resources as agreed to by the parties (e.g., reuse of building name panels, significant intact architectural elements, etc.) will be incorporated into the new structure or hospital site creating historic linkage and homage to the history of this portion of the City of Utica.

36. The LOR does not authorize or even put into motion any activities that could be viewed as inflicting injury. In fact, the opposite is true. The actions which are the subject of the Article 78 proceeding have not inflicted any injury on Petitioners/Plaintiffs at all, much less injury that is concrete or incapable of redress through the subsequent stages of the process.

Other Discretionary Approvals

37. As noted above, in addition to the issuance of SEQRA findings statements by other involved agencies, those involved agencies also have their own discretionary approvals.

38. For example, Section 1.3 of the FEIS, attached as Exhibit B, identifies 20+ discretionary and ministerial permits and approvals that are required before the Project can proceed. At a minimum, until the other discretionary approvals are issued for the Project, none of the Petitioners/Plaintiffs have suffered any injury, much less injury that is concrete or

incapable of redress through the subsequent stages of the process.

39. More specifically, as noted above, pursuant to the City of Utica Zoning Ordinance, MVHS must apply to the City of Utica Planning Board ("ZBA") for site plan approval (§ 2-29-542 (b)). In addition, MVHS will also need to apply to the City of Utica Zoning Board of Appeals for a special use permit and area variances.

40. If and when these completed applications are submitted to the Planning Board/ZBA, the respective board may deny, approve, or approve with modifications those applications.

41. Accordingly, each of these discretionary approvals could prevent or ameliorate the alleged harm sustained by the Petitioners.

42. However, as of this date MVHS has not submitted the complete applications to obtain these approvals. As a result, Petitioners/Plaintiffs have not been injured, there is nothing for the Court to review and the Proceeding/Action should be dismissed in its entirety.

43. Moreover, as noted in Section 1.3 of the FEIS, MVHS also needs discretionary approvals from NYSDOH (issuance of the master grant contract) and DASNY (tax exempt bond) that have not, and, in fact cannot, be issued until after these agencies issue their own findings statements.

44. Accordingly, as set forth in this affidavit, several key events have not yet occurred and as a result, the Petition is not ripe for review.

WHEREFORE, your affiant respectfully requests that the Respondent MVHS's Motion to Dismiss be granted, and for such other and further relief as the Court may deem just and proper.

Dated: June 12, 2019



Kathleen M. Bennett

Exhibit A

**LETTER OF RESOLUTION
AMONG
THE DORMITORY AUTHORITY STATE OF NEW YORK AND
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION AND
MOHAWK VALLEY HEALTH SYSTEMS**

WHEREAS, Mohawk Valley Health Systems ("Applicant") is proposing to construct a new regional hospital to replace two existing outdated inpatient facilities: Faxton-St. Luke's Healthcare and St. Elizabeth's Medical Center (the "Hospital"), together with surface parking and a parking garage ("Parking Areas" and together with the Hospital, the "Project");

WHEREAS, the Dormitory Authority of the State of New York ("DASNY") will be working with the New York State Department of Health ("DOH") to administer a grant awarded under Section 2825-b of the Public Health Law to the Applicant for the purpose of creating the Project,

WHEREAS, DASNY recognizes its responsibilities pursuant to Article 14 of New York State Parks, Recreation and Historic Preservation law ("PRHPL") to avoid, minimize or mitigate adverse impacts to historic resources and/or archaeological sites ("Historic Properties"), to the fullest extent practicable consistent with other provisions of the law;

WHEREAS, OPRHP has reviewed the preliminary scope of the Project provided by O'Brien & Gere and submitted to OPRHP via their Cultural Resource Information System ("CRIS") on October 3, 2016, including the proposed Project Impact Area ("PIA");

WHEREAS, the PIA includes areas upon which the Hospital and the Parking Areas will be constructed;

WHEREAS, the PIA includes approximately 55 properties (80 tax map parcels) in the City of Utica, which are expected to be acquired by either negotiated sale or eminent domain;

WHEREAS, OPRHP has identified several Historic Properties that are listed in the New York State and National Registers of Historic Places or appear to be eligible for inclusion in the Registers (See attached Appendix A);

WHEREAS, OPRHP has also identified several areas that warrant additional assessment for archaeological potential and are potentially eligible for the Registers based on preliminary analysis as outlined in the SHPO Consultation Materials, dated April 2018, and submitted by O'Brien & Gere;

WHEREAS, it has been determined that one or more of the identified Historic Properties will be directly impacted during the development of this undertaking;

WHEREAS, such impacts are defined under 9 NYCRR Part 428.7 as constituting an Adverse Impact to Historic Properties;

WHEREAS, the parties acknowledge that the full extent of the potential impacts cannot be ascertained at this time, since the Applicant does not currently own all of the parcels comprising the PIA;

WHEREAS, the parties have determined that it is desirable to progress with the certain pre-construction activities concurrent with efforts to secure the parcels within the PIA;

WHEREAS, the parties agree that ongoing consultation, in accordance with PRHPL Section 14.09 and its implementing regulations at 9 NYCRR Part 428, will explore alternatives that would avoid or minimize impacts to identified historic/archaeological resources within the PIA;

WHEREAS, all parties agree that if reasonable and prudent alternatives that might avoid direct and indirect impacts to yet to be identified resources cannot be found, that appropriate mitigation measures will be developed to offset any loss to Historic resource;

NOW THEREFORE, DASNY, OPRHP and the Applicant agree that DASNY's Section 14.09 responsibilities will be addressed by implementing the following stipulations, which are intended to take into account the impacts of the Project on known and as of yet unknown Historic resources.

I. STIPULATIONS

DASNY along with Mohawk Valley Health Systems will insure that the following measures are implemented:

BUILDINGS

- As soon as practicable, the Applicant will commence a complete assessment of buildings it currently controls that are listed in Appendix A and proposed for removal.
- Upon site control of the remaining buildings, the Applicant will commence a complete assessment of the remaining buildings listed in Appendix A.
- This assessment will include photographs of exterior and interior conditions. Sufficient (10 to 20) images should be prepared to provide OPRHP with a general understanding of the state of the resource. These images, along with a written assessment of the general condition of the building, will be submitted to OPRHP via the CRIS program.

ARCHAEOLOGY

- Archaeological testing, as previously requested by OPRHP in their letter to O'Brien & Gere dated June 18, 2018, will commence once the Applicant obtains site control. Reports associated with the testing must be filed with OPRHP in a timely manner and must meet NYS Archaeological Standards.
- No ground disturbing activities in the PIA will commence until all archaeological testing has been completed at each identified site and the results of the testing have been reviewed by OPRHP. Notwithstanding the above, the parties acknowledge and agree that MVHS will be allowed to perform certain environmental testing and engineering surveys (borings) as needed on properties MVHS or the City of Utica control within the PIA.
- Unanticipated discoveries, including the discovery of human remains during construction, will follow the protocol outlined in Appendix C.

TREATMENT MEASURES (BUILDINGS)

In accordance with Section 14.09, efforts that would avoid or minimize impacts to historic buildings should be explored and documented. An alternatives analysis relating to the

disposition of historic buildings in the PIA must be submitted to OPRHP for review and comment prior to any activity on the site that might damage the resources. This analysis should explore the following opportunities:

- The parties expressly agree that buildings located within the footprint of the hospital building and parking garage structure will not be retained. If appropriate and agreed upon, salvageable, architecturally significant features of the removed buildings (*i.e.*: building name panels, significant intact architectural elements, *etc.*) will be incorporated into the new structure or hospital site.
- Avoidance: To the extent practicable, efforts to avoid the removal or direct impacts to buildings identified as historic (Appendix A) and located outside of the footprint of the Hospital and Parking Garage will be explored. Documentation outlining this exploration of alternatives will be provided to OPRHP prior to any action that would directly impact the involved resource(s).
- Minimization: If practicable, efforts that would include options to lessen the overall, as of yet to be fully documented, impacts to historic resources located outside of the hospital building and parking structure footprints will need to be explored. This assessment should include a discussion of the potential retention of *some* of the historic resources as part of the development planning and mitigation.
- Mitigation Options: Where it has been determined by the parties that *some or all* of the historic resources must be removed from the PIA, the following mitigation measures may be applied:
 1. Exploration of the potential reuse of existing structures located outside of the hospital building and parking structure's footprints, deemed retainable and adaptable for a productive hospital-associated use, provided sufficient resources to complete the project remain.
 2. Where buildings cannot be retained the Applicant will follow OPRHP's standard resource documentation process outlined in Appendix B.
 3. Other appropriate mitigation for the loss of historic resources as agreed to by the parties (*i.e.*: reuse of building name panels, significant intact architectural elements, *etc.*) will be incorporated into the new structure or hospital site creating historic linkage and homage to the history of this portion of the City of Utica.

II. DURATION

This Letter of Resolution (LOR) will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, DASNY may consult with the other signatories to reconsider the terms of the LOR and amend it in accordance with Stipulation IV below.

Should any, as-of-yet determined resources be identified, OPRHP would make determinations of significance and any mitigation measures would be developed by DASNY, after consultation among MVHS, OPRHP, and DASNY, and would be based on the characteristics and significance of the resource. Any mitigation measures would be conducted pursuant to the Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in

New York State, prepared by the New York Archaeological Council and adopted by OPRHP (1994).

III. DISPUTE RESOLUTION

Should any signatory to this LOR object at any time to any actions proposed or the manner in which the terms of this LOR are being implemented, DASNY shall consult with OPRHP to resolve the objection.

IV. AMENDMENTS

This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy is signed by all the signatories.

The following staffs (or their designees) are primary contacts for the parties:

DASNY Contact:

Robert S. Derico, R.A.
Acting Director, Office of Environmental Affairs and Agency Preservation Officer
DASNY
515 Broadway
Albany, New York 12207-2964
rderico@dasny.org
(518) 257-3214

OPRHP Contact:

John Bonafide
Director, Technical Preservation Services Bureau/OPRHP Agency Preservation Officer
Division for Historic Preservation
PO Box 189, Waterford, NY 12188-0189
john.bonafide@parks.ny.gov
(518) 268-2166

MVHS Contact:

Robert C. Scholefield, MS RN
Executive Vice President/ Chief Operating Officer
Mohawk Valley Health System
2209 Genesee Street
Utica, New York 13501
bscholef@mvhealthsystem.org
(315) 801-4978

V. TERMINATION

If any signatory to this LOR determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation IV, above. If, within a time-period agreed to by all signatories, an amendment cannot be reached, any signatory may terminate the LOR upon written notification to the other signatories in accordance with 9 N.Y.C.R.R. §428.10(d).

VI. CONCLUSION

At the conclusion of the Project, DASNY shall certify in writing to OPRHP that the undertaking has been completed in accordance with this LOR.

VII. COUNTERPARTS; ELECTRONIC SIGNATURES; SUCCESSORS OR ASSIGNS:

This LOR consists of six (6) pages plus APPENDICIES A-C. It shall be signed and acknowledged in four original counterparts and shall take effect on the date it is signed by the last signatory. The counterparts (including counterparts delivered to the other parties by facsimile, e-mail or other electronic means) taken together shall form one legal instrument. A manually or electronically signed copy of this LOR delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the LOR. FOB and/or NYRA shall ensure that this LOR is complied with by their successors or assigns.

VIII. LIST OF APPENDICIES

APPENDIX A: List of identified historic resources within the Project Impact Area

APPENDIX B: Historic Resource Documentation Format

APPENDIX C: Human Remains Discovery Protocol & Unanticipated discoveries

SIGNATURES (3 Pages)

SIGNATURES (1 of 3)

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

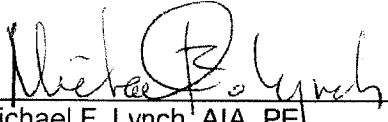


Date: 1.9.19

Robert Derico, RA
Acting Director, Office of Environmental Affairs and Agency Preservation Officer

SIGNATURES (2 of 3)

NYS OFFICE OF PARKS RECREATION AND HISTORIC PRESERVATION

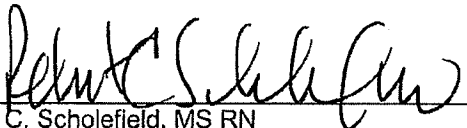


Michael F. Lynch, AIA, PE
Director, Division for Historic Preservation

Date: 1/10/19

SIGNATURES (3 of 3)

MOHAWK VALLEY HEALTH SYSTEMS



Robert C. Scholefield, MS RN
Executive Vice President/ Chief Operating Officer

Date: 1/21/19

APPENDIX A**List of identified historic resources within the Project Impact Area**

USN	Property Name	Address	Status
06540.000101	Former Utica & Mohawk Valley Railway Car Barn/Electric Express/Girard Chevrolet Service Garage	300 Lafayette Street	Eligible
06540.002096	Jones Building	336 Columbia Street	Eligible
06540.001489	C. & AJ Eichmeyer House (1907)	444 Lafayette Street	Eligible
06540.001490	S Isele House (1907)	442 Lafayette Street	Eligible
06540.002107	Witzenberger Building	460-464 Columbia Street	Eligible
06540.001491	L Snyder House	440 Lafayette Street	Eligible
06540.001555	Utica Turn Hall/Utica Turn Verein	509 Lafayette Street	Eligible
06540.002119		437 Lafayette Street	Eligible
06540.002095	Haberer Building	326-334 Columbia Street	Eligible
06540.002114	Childs Building	333 Lafayette Street	Eligible
06540.002010	Brick Commercial (Downtown Genesee Street Historic District)	301 Columbia Street	Listed
06540.002011	Brick Commercial (Downtown Genesee Street Historic District)	401 Columbia Street	Listed

APPENDIX B

Historic Resource Documentation

The buildings will be documented prior to their demolition using the following format:

Photographs

- Photographs submitted as documentation should be clear, well-composed, and provide an accurate visual representation of each building and any significant features. Submit as many photographs as needed to depict the current condition and significant features of each building, both exterior and interior (where safely accessible).
- Digital photographs should be taken using a ten (10) mega pixel or greater digital camera.
- Images should be saved in Tag Image File (TIFF) format. This allows for the best image resolution. RGB color digital TIFFs are preferred.
- Several historic images (if available) depicting the facility should be included in the documentation.
- Images should be named or labeled with the building name, photo direction and date.

Historic Narrative

A brief narrative history pertaining to development and construction of the building(s) and the development of the neighborhood should be provided with the photos, to the extent it is known. Historic period documentation, *if available*, should also be included.

Report

The final report (including images and a PDF version of the Historic Narrative) should be saved on digital media (CD, DVD, or USB thumb drive) and submitted to the OPRHP's Division for Historic Preservation.

The documentation package must be prepared and submitted no later than 6-month post demolition of the resources.

APPENDIX C

Human Remains Discovery Protocol

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, DASNY, and the appropriate Indian Nations will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archaeological.
- If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the SHPO and the Indian Nations. The involved agency will consult SHPO and appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the SHPO. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.

Unanticipated Discoveries

Although archaeological resources are not expected to exist in your project area, unanticipated discoveries may occur. If during ground-disturbing activities artifacts and/or structural remains that appear to be of Native American or pre-modern (i.e. early 20th Century or earlier) origin are exposed, OPRHP/SHPO recommend that the following procedures be carried out.

If the discovery includes human remains or other indications of human interment, please follow our Human Remains Discovery Protocol.

If the discovery does not appear to include human remains or other indications of human interment, please do the following.

- Suspend activities in the vicinity of the discovery and protect it from any further disturbance.
- Notify OPRHP and DASNY regarding the discovery, digital photographs which can be transmitted electronically would be very helpful.
- OPRHP will then make a determination whether the discovery warrants additional examination and, if so, will recommend what should be done next.

Exhibit B

The FEIS will be used by the Involved Agencies (including the City Planning Board, as Lead Agency) to make written findings regarding the environmental effects of the proposed actions. In their respective findings, Involved Agencies weigh and balance the relevant environmental impacts along with social, economic, and other essential considerations to determine whether the action will minimize or avoid environmental impacts to the maximum extent practicable. "Findings" will be based on information presented in the FEIS. Implementation of the action will not proceed until written findings are filed and all other applicable permits and approvals are obtained (see Section 1.3, below).

1.3 PERMITS AND APPROVALS

Construction and operation of the IHC will require the acquisition of discretionary and ministerial permits and approvals from various state and local jurisdictional agencies. A summary of potential permits and approvals is provided in Table 2.²¹

Table 2. Potential Permits and Approvals

Permit/Approval	Activity	Agency
State		
1 Funding Administration, Certificate of Need (CON), Construction Approval, and Operating Certificate	Joint Administration (with DASNY) of project funding approved by New York State Legislature Review process, mandated under state law, which governs the establishment, ownership, construction, renovation and change in service of specific types of health care facilities including hospitals	NYSDOH
2 Operating Certificate	Obtain an operating certificate (license) issued by the NYS Office of Mental Health (NYSOMH) prior to the operation of such facilities and programs that are subject to the regulatory jurisdiction of the Commissioner of Mental Health	NYSOMH
3 Funding Administration	Joint administration (with NYSDOH) of project funding approved by New York State Legislature. Potential conduit debt issuer in connection with any private not-for-profit tax-exempt MVHS bonds issued through DASNY	DASNY
4 Air Facility Permit ²²	Permit to construct and operate an air emission source	NYSDEC

The Lead Agency decides which comments on a DEIS constitute substantive comments and must, therefore, be responded to in the FEIS. In determining whether comments received are substantive, the Lead Agency should assess the relevance of the comments to identified impacts, alternatives and mitigation, or whether the comments raise important, new environmental issues, not previously addressed. The Lead Agency may also choose to use its responses to comments as an opportunity to explain why an impact is not significant, why a topic is not included in the FEIS, or how an alternative or proposed mitigation would work. Clarification of scientific terms, concepts or data interpretation may also be necessary in a FEIS.

When a subject has been raised frequently, even if the issue is not relevant to the proposed action, it is good practice to address that topic at least briefly. Speculative comments, or assertions that are not supported by reasonable observations or data, need no response. Where comments identify minor discrepancies in wording, or typographical errors, the Lead Agency should make those corrections, but no other response is needed.

²¹ In correspondence dated December 27, 2018 (see Appendix B to this FEIS Responsiveness Summary), the NYSDEC identified the following additional permits and/or registrations, depending upon final plans (including "final location of new transmission, water, sewer connections, if any"): Article 15/24 (Excavation Fill, Stream Disturbance, Freshwater Wetlands, Water Quality), Chemical Bulk Storage, and Water Withdrawal. Based on current plans, it is anticipated that these permits/registrations will not be necessary.

²² Proposed emissions may be considered "trivial or exempt activities" (see DEIS Section 3.4); a permit or registration may not be required.

MVHS INTEGRATED HEALTH CAMPUS | FINAL ENVIRONMENTAL IMPACT STATEMENT

	Permit/Approval	Activity	Agency
5	SPDES General Permit for Storm Water Discharges from Construction Activity (GP-0-15-002)	Storm water discharges from construction phase activities disturbing one-acre or greater	NYSDEC
6	Petroleum Bulk Storage Registrations	Petroleum bulk storage tanks for boilers and emergency generators	NYSDEC
7	Water and Wastewater System Improvements Approval of Plans	Approval of water and wastewater infrastructure improvements and connections.	NYSDEC See No. 19
8	Highway Work Permit	Work within NYS highway rights-of-way (ROW).	NYSDOT
9	Consultation (16PR06600)	Compliance with State & National Historic Preservation Acts	SHPO
Local			
10	Project Funding	Financial benefits & incentive support	Oneida County Local Development Corporation (LDC)
11	Potential Property Condemnation/Eminent Domain	Potential condemnation and acquisition of private property within Project footprint	Oneida County Oneida County IDA City of Utica URA
12	Site Plan Review	Review and approval of site plan ²³	Utica Planning Board
13	Multiple	Approval of public property transfers/road closures; funding of parking garage; review and approval of structures located within City rights-of-way (e.g., pedestrian bridges, walkways, canopies, etc.)	Utica Common Council
14	Highway Work Permit	Work within highway rights-of-way (road and utility improvements, curb cuts)	Utica Department of Engineering
15	Rail Crossing	Extension of natural gas line (by National Grid) under CSX railroad	CSX
16	Consolidation & Re-Subdivision	Potential consolidation of parcels within area of potential effect	Utica Department of Engineering or City Planning Board
17	Special Use Permit/Variations	Medical use in Central Business District (CBD); area variances depending upon location of specific Project elements	Utica Zoning Board of Appeals
18	General Municipal Law (GML) § 239-m	County Planning review of activities located within 500-feet of State or County highway, municipal boundary or park.	Oneida County Department of Planning Herkimer-Oneida County Comprehensive Planning Program See No. 7
19	Water and Wastewater System Improvements Approval of Plans	Approval of water and wastewater infrastructure improvements and connections.	Mohawk Valley Water Authority (MVWA) Oneida County Health Department City of Utica Oneida County Department of Water Quality & Water Pollution Control
20	Building & Demolition Permits	Building code compliance.	Utica Codes Department

²³ Installation of a utility/pedestrian bridge over a City street (Columbia Street) will require review and approval by the City Engineer.



MVHS INTEGRATED HEALTH CAMPUS | FINAL ENVIRONMENTAL IMPACT STATEMENT

	Permit/Approval	Activity	Agency
21	Certificate of Occupancy	Approval to occupy building.	Utica Codes Department
22	Various	Specific hospital operations will require multiple registrations, licensing, notifications, and/or certifications to support specific operations and equipment (e.g., radiology, lasers, etc.). Such activities are considered nondiscretionary (ministerial) approvals.	Various

