



BEAR DEN PROJECT

Plan of Development

APPENDIX I

**Plan for Unanticipated Discovery of Cultural Resources
or Human Remains During Construction**



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**Plan for Unanticipated Discovery of Cultural Resources
or Human Remains During Construction**

**Prepared for:
BUREAU OF LAND MANAGEMENT**

June 2013

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1.0 INTRODUCTION

Pursuant to the regulatory requirements of Section 106 of the National Historic Preservation Act (16 United States Code [USC] 470) (NHPA) and its implementing regulation 36 Code of Federal Regulations (CFR) 800 (as amended August 5, 2004), and Section 3(d) (USC Part 3002) of the Native American Graves Protection and Repatriation Act (NAGPRA 25 USC Part 3001-3013), the Archaeological Resource Protection Act (ARPA; Public Law 96-95, 16 USC 470aa-mm; North Dakota Century Code §23-06-27; North Dakota Century Code §55-02-07; and the administrative rules in the North Dakota Administrative Code Chapter 40-02-03, CenterPoint Energy Bakken Crude Services, LLC (CEBCS) has established the following procedures to be followed by CEBCS personnel and their contractors in the event that previously unreported and unanticipated historic properties or human remains are found during construction of the Bear Den Project (Project). This document serves as the primary guidance tool for CEBCS and its contractors so they can comply with federal and state laws and regulations.

The identification of possibly significant cultural materials is addressed in sections 2.0 and 3.0. The discovery of possible human remains is addressed in section 4.0.

A cultural resource discovery could consist of, but is not limited to:

- prehistoric features such as storage pit features, postmolds, hearths, occupational surfaces, middens, and anthropogenic soil horizons;
- prehistoric artifact concentrations such as projectile points and waste flakes/debitage;
- historic features such as trails, roads, canals, wells, cisterns, foundations, and trash pits at least 50 years in age; and
- historic artifact concentrations such as glass bottles, tin cans (e.g., hole-in-top cans), tableware, dishware, architectural debris (e.g., bricks, mortar, window glass), hardware (e.g., square nails), and farm implements at least 50 years in age.

Evidence of a burial site could consist of, but is not limited to:

- any human remains including articulated or disarticulated bones, teeth, hair, preserved soft tissue, etc.;
- artifacts which could be burial goods such as projectile points, knives, ornaments (made of teeth, claws, talons, glass beads, shell, etc.), bone needles, pipes, and pottery;
- burial pit or grave shaft outlines in the soil;
- headstones or footstones; and
- coffin wood fragments and coffin hardware.

2.0 INADVERTENT DISCOVERY OF CULTURAL MATERIALS BY CONSTRUCTION PERSONNEL

If a contractor believes that he or she has uncovered any cultural resources during construction, the following steps shall be taken.

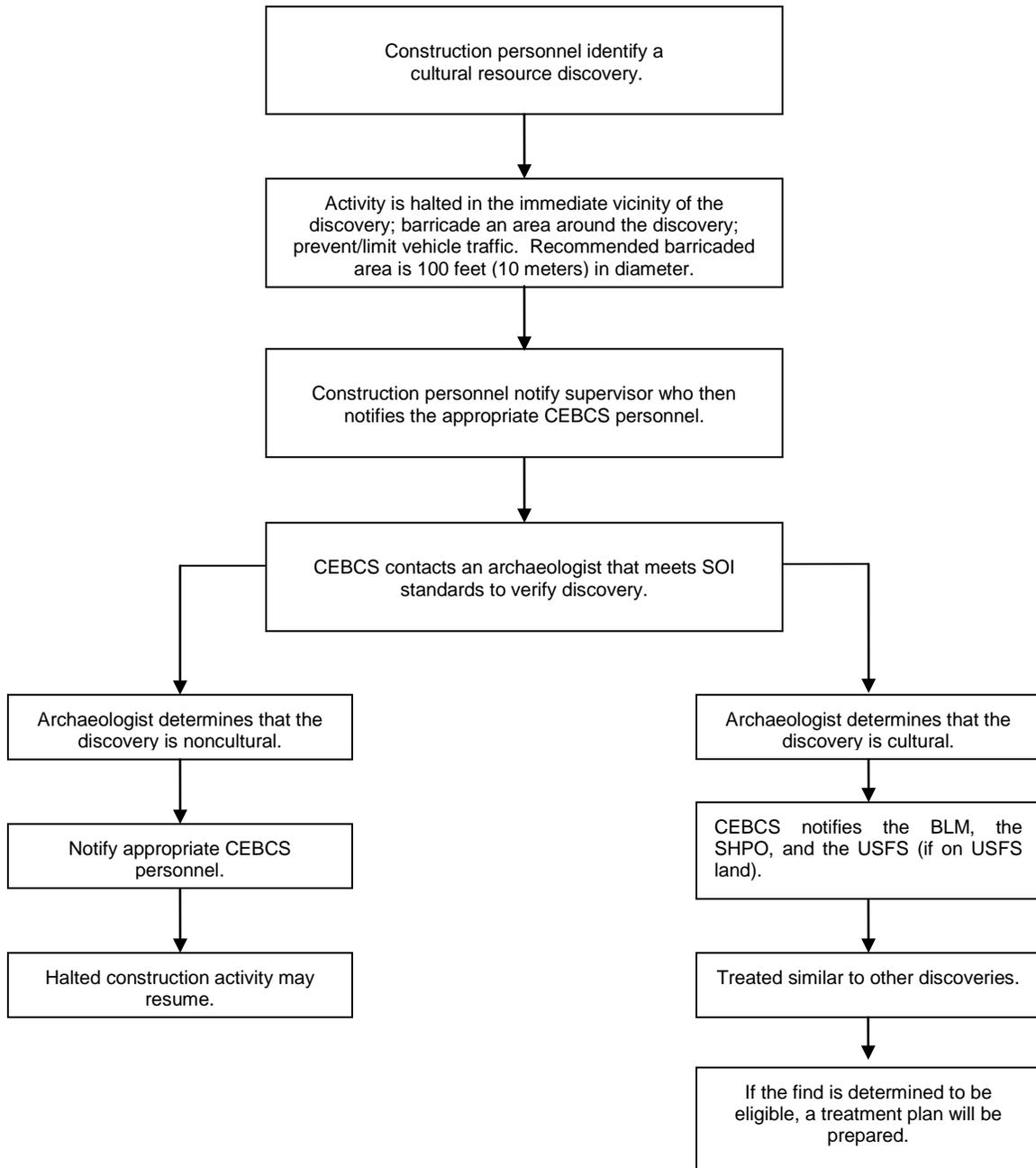
1. The Contractor will cease work immediately within the area of the find to protect the integrity of the find as stipulated in the contract and will immediately notify CEBCS' Environmental Inspector (EI) (see contact information in section 5.0). The Contractor will not restart work in the area of the find until approved by the EI and no cultural material will be transported from its original location.
2. The EI will immediately notify CEBCS' Environmental Project Manager or his representative (e.g., Cultural Resource Manager) who will coordinate with the Natural Resource Group (NRG) Archaeologist to travel to the location of the find and conduct a preliminary evaluation of the significance of the find.
3. The EI will also temporarily flag or fence off the site to ensure that appropriate measures have been taken to protect the discovery from further disturbance. The area will encompass a sufficient area to protect the discovery itself and provide a buffer zone. A general guideline will be to provide a buffer of approximately 100 feet around the discovery and can be larger or smaller depending on the width of the right-of-way (ROW). No fencing will be installed outside of the project area without prior approval from the landowner.
4. The NRG Archaeologist will assess and document the find using the appropriate North Dakota Cultural Resource Survey form as soon as possible (within 48 hours) of its discovery. Following the investigation, the Archaeological Consultant will notify CEBCS and the BLM regarding the preliminary evaluation of the significance of the find.
5. If the NRG Archaeologist determines that the discovery is non-cultural or that the find represents a simple or isolated find that is not significant, the EI will be notified that construction can resume. The EI will have the authority to remove the stop-work order, and construction may resume. The Archaeological Consultant will submit a letter report regarding the discovery and findings to CEBCS within 5 business days and for submittal to the Bureau of Land Management (BLM).
6. If the NRG Archaeologist determines that the find represents a potentially significant, complex find of cultural materials, the Archaeological Consultant will notify CEBCS and the BLM the same day and the procedures in section 3.0 of this plan will be followed.
7. If the NRG Archaeologist determines that the discovery constitutes human remains, the procedures described in section 4.0 of this plan will be followed.

3.0 DISCOVERY OF POTENTIALLY SIGNIFICANT CULTURAL MATERIALS

As discussed above in section 2.0, the on-site EI will ensure that appropriate measures have been taken to protect the discovery from further disturbance.

1. The CEBCS Environmental Project Manager or his representative (e.g., Cultural Resource Manager) will direct the NRG Archaeologist to begin a more detailed assessment of the significance of the find and the potential effect of construction on the find.
2. CEBCS or its representative will notify the BLM Project Manager, the BLM Archaeologist, the SHPO, and the U.S. Forest Service (USFS) Archaeologist, if on USFS land, of the find.
3. CEBCS or its representative will notify other parties of the find as directed by the SHPO and BLM, including the landowner. The BLM will be responsible for notifying the appropriate Native American tribes, if the site is associated with prehistoric or historic Native American culture.
4. If the find is determined to be significant and continuing construction may damage more of the site, then CEBCS or its representative will request recommendations from the SHPO, BLM, and any parties recommended by the SHPO and BLM regarding measures for site treatment. These measures may include:
 - i) variance request to re-route around the site;
 - ii) formal archaeological evaluation of the site;
 - iii) visits to the site by the SHPO, BLM, and other parties;
 - iv) preparation of a mitigation plan by CEBCS for approval by the SHPO and BLM;
 - v) implementation of the mitigation plan; and
 - vi) approval to resume construction following completion of the fieldwork component of the mitigation plan.
5. If, upon further analysis by the Archaeological Consultant, the find is determined to lack significance, then CEBCS or its representative will consult with the SHPO, BLM, and other appropriate parties, and will request approval to resume construction subject to any further mitigation that may be required by the BLM.

Figure 3-1.
Procedures for Dealing with Cultural Resource Discoveries by Construction Personnel



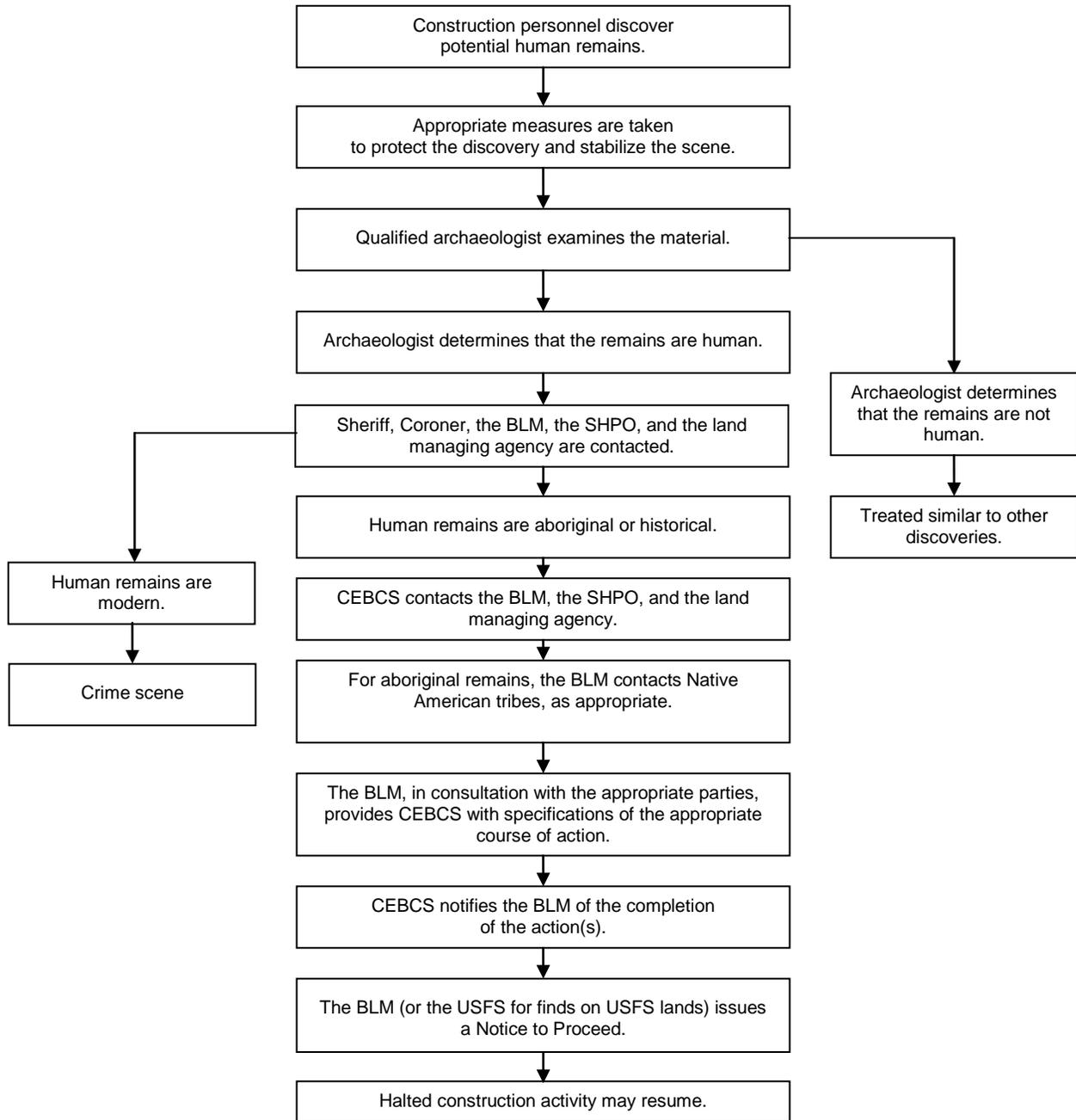
4.0 DISCOVERY OF HUMAN REMAINS

If an unmarked human burial or skeletal remains are encountered during construction activities, CEBCS will comply with federal laws and North Dakota's "Protection of burial sites, human remains, and burial goods" law (North Dakota Century Code [NDCC] 23-06-27) and its accompanying administrative rules (North Dakota Administrative Code [NDAC] 40-02-03) as well as taking into account the Advisory Council on Historic Preservation's *Policy Statement on the Treatment of Burial Sites* (2007).

1. If it is immediately obvious that the skeletal remains found are non-human and are in association with cultural material, the procedures described in section 2.0 will be followed.
2. If human remains are inadvertently discovered construction of the Undertaking, all work will immediately cease within a 200-foot radius from the point of discovery and the EI will make verbal notification of the discovery immediately or within 24 hours to the BLM North Dakota Field Office Manager, BLM Archaeologist, CEBCS Project Manager, and the Cultural Resource Manager. Upon discovery of human remains they will be left in-place, fully protected and treated with full dignity and respect following ACHP's Policy Statement on the Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007). The EI will secure the area and follow the procedures outlined in this plan. The remains will be left in place and exclusionary fencing will be placed in a 50-foot radius around the discovery. Other means to secure the discovery may include covering the discovery with a protective cover in adverse weather conditions, preventing vehicle traffic through the area, and posting a guard.
3. The EI will notify the CEBCS Environmental Project Manager or his representative (e.g., Cultural Resource Manager), who will notify the county sheriff, the BLM, SHPO, and the USFS (if on their land) of the find. The sheriff's office will be requested to contact the county coroner.
4. If the human remains are modern, the sheriff or coroner will assume responsibility.
5. If the county sheriff determines the remains are not modern or do not reflect a crime scene and/or if they otherwise relinquish their jurisdiction over the remains, the BLM in coordination with the SHPO will consult appropriate parties (e.g. CEBCS, federally recognized Indian tribes, USFS, and/or the landowner) regarding additional steps to be followed.
6. The remains will be treated in accordance with procedures agreed upon by the BLM and SHPO for state and private land, and with applicable federal law for finds on BLM and USFS lands.

7. If the human remains appear to be prehistoric or historic Native American and are on federal land, the BLM will meet the requirements of NAGPRA for all Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony on a case-by-case basis in accordance with 43 CFR 10. An action plan will be written for each case by NRG in consultation with the BLM archaeologist. If it is determined that the remains have affinity to a federally recognized Indian tribe, a reasonable effort will be made to identify, locate, and notify the tribe. The consulting tribes to this project will be notified if there is the discovery of human remains of Native American origin.
8. The measures to protect the remains and any associated artifacts will remain in effect until they have been fully evaluated and the appropriate treatment of the discovery (if applicable) has been completed, and CEBCS has received formal written notice from the BLM to proceed with construction at the site of the discovery.
9. CEBCS will notify the EI who will grant clearance to the Contractor to resume work in the vicinity of the find.

Figure 4-1.
Procedures for the Treatment of the Unanticipated Discovery of Human Remains



5.0 CONTACTS FOR UNANTICIPATED DISCOVERIES

CEBCS Environmental Inspector:

Name: TBD
Cell: TBD
Email: TBD

Cultural Resource Manager:

Name: DeAnn Thyse
Office: (612) 347-7157
Cell: (612) 219-8269
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CEBCS Environmental Project Manager:

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CEBCS Archaeological Consultant:

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Company: Alpine Archaeological Consultants
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E-mail: jack_pfertsh@alpinearchaeology.com

BLM Project Manager:

Name: Lowell Hassler
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Cell: (701) 290-4235
Email: lhassler@blm.gov

BLM Project Archaeologist:

Name: Shannon Gilbert
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Email: sgilbert@blm.gov

State Historic Preservation Office:

Name: Merlan Paaverud, Jr.
Director, State Historical Society of North Dakota
Direct: (701) 328-2672
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USFS Archaeologist:

Name: Liv Fetterman
Office: (701) 250-4443 x108
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Email: lfetterman@fs.fed.us

Dunn County Sheriff:

Name: Sheriff Don Rockvoy
Phone: (701) 573-4449
E-mail: don.rockvoy@dunndountynd.org

McKenzie County Sheriff:

Name: Sheriff Ron Rankin
Phone: (701) 444-3654 x1420