

Exhibit 1

February 10, 2023

Elizabeth Toombs.
Tribal Historic Preservation Officer
Cherokee Nation
PO Box 948
Tahlequah, OK 74465

SUBJECT: Tribal Consultation and Section 106 Compliance for project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
Plant.

Dear Elizabeth Toombs:

I previously spoke with you regarding a project that the U.S. Department of Energy,
National Energy Technology Laboratory (NETL) proposes to fund.

NETL proposes to provide federal funding to Ascend Elements Inc. (Ascend) for the following Project: Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant. The project would involve the construction of a manufacturing facility producing lithium-ion battery materials in Hopkinsville, KY that is capable of establishing industrial scale U.S. production capacity of sustainable, low-cost precursor cathode materials by integrating the separation of critical cathode materials from spent lithium-ion batteries with the production of both precursor cathode materials and metal salts to support domestic production of cathode active materials. To achieve its purpose, the facility will consist of manufacturing buildings, office space and a warehouse, as well as support infrastructure, including a rail spur, unloading/loading stations, and holding tanks. See, Exhibit 1 (Facility Site Plan).

The proposed site for the project is located within the Hopkinsville Commerce Industrial Park II, in Hopkinsville, Kentucky. See, Exhibit 2 (Christian County, Kentucky & Hopkinsville, Kentucky) and Exhibit 3 (Proposed Project Location). Commerce Industrial Park II is located in Christian County, Kentucky, along US Route 41. The location is 10 miles from both Interstate 24 and Interstate 169 and one hour from Nashville International Airport, and is serviced by a CSX rail line. Commerce Industrial Park II is adjacent to Hopkinsville Commerce Industrial Park I. The land that comprises the industrial park is currently zoned as heavy industrial, with a TVA (Tennessee Valley Authority) 161 kV transmission line running through the western side of the Industrial Park.

The proposed project site encompasses two adjacent lots in the northwestern corner of Commerce Industrial Park II, Lot 3 and Lot 4. Lot 3 is approximately 80 acres (southern lot shown in yellow) and Lot 4 is approximately 64 acres (northern lot shown in blue/white) as presented in Exhibit 4 (Proposed Project Site), attached. Prior to being converted to an industrial park, the proposed project site was used for many years for

commercial agricultural crop production. As such, the land was regularly plowed, planted, and harvested using industrial mechanized farming equipment. The project proponent has undertaken certain self-funded site preparation activities, including land grading and levelling within Lot 4.

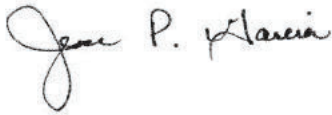
In 1979, the Kentucky Heritage Commission conducted a Commonwealth-wide Survey of Historic Sites in Kentucky. See, Exhibit 5 (Survey of Historic Sites in Kentucky). Christian County was included as part of the Pennyriple Area Development District, and 13 historic sites were identified within the County. None of the sites are within or adjacent to the proposed project site. Furthermore, the nearest site listed on the National Register of Historic Places (NRHP) is approximately 14 miles from the project site.

In 2017, the Hopkinsville Industrial Foundation, Inc. commissioned Greenhouse Consultants Incorporated to complete a Cultural Resources Reconnaissance Survey for a 705-acre section of Commerce Industrial Park II, including Lots 3 & 4 (Survey). See, Exhibit 6 (Cultural Resources Reconnaissance Survey). In the course of completing the Survey, Greenhouse consulted Kentucky Archaeological Survey and Kentucky Heritage Council records and determined there were no resources within or immediately adjacent to the 705-acre area listed on the NRHP. Survey, at p. 32. [REDACTED]

Based on the scope of the proposed Ascend project, DOE plans to prepare an Environmental Assessment (EA) (*DOE/EA-2205D*) in accordance with requirements of the National Environmental Policy Act to analyze, document, and disseminate information on the potential environmental and cultural consequences of the project. Information that you provide will be incorporated and appropriately addressed in the EA. Moreover, when the Draft EA is circulated for public comment, the Cherokee Nation will be sent an electronic and hard copy where you may provide any further comments.

If you have any questions concerning the project, please contact me. I look forward to working with your Tribal Nation.

Sincerely,



Jesse P. Garcia
NEPA Compliance/Tribal Liaison
U.S. Department of Energy
National Energy Technology Laboratory
1450 Queen Ave SW
Albany, Oregon 97321-2198
541-967-5912
Jesse.Garcia@netl.doe.gov

Attachments:

- | | |
|------------|---|
| Exhibit 1: | Facility Site Plan |
| Exhibit 2: | Christian County, Kentucky & Hopkinsville, Kentucky |
| Exhibit 3: | Proposed Project Location |
| Exhibit 4: | Proposed Project Site |
| Exhibit 5: | Survey of Historic Sites in Kentucky |

Exhibit 2

February 13, 2023

Hon. Craig Potts
Director and State Historic Preservation Officer
Kentucky Heritage Council
The Barstow House
410 High Street
Frankfort, KY 40601
craig.potts@ky.gov

SUBJECT: Consultation and Section 106 Compliance for Project Apex - Integrated Sustainable Battery Active Material and Precursor Production Plant.

Dear Mr. Potts:

I write regarding a project that the U.S. Department of Energy, National Energy Technology Laboratory (NETL) proposes to fund within the Commonwealth of Kentucky. I called your office last week and left my contact information. I have initiated Tribal Consultation with the Cherokee Nation of Oklahoma and the Eastern Band of Cherokee Indians in North Carolina. At your earliest convenience, I would like to introduce myself and discuss this project with you.

NETL proposes to provide federal funding to Ascend Elements Inc. (Ascend) for the following Project: Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant. The project would involve the construction of a manufacturing facility producing lithium-ion battery materials in Hopkinsville, KY that is capable of establishing industrial scale U.S. production capacity of sustainable, low-cost precursor cathode materials by integrating the separation of critical cathode materials from spent lithium-ion batteries with the production of both precursor cathode materials and metal salts to support domestic production of cathode active materials. To achieve its purpose, the facility will consist of manufacturing buildings, office space and a warehouse, as well as support infrastructure, including a rail spur, unloading/loading stations, and holding tanks. See, Exhibit 1 (Facility Site Plan).

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In 1979, the Kentucky Heritage Commission conducted a Commonwealth-wide Survey of Historic Sites in Kentucky. See, Exhibit 5 (Survey of Historic Sites in Kentucky). Christian County was included as part of the Pennyryle Area Development District, and 13 historic sites were identified within the County. None of the sites are within or adjacent to the proposed project site. Furthermore, the nearest site listed on the National Register of Historic Places (NRHP) is approximately 14 miles from the project site.

The Trail of Tears National Historic Trail crosses through the town of Hopkinsville, running along U.S. Route 41, which is a four-lane divided highway at the point it is closest (approximately 2/3 mile) to the Project site. The site is separated from the National Historic Trail by a by a railyard and Commerce Industrial Park I. Additionally, the site is approximately seven miles from the Trail of Tears Commemorative Park.

In 2017, the Hopkinsville Industrial Foundation, Inc. commissioned Greenhouse Consultants Incorporated to complete a Cultural Resources Reconnaissance Survey for a 705-acre section of Commerce Industrial Park II, including Lots 3 & 4 (Survey). See, Exhibit 6 (Cultural Resources Reconnaissance Survey). In the course of completing the Survey, Greenhouse consulted Kentucky Archaeological Survey and Kentucky Heritage Council records and determined there were no resources within or immediately adjacent to the 705-acre area listed on the NRHP. Survey, at p. 32. [REDACTED]

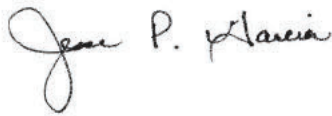
[illegible]

[REDACTED]

Based on the scope of the proposed Ascend project, DOE plans to prepare an Environmental Assessment (EA) (DOE/EA-2205D) in accordance with requirements of the National Environmental Policy Act to analyze, document, and disseminate information on the potential environmental and cultural consequences of the project. Information that you provide will be incorporated and appropriately addressed in the EA. Moreover, when the Draft EA is circulated for public comment, the Kentucky Heritage Council will be sent an electronic and hard copy where you may provide any further comments.

If you have any questions concerning the project, please contact me. I look forward to working with you.

Sincerely,



Jesse P. Garcia
NEPA Compliance/Tribal Liaison
U.S. Department of Energy
National Energy Technology Laboratory
1450 Queen Ave SW
Albany, Oregon 97321-2198
541-967-5912
Jesse.Garcia@netl.doe.gov

Attachments:

- Exhibit 1: Facility Site Plan
- Exhibit 2: Christian County, Kentucky & Hopkinsville, Kentucky
- Exhibit 3: Proposed Project Location
- Exhibit 4: Proposed Project Site
- Exhibit 5: Survey of Historic Sites in Kentucky

[REDACTED]

[REDACTED]

[REDACTED]



Exhibit 3

February 13, 2023

Beau Carroll
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713

SUBJECT: Tribal Consultation and Section 106 Compliance for project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
Plant.

Dear Mr. Carroll:

I previously spoke with you regarding a project that the U.S. Department of Energy, National Energy Technology Laboratory (NETL) proposes to fund.

NETL proposes to provide federal funding to Ascend Elements Inc. (Ascend) for the following Project: Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant. The project would involve the construction of a manufacturing facility producing lithium-ion battery materials in Hopkinsville, KY that is capable of establishing industrial scale U.S. production capacity of sustainable, low-cost precursor cathode materials by integrating the separation of critical cathode materials from spent lithium-ion batteries with the production of both precursor cathode materials and metal salts to support domestic production of cathode active materials. To achieve its purpose, the facility will consist of manufacturing buildings, office space and a warehouse, as well as support infrastructure, including a rail spur, unloading/loading stations, and holding tanks. See, Exhibit 1 (Facility Site Plan).

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The Trail of Tears National Historic Trail crosses through the town of Hopkinsville, running along U.S. Route 41, which is a four-lane divided highway at the point it is closest (approximately 2/3 mile) to the Project site. The site is separated from the National Historic Trail by a by a railyard and Commerce Industrial Park I. Additionally, the site is approximately seven miles from the Trail of Tears Commemorative Park.

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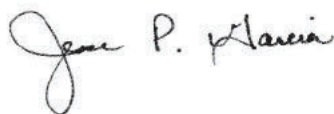
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Sincerely,



Jesse P. Garcia
NEPA Compliance/Tribal Liaison
U.S. Department of Energy
National Energy Technology Laboratory
1450 Queen Ave SW
Albany, Oregon 97321-2198
541-967-5912
Jesse.Garcia@netl.doe.gov

cc: Russell Townsend, Tribal Historic Preservation Office Stephen Yerka ,
Tribal Historic Preservation Office

Attachments:

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[REDACTED]

[REDACTED]

[REDACTED]

February 13, 2023

Russell Townsend
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713

SUBJECT: Tribal Consultation and Section 106 Compliance for Project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
Plant.

Dear Mr. Townsend:

I previously spoke with your colleague, Beau Carroll, regarding a project that the U.S. Department of Energy, National Energy Technology Laboratory (NETL) proposes to fund.

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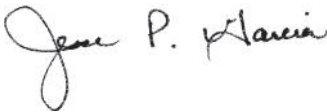
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If you have any questions concerning the project, please contact me. I look forward to working with your Tribal Nation.

Sincerely,



Jesse P. Garcia
NEPA Compliance/Tribal Liaison
U.S. Department of Energy
National Energy Technology Laboratory
1450 Queen Ave SW
Albany, Oregon 97321-2198
541-967-5912

Jesse.Garcia@netl.doe.gov

cc: Beau Carroll, Tribal Historic Preservation Office
Stephen Yerka, Tribal Historic Preservation Office

Attachments:

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- Exhibit 7: Resources Identified During 2017 Field Work
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- Exhibit 9: Resource Area P-1
- Exhibit 10: Resource Area P-2
- Exhibit 11: Resource Areas H-2 and H-3

February 13, 2023

Stephen Yerka
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713

SUBJECT: Tribal Consultation and Section 106 Compliance for Project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
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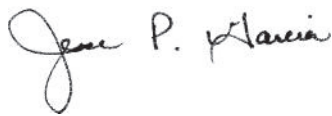
[REDACTED]

Tribal Consultation for DOE/EA2205D

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U.S. Department of Energy
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cc: Russell Townsend, Tribal Historic Preservation Office
Beau Carroll, Tribal Historic Preservation Office

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- Exhibit 10: Resource Area P-2
- Exhibit 11: Resource Areas H-2 and H-3

Exhibit 4



GWYJ DBF
CHEROKEE NATION®
P.O. Box 948 • Tahlequah, OK 74465-0948
918-453-5000 • www.cherokee.org

Chuck Hoskin Jr.
Principal Chief
GF FFP S:AS
O-EOG:J

Bryan Warner
Deputy Principal Chief
SZ:JFV:J
WF:J DL:J:J O-EOG:J

April 11, 2023

Jesse P. Garcia
United States Department of Energy
1450 Queen Avenue SW
Albany, OR 97321-2198

Re: Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant
Ascend Elements, Inc.

Mr. Jesse P. Garcia:

The Cherokee Nation (Nation) is in receipt of your correspondence about **Ascend Elements, Inc.**, and appreciates the opportunity to provide comment upon this project. Please allow this letter to serve as the Nation's interest in acting as a consulting party to this proposed project.

the Nation recommends that a cultural resources survey is conducted for this project, and requests a copy of the related report with comments from the State Historic Preservation Office. The Nation requires that cultural resources survey personnel and reports meet the Secretary of the Interior's standards and guidelines.

However, the Nation requests that the United States Department of Energy (DOE) halt all survey activities immediately and re-contact our Office for further consultation if items of cultural significance are discovered during the course of this survey. Additionally, the Nation requests that the DOE conduct appropriate inquiries with other pertinent Historic Preservation Offices regarding historic and prehistoric resources not included in the Nation's databases or records.

If you require additional information or have any questions, please contact me at your convenience. Thank you for your time and attention to this matter.

Wado,

Elizabeth Toombs, Tribal Historic Preservation Officer
Cherokee Nation Tribal Historic Preservation Office
elizabeth-toombs@cherokee.org
918.453.5389

Exhibit 5



ANDY BESHEAR
GOVERNOR

TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL
THE STATE HISTORIC PRESERVATION OFFICE

LINDY CASEBIER
SECRETARY

JACQUELINE COLEMAN
LT. GOVERNOR

410 HIGH STREET
FRANKFORT, KENTUCKY 40601
(502) 564-7005
www.heritage.ky.gov

CRAIG A. POTTS
EXECUTIVE DIRECTOR &
STATE HISTORIC PRESERVATION OFFICER

June 13, 2023

Anne Bader
Principal Investigator
Corn Island Archaeology LLC
P.O. Box 991259
Louisville, Kentucky 40269
Via email: abader@ciarch.com

RE: U.S. Department of Energy
Ascend Elements; Project Apex 1; Christian County

*Phase I Archaeological Survey for the Project Apex Battery Materials Facility in
Commerce Industrial Park II, Christian County, Kentucky by Tim D. Sullivan*

Dear Ms. Bader,

Thank you for your submittal of an archaeology report for the above-referenced project. We understand Ascend Elements proposes to construct an industrial scale facility within Commerce Park II near Hopkinsville, in Christian County. We understand the facility will consist of 17 buildings covering approximately 700,000 square feet, as well as infrastructure including a rail spur, loading/unloading stations, and holding tanks. The area of potential effect (APE) for this archaeological survey totaled 82.8 acres and covered the Lot 3 portion of Apex's overall 147-acre APE for project impacts.

We understand Corn Island Archaeology, LLC conducted an archaeological survey of the 82.8-acre archaeological APE in April of 2023. [REDACTED]

[REDACTED]

[REDACTED]



An Equal Opportunity Employer M/F/D

[REDACTED]

We accept this archaeology report without revision.

We look forward to continued consultation for this project. Should you have any questions, please contact Patti Hutchins of my staff at Patricia.Hutchins@ky.gov.

Sincerely,



Craig Potts
Executive Director and
State Historic Preservation Officer

KHC# 231165

reference: 230911, 230912

CP: peh

e-cc: Philip Mink, OSA, pbmink2@uky.edu

Elizabeth Toombs, Cherokee Nation, elizabeth-toombs@cherokee.org

Jesse Garcia, DOE, Jesse.Garcia@NETL.DOE.GOV

Stephen Whitmer, DOE, Stephen.Witmer@NETL.DOE.GOV



An Equal Opportunity Employer M/F/D

Exhibit 6

July 11, 2023

Elizabeth Toombs.
Tribal Historic Preservation Officer
Cherokee Nation
PO Box 948
Tahlequah, OK 74465

SUBJECT: Tribal Consultation and Section 106 Compliance for Project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
Plant (Project)

Dear Elizabeth Toombs:

The Department of Energy (DOE) appreciates the Cherokee Nation's agreement to serve as a consulting party regarding DOE's proposed undertaking to provide federal funding to Ascend Elements Inc. (Ascend) for this Project. The purpose of this letter is to provide an update regarding DOE's evaluation of whether the proposed undertaking would adversely affect historic properties or resources and to share the Department's intent to complete the National Historic Preservation Act (NHPA) consultation and the National Environmental Policy Act (NEPA) review associated with DOE's proposed action.

Ascend retained a firm led by a Secretary of the Interior Qualified Preservation Professional to complete a Phase I archaeological survey (Phase I) on the portion of the Proposed Project area where prior site preparation had not occurred. [REDACTED]

[REDACTED] Per your prior request DOE provided the Cherokee Nation with a copy of the Phase I on June 13, 2023, and a letter from the Kentucky State Historic Preservation Officer (SHPO) accepting the report without revision.

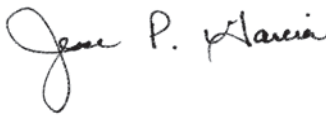
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DOE intends to incorporate an obligation to provide funding for the initiatives set out in Ascend's proposal into the final Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) as required mitigation measures related to impacts to cultural

resources. The EA will specify that these initiatives must include an opportunity for interested Tribal Nations, including the Cherokee Nation, to provide information or comments related to the initiatives' development.

DOE intends to finalize the mitigation requirements expeditiously and to complete the consultation under Section 106 of the NHPA and the review under NEPA. In advance, DOE would welcome any comments from the Cherokee Nation regarding the proposed mitigation measures. DOE respectfully requests the Cherokee Nation's response as soon as practicable.

Sincerely,

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Jesse P. Garcia
NEPA Compliance/Tribal Liaison
U.S. Department of Energy
National Energy Technology Laboratory
1450 Queen Ave SW
Albany, Oregon 97321-2198
541-967-5912
Jesse.Garcia@netl.doe.gov

Attachment:

Exhibit 1: Proposal from the Trail of Tears Commission

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TRAIL OF TEARS COMMEMORATIVE PARK

Scope of Work Proposal to Ascend Elements For Potential Funding Grant

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In Summary, we are requesting a \$50,000 contribution to our efforts to continually improve our Park and Programs for the benefit of the Community and the history of this area. It installs a Pride for our City and Community regarding our History and location. Our ties with the National Park Service as well as the Trail of Tears Association involves many States, if not the entire United States.

We appreciate your consideration for this Grant.

Thank you,

Sincerely,

Richard Narkevic

Board Member

Trail of Tears Commission, Inc

Hopkinsville, KY

Exhibit 7

July 11, 2023

Russell Townsend
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713

**SUBJECT: Tribal Consultation and Section 106 Compliance for Project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
Plant (Project)**

Dear Mr. Townsend:

The purpose of this letter is to provide an update regarding the Department of Energy's (DOE) evaluation of whether the Department's proposed undertaking to provide federal funding to Ascend Elements Inc. (Ascend) for the above-referenced Project would adversely affect historic properties or resources and to share the Department's intent to complete the National Historic Preservation Act (NHPA) consultation and the National Environmental Policy Act (NEPA) review associated with DOE's proposed action.

Ascend retained a firm led by a Secretary of the Interior Qualified Preservation Professional to complete a Phase I archaeological survey (Phase I) on the portion of the Proposed Project area where prior site preparation had not occurred. [REDACTED]

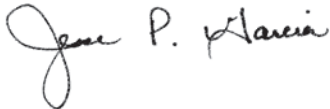
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Additionally, Ascend has worked with the Trail of Tears Commission to identify opportunities to increase awareness of the cultural and historical importance of the Hopkinsville area. Ascend provided DOE with a proposal from the Trail of Tears Commission under which Ascend would provide funding in support of certain initiatives related to the Trail of Tears Commemorative Park and the Trail of Tears National Historic Trail. A copy of this proposal is enclosed. Prior to submitting this proposal to DOE, Ascend discussed its outreach to the Trail of Tears Commission and the potential initiatives identified by the Commission with the KY SHPO's office and they provided a positive response to this proposal. The KY SHPO's office requested we provide this to the Eastern Band of Cherokee Indians for review.

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Sincerely,

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Jesse P. Garcia
NEPA Compliance/Tribal Liaison
U.S. Department of Energy
National Energy Technology Laboratory
1450 Queen Ave SW
Albany, Oregon 97321-2198
541-967-5912
Jesse.Garcia@netl.doe.gov

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We appreciate your consideration for this Grant.

Thank you,

Sincerely,

Richard Narkevic

Board Member

Trail of Tears Commission, Inc

Hopkinsville, KY

July 11, 2023

Stephen Yerka
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713

SUBJECT: Tribal Consultation and Section 106 Compliance for Project Apex -
Integrated Sustainable Battery Active Material and Precursor Production
Plant (Project)

Dear Mr. Yerka:

The purpose of this letter is to provide an update regarding the Department of Energy's (DOE) evaluation of whether the Department's proposed undertaking to provide federal funding to Ascend Elements Inc. (Ascend) for the above-referenced Project would adversely affect historic properties or resources and to share the Department's intent to complete the National Historic Preservation Act (NHPA) consultation and the National Environmental Policy Act (NEPA) review associated with DOE's proposed action.

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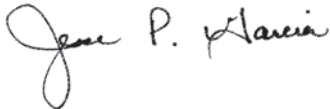
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Jesse P. Garcia
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Thank you,

Sincerely,

Richard Narkevic

Board Member

Trail of Tears Commission, Inc

Hopkinsville, KY

Exhibit 8



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CHEROKEE NATION®

P.O. Box 948 • Tahlequah, OK 74465-0948
918-453-5000 • www.cherokee.org

Chuck Hoskin Jr.
Principal Chief
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Bryan Warner
Deputy Principal Chief
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July 17, 2023

Jesse P. Garcia
United States Department of Energy
1450 Queen Avenue SW
Albany, OR 97321-2198

Re: Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant
Ascend Elements, Inc.

Mr. Jesse P. Garcia:

The Cherokee Nation (Nation) is in receipt of your July 11, 2023 correspondence about and related report received July 13, 2023 for **Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant Ascend Elements, Inc.**, and appreciates the opportunity to provide comment upon this project. Please allow this letter to serve as the Nation’s continued interest in acting as a consulting party to this proposed project.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. To

continue our review, this Office requests the additional following information:

- One project map depicting the entirety of the project’s Area of Potential Effects (APE) with previous survey areas [REDACTED] from the 2014 survey for the Proposed CSXT Inspection Yard; the August 2017 report by Greenhouse Consultants, Inc.; and the May 2023 report by Corn Island Archeology.
- Clarification in regard to the July 11, 2023 letter that provides for “required mitigation measures” when the United States Department of Energy’s (DOE) project determination is “no historic properties.” The National Historic Preservation Act (NHPA) addresses mitigation measures when there is a finding of an adverse effect according to 36 C.F.R. §800.11(e)(5).

Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant Ascend Elements, Inc.

July 17, 2023

Page 2 of 2

Additionally, the Nation requests that the DOE conduct appropriate inquiries with other pertinent Historic Preservation Offices regarding historic and prehistoric resources not included in the Nation's databases or records.

If you require additional information or have any questions, please contact me at your convenience. Thank you for your time and attention to this matter.

Wado,



Elizabeth Toombs, Tribal Historic Preservation Officer
Cherokee Nation Tribal Historic Preservation Office
elizabeth-toombs@cherokee.org
918.453.5389

CC: Nicole Konkol, Kentucky State Historic Preservation Office

Exhibit 9

July 20, 2023

Elizabeth Toombs.
Tribal Historic Preservation Officer
Cherokee Nation
PO Box 948
Tahlequah, OK 74465

SUBJECT: Apex - Integrated Sustainable Battery Active Material and Precursor
Production Plant (Project)

Dear Elizabeth Toombs:

The Department of Energy (DOE) appreciates the agreement of the Cherokee Nation (Nation) to serve as a consulting party regarding DOE's proposed undertaking to provide federal funding to Ascend Elements Inc. (Ascend) for this Project. The purpose of this letter is to respond to the Nation's July 17, 2023, letter.

First, the Nation inquired about the availability of a project map that includes the Area of Potential Effects for this Project as well as both the survey areas [REDACTED] associated with two prior archeological investigations, Stallings et al. 2014 and Afendas et al. 2017, and the archeological investigation conducted in association with this Project, Sullivan et al. 2023. DOE has followed up with Ascend and unfortunately, no such map exists.

Additionally, the Nation asked for clarification regarding DOE's intention regarding certain mitigation associated with impacts to cultural resources. The Project proponent, Ascend has worked proactively with the Trail of Tears Commission to identify opportunities to increase awareness of the cultural and historical importance of the Hopkinsville area and has provided DOE with a proposal under which Ascend would provide funding in support of two initiatives related to the Trail of Tears Commemorative Park and the Trail of Tears National Historic Trail. While mitigation is not required under the National Historic Preservation Act because there are no historic properties affected by the Project, DOE has the authority to require mitigation under the National Environmental Policy Act (NEPA). Accordingly, DOE intends to exercise its authority under NEPA to incorporate an obligation for Ascend to provide funding for the two initiatives into the final Environmental Assessment and Finding of No Significant Impact.

Lastly, the Nation repeated a request contained in its April 11, 2023, letter to DOE that the Department "conduct appropriate inquiries with other pertinent Historic Preservation Offices regarding historic and prehistoric resources not included in the Nation's databases or records." In addition to the Cherokee Nation, DOE has conducted consultations related to the Project with the Eastern Band of Cherokee Indians and Kentucky Heritage Council. DOE has not identified any other Historic Preservation Offices for which it would be appropriate to conduct consultation regarding the Project.

DOE would like to reiterate its appreciation for the Cherokee Nation's participation in consultation with the Department related to the Project. DOE has made a determination for the Project of no historic properties affected, as defined by the NHPA. Under the NHPA, a determination of no historic properties affected completes the Section 106 review and consultation process for a project.

Thank you again for serving as a consulting party for the Section 106 consultation process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Pozzuto', with a horizontal line extending to the right.

Fred E. Pozzuto
Director, NEPA Policy & Compliance Division
U.S. Department of Energy
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507
304-285-5219
fred.pozzuto@netl.doe.gov

cc: Craig Potts
Nicole Konkol

Exhibit 10

July 20, 2023

Hon. Craig Potts
Director and State Historic Preservation Officer
Kentucky Heritage Council
The Barstow House
410 High Street
Frankfort, KY 40601
craig.potts@ky.gov

SUBJECT: Consultation and Section 106 Compliance for Project Apex - Integrated Sustainable Battery Active Material and Precursor Production Plant.

Dear Mr. Potts:

The Department of Energy (DOE) appreciates the assistance that you and the staff of the Kentucky Heritage Council (KHC) have provided as a consulting party under section 106 of the National Historic Preservation Act (NHPA) regarding DOE's proposed undertaking to provide federal funding to Ascend Elements Inc. (Ascend) for its Integrated Sustainable Battery Active Material and Precursor Production Plant (Project Apex). This letter is to confirm that DOE has made a "no historic properties affected" determination for Project Apex, which completes the section 106 review and consultation process.

I. The Proposed Undertaking

As described more fully in the draft Environmental Assessment (EA) previously reviewed by your office, DOE's Proposed Undertaking is to provide grants to partially fund Ascend Elements' Project Apex – the construction of an industrial scale facility for the production of sustainable, low-cost precursor cathode materials by integrating the separation of critical cathode materials from spent lithium-ion batteries (LiBs) with the production of both precursor cathode active materials (pCAM) and metal salts, to support domestic production of cathode active materials (CAM) for U.S. electric vehicle (EV) battery production. The facility would be located within two adjacent lots in the northwest corner of Commerce Industrial Park II in Hopkinsville, Christian County, Kentucky and would consist of multiple manufacturing buildings, office space and a warehouse, as well as extensive support infrastructure, including a rail spur, unloading/loading stations and holding tanks. There would be a total of 17 buildings covering approximately 700,000 square feet, with a maximum building height of 60-feet tall and a maximum stack structure height of 98-feet. Once operational, the facility would produce annually enough material to supply batteries for over 250,000 electric vehicles.

II. Consultation

DOE initiated consultation with KHC via letter on February 13, 2023 (Consultation Letter). The Consultation Letter provided detailed information regarding Project Apex, including a summary of the project and several attached exhibits, including the Facility Site Plan, the Proposed Project Location, and the Proposed Project Site. [REDACTED]

[REDACTED]

The Consultation Letter notified KHC that DOE intended to use the process mandated by the National Environmental Policy Act (NEPA) for the purpose of complying with Section 106 of the NHPA. The Letter explained that DOE would be preparing an Environmental Assessment (EA) in accordance with NEPA, and that DOE would “analyze, document, and disseminate information on the potential environmental and cultural consequences of the project” through the preparation of the EA. The Consultation Letter provided KHC with the opportunity to provide information to DOE at that time so that the information could be incorporated and addressed in the Draft EA and informed KHC that it would be given an additional opportunity to provide information when the Draft EA would be put out for public comment.

DOE appreciated the information provided by KHC during the consultation, and was able to incorporate and address the information provided into the EA in demonstrable ways. For example, KHC and the Tribal Nations made recommendations during the consultation process that DOE addressed by requiring the adoption of an Inadvertent Discoveries Plan (IDP) and by overseeing Ascend Elements’ decision to retain a firm led by a Secretary of the Interior-qualified professional to conduct both a Phase I Archeological Survey and a Cultural Historic Survey for the portion of the Project Site where ground clearing had not occurred (approximately 55% of the total acres of the Project Site).

III. Determination

DOE reached the determination of no historic properties affected, as defined by the NHPA, after considering the information that was provided by KHC and the Tribal Nations; information regarding previous planning, research, and studies relevant to the Project Site; the results of the field work completed by a qualified professional; and information obtained by DOE from other sources. [REDACTED]

[REDACTED] Because “historic properties” is defined in the ACHP regulations implementing the NHPA as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places,” none [REDACTED] identified in the information before DOE would qualify as historic properties or be subject to NHPA protections.

ACHP regulations require an agency to implement an identification plan that represents a reasonable good faith effort to identify historic properties. DOE’s plan for identifying historic properties is consistent with that standard and, as demonstrated in the discussion above, appropriately considered the factors listed in the ACHP regulations.

IV. Mitigation

While mitigation is not required under the NHPA because there are no historic properties affected, Ascend Elements has worked with the Trail of Tears Commission to identify opportunities to increase awareness of the cultural and historical importance of the Hopkinsville area. Ascend has provided DOE with a proposal from the Trail of Tears Commission under which Ascend would provide funding in support of

two initiatives related to the Trail of Tears Commemorative Park and the Trail of Tears National Historic Trail. The first initiative would expand the Commission's School Days Program, which educates elementary, middle, and high school students about the historical presence of Tribal Nations in the Hopkinsville area in advance of the annual Trail of Tears Pow Wow, to reach additional students within the Hopkinsville community and in neighboring communities. The second initiative would involve the design and development of a historical walking path and traditional meditation garden with informational signage. DOE intends to incorporate an obligation to provide funding for the two initiatives into the final EA associated with DOE's proposed undertaking as one of two required mitigation measures related to impacts to cultural resources under NEPA. In addition, the EA will require Ascend to continue to implement the IDP. Copies of the proposal from the Trail of Tears Commission and of the IDP are attached.

DOE intends to finalize the mitigation requirements expeditiously and then proceed, consistent with the applicable statutory and regulatory requirements, to complete review of the Proposed Undertaking and Project Apex under NEPA, and respectfully requests your concurrence with the determination that no historic properties will be affected.

Sincerely,



Fred E. Pozzuto
Director, NEPA Policy & Compliance Division
U.S. Department of Energy
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507
304-285-5219
fred.pozzuto@netl.doe.gov

cc: Elizabeth Toombs
Russell Townsend
Beau Carroll
Stephen Yerka

Enclosures:

Exhibit 1: Proposal from the Trail of Tears Commission
Exhibit 2: Inadvertent Discoveries Plan

Exhibit 1: Proposal from the Trail of Tears Commission



TRAIL OF TEARS COMMEMORATIVE PARK

Scope of Work Proposal to Ascend Elements For Potential Funding Grant

**Mission and Purpose of the Trail of Tears Commemorative Park and the
Trail of Tears Commission, Inc**

the group (Trail of Tears Commission, Inc) incorporated in Kentucky in July, 1987, as a non-profit corporation, its purpose: "formed to develop and promote historical significance of the Trail of Tears to Hopkinsville and Christian County; to create a park that would pay tribute to the importance of Native American Indians to our history and culture, with special emphasis on the Cherokee: and to encourage tourism to the area through the park, its museum, and special activities."

Our request is for a \$50,000 grant from Ascend Elements to be used for the Trail of Tears Commemorative Park .

Our request consists of 2 parts:

- 1) Expanding our School Days Program
- 2) Create/Expand/Improve a Walking Trail along “Little River”

1) School Days Program

- ❖ Our School Days Program was instituted several years ago to teach , educate, as well as provide some fun for a field day for elementary, middle and high school students the week before our Annual Pow Wow.
- ❖ Currently we have planned a limited program consisting of an authentic Native American vendor, volunteers that teach the history both the Trail of Tears in general and our local part in that history.
- ❖ **Our request is for \$15,000 to add and update this program:**
 - Our schools that attend encompass an area within a 50 mile radius of Hopkinsville
 - Inviting both Public Schools as well as Private Schools we expect >1,000 students
 - Benefits to the community and surrounding area include a wider knowledge of Native American heritage within the community, a potential increase in tourism to local businesses, and an increased interest in history among our youth.
- ❖ Funds to be used for the following:
 - A Premium Sponsorship with banner for Ascend Elements for 2 years = \$3,000
 - An additional two Vendors of interest to youth for this year and next year (i.e. bow & arrow shoot, hatchet throwing exhibition, Tipi presentation, etc.) = 6,000
 - Local staff for Hunting game & 2 other stops in our program = \$2,000
 - New display board for our U.S. Native American history presentation = \$1,000
 - Additional supplies for our Craft Table, for 2 years (young students really enjoy this) = \$1,000
 - Materials used for program stops along our presentation path = \$2,000

2) Walking Trail along “Little River”

- ❖ Currently, there is a so-called walking path along Little River. Because of neglect and river flooding, the trail is in serious deterioration.
- ❖ Our vision is to create/improve a viable walking trail along “Little River” with informational signs about Native Americans at this site, resting benches, a meditation garden in Cherokee Heritage.
- ❖ Picture a trail along a small stream/river, shaded, with a soft walking surface, some information signage, a few benches for resting, a meditation garden to remember and contemplate personal thoughts - a quiet place with flowers, rocks, and memorials.
- ❖ Visitors to our site frequently inquire about a walking trail and we are currently very limited to a 2.5 acre area while our Commemorative Park encompasses a 12.5 acre site.
- ❖ Our site/Park is part of the National Park Service being a certified site on a National Historic Trail. We have visitors from all 50 states, as well as International. (i.e. April had visitors from 18 states, May had 20 states) total visitors this year to this site (that actually signed in) totaled 207 as of June 28, 2023.
- ❖ Benefits to the community include National Exposure, as well as International exposure, increased business for our local businesses, and a Pride in our community to have such a historic place in our city.
- ❖ **Our request is for \$35,000 to build this trail with signs and a Meditation Garden.**
- ❖ Funds to be used for the following:
 - Actual trail material & labor using a Sustainable Surfacing Trail material – in particular Rubberway rubber trail. This is a material that uses recycled rubber from tires. It is a pervious surface and used for recreation type trails. Estimate \$20,000
 - Signage along walkway - 6 to 8 signs with information about Cherokee Heritage and this site in history, and/or information regarding Cherokee life. Estimate \$2,000
 - Creation of a Meditation Garden with flowers and appropriate rocks. Estimate \$2,000
 - Boardwalk/Walking Bridge over low area of trail to accommodate for river overflow – Estimate \$10,000
 - Trail cameras to be used to prevent abuse of resources and other inappropriate behavior Estimate \$1,000

In Summary, we are requesting a \$50,000 contribution to our efforts to continually improve our Park and Programs for the benefit of the Community and the history of this area. It installs a Pride for our City and Community regarding our History and location. Our ties with the National Park Service as well as the Trail of Tears Association involves many States, if not the entire United States.

We appreciate your consideration for this Grant.

Thank you,

Sincerely,

Richard Narkevic

Board Member

Trail of Tears Commission, Inc

Hopkinsville, KY

Exhibit 2: Inadvertent Discoveries Plan

Inadvertent Discovery Plan for Project Apex

Ascend Elements is committed to working with the Department of Energy, the Kentucky Heritage Council, and Tribal Nations to identify and document any historic or cultural resources that exist at the Project Apex site. As a supplement to that work, Ascend Elements has adopted the following process for responding to any unanticipated discoveries of, or effects on, historic resources during implementation of the Project.

I. Procedures for Unanticipated Historic Resources or Unanticipated Adverse Effects

If historic properties are discovered or if unanticipated effects on historic properties occur, Ascend Elements will implement the following procedures:

- A. Ascend Elements will immediately pause all operations with the potential to affect the unanticipated historic resource or that has resulted in an unanticipated adverse effect on a known historic resource.
- B. On the same day the discovery is made, complete the attached "Ascend Elements Unanticipated Discovery Reporting Form."
- C. Within one business day after the date of an unanticipated discovery, Ascend Elements will inform the Department of Energy and the Kentucky Heritage Council, using the contact information contained in Section III, of the unanticipated discovery, along with any additional information relevant to the discovery.
- D. When appropriate, Ascend Elements will consult with a third party that possesses the appropriate qualifications regarding the potential eligibility of the unanticipated historic resource for listing on the National Register or the potential for the unanticipated adverse effect to impact the qualifying characteristics of a known historic resource.
- E. Within three business days after the date of an unanticipated discovery, or as soon as appropriate thereafter, and taking into account any consultation conducted under Paragraph C, Ascend Elements will inform the Department of Energy and the Kentucky Heritage Council of the potential eligibility of the unanticipated historic resource for listing on the National Register or the potential for the unanticipated adverse effect to impact the qualifying characteristics of a known historic resource, along with a determination as to whether any additional evaluation of the unanticipated historic resource or unanticipated adverse effect on a known resource is planned.
- F. In addition to the notifications described above, to the extent an unanticipated historic resource or unanticipated adverse effect on a known resource has the potential to adversely affect sites of religious or cultural significance to a Tribal Nation, Ascend Elements will also inform the Tribal Nations, using the contact information contained in Section III, when notifying the Department of Energy and the Kentucky Heritage Council under Paragraph C or Paragraph E, or as soon as possible thereafter.
- G. In response to receiving information under Paragraph C, Paragraph E, or Paragraph F, the State Historic Preservation Officer or the Tribal Historic Preservation Officer representing the State Agency or the Tribal Nation who received the information may request consultation regarding Ascend Elements' determination as to whether any additional evaluation of the unanticipated historic resource or unanticipated adverse effect on a known resource is planned.

- H. Any consultation requested under Paragraph G will be conducted within three business days after the date such consultation is requested.
- I. Upon the expiration of the period for consultation specified in Paragraph H, or, if no request for consultation is made within five business days after the date the information under Paragraph E, or Paragraph F is delivered, all work paused under Paragraph A may resume.

II. Special Procedures for the Treatment of Human Remains and Sacred Objects

The purpose of these special procedures is to establish a clear plan of response in the event of an inadvertent discovery of human remains and/or artifacts at the Project Apex site that could potentially be Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. These procedures incorporate protective measures contained in the Native American Graves Protection and Repatriation Act (NAGPRA) (P.L. Law 101-601; U.S.C. 3001-3013; 104 STAT. 3048-3059, Section 3) and implementing regulations (43 CFR Part 10, Section 10.4), which govern such discoveries on federal or Tribal lands. The special procedures are consistent with the principle that any human remains encountered during the undertaking will be given sensitive and respectful treatment.

If human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered at any time during implementation of the Project, Ascend Elements will follow the procedures described above, as supplemented by these additional procedures.

- A. Immediately stop all work within thirty (30) meters of the area of the discovery.
 - a. The “area” is defined as any ground surrounding the discovery that is needed to ensure the protection of the human remains, funerary objects, sacred objects, or objects of cultural patrimony.
- B. If the discovery is of skeletal remains, contact the appropriate law enforcement office as soon as practicable after discovery, but no later than the same day as the date of discovery.
 - a. If skeletal material discovered cannot be reasonably identified as non-human, do not disturb the find.
 - b. Only the Sheriff/Coroner has the authority to remove the skeletal material to make a final determination as to its origin.
 - c. Under no circumstances will any unauthorized Ascend Elements personnel or contractors use potentially destructive means (trowels, probes, shovels etc.) to determine if the remains are human or remove the skeletal material.
- C. Secure the area of discovery.
 - a. Human remains must be provided with security at all times until removed.
 - i. Upon discovery, post a guard at the area of discovery until at least the time the proper authorities are notified.
 - ii. An alternative security plan can be utilized after notification if the alternative plan is developed after consultation with the proper authorities.
- D. Protect the discovery.
 - a. At a minimum, protecting the discover will include flagging off the area of discovery.
 - b. Human remains will be carefully covered and secured to protect them from any degradation, inappropriate observation, or inappropriate photography.
- E. Consult with Tribal Nations and the Kentucky State Historic Preservation Office, using the contact information contained in Section III.

III. Contact Information

Ascend Elements will use the following when completing notifications or consultations under this Plan.

- A. Cherokee Nation
Hon. Elizabeth Toombs
Tribal Historic Preservation Officer
PO Box 948
Tahlequah, OK 74465
(918) 453-5389
elizabeth-toombs@cherokee.org
<http://www.cherokee.org>
- B. Eastern Band of Cherokee Indians
Hon. Russell Townsend
Tribal Historic Preservation Officer
2877 Governors Island Road
Bryson City, NC 28713
(828) 359-6851
rustown@ebci-nsn.gov
<https://ebci.com>
- C. Eastern Band of Cherokee Indians
Hon. Beau Carroll
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713
(828) 359-6861
beaucarr@ebci-nsn.gov
- D. Eastern Band of Cherokee Indians
Hon. Stephen Yerka
Tribal Historic Preservation Office
2877 Governors Island Road
Bryson City, NC 28713
(828) 359-6852
syerka@ebci-nsn.gov
- E. Kentucky State Historic Preservation Office
Hon. Craig Potts
Kentucky State Historic Preservation Officer
Kentucky Heritage Council
The Barstow House
410 High Street
Frankfort, KY 40601
(502) 892-3601
craig.potts@ky.gov
<https://heritage.ky.gov/>
- F. Hopkinsville Police Department
Non-emergency Dispatch
101 North Main Street

Hopkinsville, KY 42240

270-890-1300

G. Department of Energy

Jesse Garcia

NEPA Compliance and Tribal Liaison

U.S. Department of Energy/NETL

1450 Queen Ave SW

Albany, OR 97321

541-967-5912

jesse.garcia@NETL.DOE.gov

ASCEND ELEMENTS UNANTICIPATED DISCOVERY REPORTING FORM

1. DATE OF DISCOVERY:
2. TIME OF DISCOVERY:
3. DATE AND TIME THIS REPORT IS BEING COMPLETED:
4. PERSON COMPLETING THIS REPORT:
 - a. COMPANY AFFILIATION AND POSITION OF THE REPORTER:
 - b. TELEPHONE NUMBER AT WHICH REPORTER CAN BE REACHED:
5. PERSON WHO MADE THE DISCOVERY:
 - a. COMPANY AFFILIATION AND POSITION OF THE DISCOVERER:
 - b. OFFICIAL WORK ADDRESS:
 - c. LOCAL WORK ADDRESS:
 - d. TELEPHONE NUMBER AT WHICH FINDER CAN BE REACHED:
6. CIRCUMSTANCES SURROUNDING DISCOVERY:

7. AREA OF DISCOVERY:
 - a. IS MAP SHOWING LOCATION ATTACHED: Y: _____ N: _____
8. NUMBER AND DESCRIPTION OF ITEM/S DISCOVERED

PLEASE CONTINUE ON BACK, IF NEEDED.

9. WAS ANYTHING REMOVED FROM SITE: Y: _____ N: _____
 - a. IF YES, WHERE IS IT NOW?

10. IF SKELETAL REMAINS, CONTACT INFORMATION FOR LAW ENFORCEMENT OFFICER NOTIFIED

11. SIGNATURE OF THE REPORTER AND DATE:

Exhibit 11



ANDY BESHEAR
GOVERNOR

TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL
THE STATE HISTORIC PRESERVATION OFFICE

LINDY CASEBIER
SECRETARY

JACQUELINE COLEMAN
LT. GOVERNOR

410 HIGH STREET
FRANKFORT, KENTUCKY 40601
(502) 564-7005
www.heritage.ky.gov

CRAIG A. POTTS
EXECUTIVE DIRECTOR &
STATE HISTORIC PRESERVATION OFFICER

July 31, 2023

Fred E. Pozzuto
Director, NEPA Policy & Compliance Division
U.S. Department of Energy
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507

Re: Section 106 Compliance for Project Apex - Integrated Sustainable
Battery Active Material and Precursor Production Plant
Christian County, Kentucky

Dear Mr. Pozzuto:

As we are nearing our 30-day review period to comment on the above ground resources report, our comments on that document are included in our response to your Determination of Effect for the above referenced undertaking.

[REDACTED]

We are also in receipt of your Determination of Effect finding of *No Historic Properties Affected* for this undertaking. We cannot concur with that determination. We would like to continue working with you to develop a Memorandum of Agreement (MOA) that includes adequate, inclusive mitigation measures and an acceptable Inadvertent Discoveries Plan.

We appreciate your previous and continued efforts to identify, evaluate, and properly consider Kentucky's unique historic properties and archaeological resources and look forward to hearing from you soon.

Sincerely,

Craig A. Potts,
Executive Director and
State Historic Preservation Officer

KHC # 232187

CP:nk/ph/gf

e-cc: Elizabeth Toombs (Cherokee Nation); Jesse Garcia and Steven Witmer (Department of Energy); Kevin Minoli and Doug Arnold (Alston and Bird)



An Equal Opportunity Employer M/F/D

Exhibit 12



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CHEROKEE NATION®
P.O. Box 948 • Tahlequah, OK 74465-0948
918-453-5000 • www.cherokee.org

Chuck Hoskin Jr.
Principal Chief
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Bryan Warner
Deputy Principal Chief
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August 4, 2023

Fred E. Pozzuto
United States Department of Energy
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507

Re: Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant Project

Mr. Fred E. Pozzuto:

The Cherokee Nation (Nation) is in receipt of your correspondence about the proposed **Apex – Integrated Sustainable Battery Active Material and Precursor Production Plant Project**, and appreciates the opportunity to provide additional comments upon this project.

Please allow this letter to serve two purposes. First, our Historic Preservation Office (Office) is neither able to concur nor address the United States Department of Energy's (DOE) determination of no historic properties for the proposed project. Second, by copy of this letter, this Office respectfully invites the Advisory Council on Historic Preservation (ACHP) to review the consultation record for this undertaking. Given concerns outlined below, our Office believes that this undertaking contains information deficiencies and procedural issues that have the potential to cause or have caused adverse impacts to resources that are significant to the Nation.

Enclosed with this letter is an October 2022 article indicating the applicant's receipt of federal grants from the DOE, a nexus warranting consultation for an undertaking in accordance with the National Historic Preservation Act (NHPA, 54 U.S.C. §300101 et seq.) and its implementing regulations (36 CFR Part 800). Our Office received notification in February 2023 for the project's Area of Potential Effects of 164 acres, or Lots 3 and 4. [REDACTED]

[REDACTED]. Recent updates to the ACHP's *Policy Statement on Burial Sites, Human Remains, and Funerary Objects* addresses principles that help inform this consultation process with Tribes.

[REDACTED]. Rather than receiving a report for the APE for this project, our Office received a report that addressed a part of the APE, Lot 3 of 82.8 acres (Figure 3 in Record of Consultation). The report is silent about Lot 4.

Two additional concerns came to light upon receipt of the 2023 report and the letter dated July 20 from the DOE. First, images in the 2023 survey report show active work in the adjacent lot. According to the 2023 report, the survey was conducted in April 2023 or while Section 106 consultation was ongoing. Second, mitigation with a 501(c)3 was provided to the Nation for consideration. Procedurally, mitigation is provided as a measure under both NHPA and the National Environmental Policy Act (NEPA, 42 U.S.C. §4321 et seq.). Both regulations provide mitigation either to resolve adverse effects (36 C.F.R. 800.6(a)) or address impacts caused by actions (40 C.F.R. 1508.1(s)). However, to arrive at mitigation is to have identified historic properties, a crucial overlooked step with this undertaking. To reiterate, our Office is unable to assess the impact to such resources because identification efforts were limited to one lot. More importantly, ongoing actions may have already impacted previously unevaluated identified resources and unidentified resources.

Because of potential ongoing actions by the Applicant, varying scopes of the APE (36 C.F.R. 800.16(d)), level of effort in identifying historic properties (800.4(b)(1)), and the lack of a basis for mitigation, the Nation is unable to concur or engage in meaningful consultation with the DOE. Given DOE's interpretation of completing consultation by letter received on July 21, our Office is compelled to invite the ACHP's review of this consultation record. If you require additional information or have any questions, please contact me at your convenience. Thank you for your time and attention to this matter.

Wado,



Elizabeth Toombs, Tribal Historic Preservation Officer
Cherokee Nation Tribal Historic Preservation Office
elizabeth-toombs@cherokee.org
918.453.5389

CC: Ira Matt, Advisory Council on Historic Preservation, ACHP
 Wm. Dancing Feather, ACHP
 Jamie Lee Marks, ACHP
 Jesse Garcia, DOE
 Nicole Konkol, Kentucky Heritage Council

Enclosures: *Recycling Today*, "Ascend Elements breaks ground on Kentucky Facility."
 Record of consultation