



**BEAR DEN PHASE 2 PROJECT**

**Plan of Development**

**APPENDIX I**

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





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**Plan of Development**

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

**Prepared for:  
BUREAU OF LAND MANAGEMENT**

**MAY 2014**

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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, Enable Bakken Crude Services, LLC (EBCS) has established the following procedures to be followed by EBCS 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 Phase 2 Project (Project). This document serves as the primary guidance tool for EBCS 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.

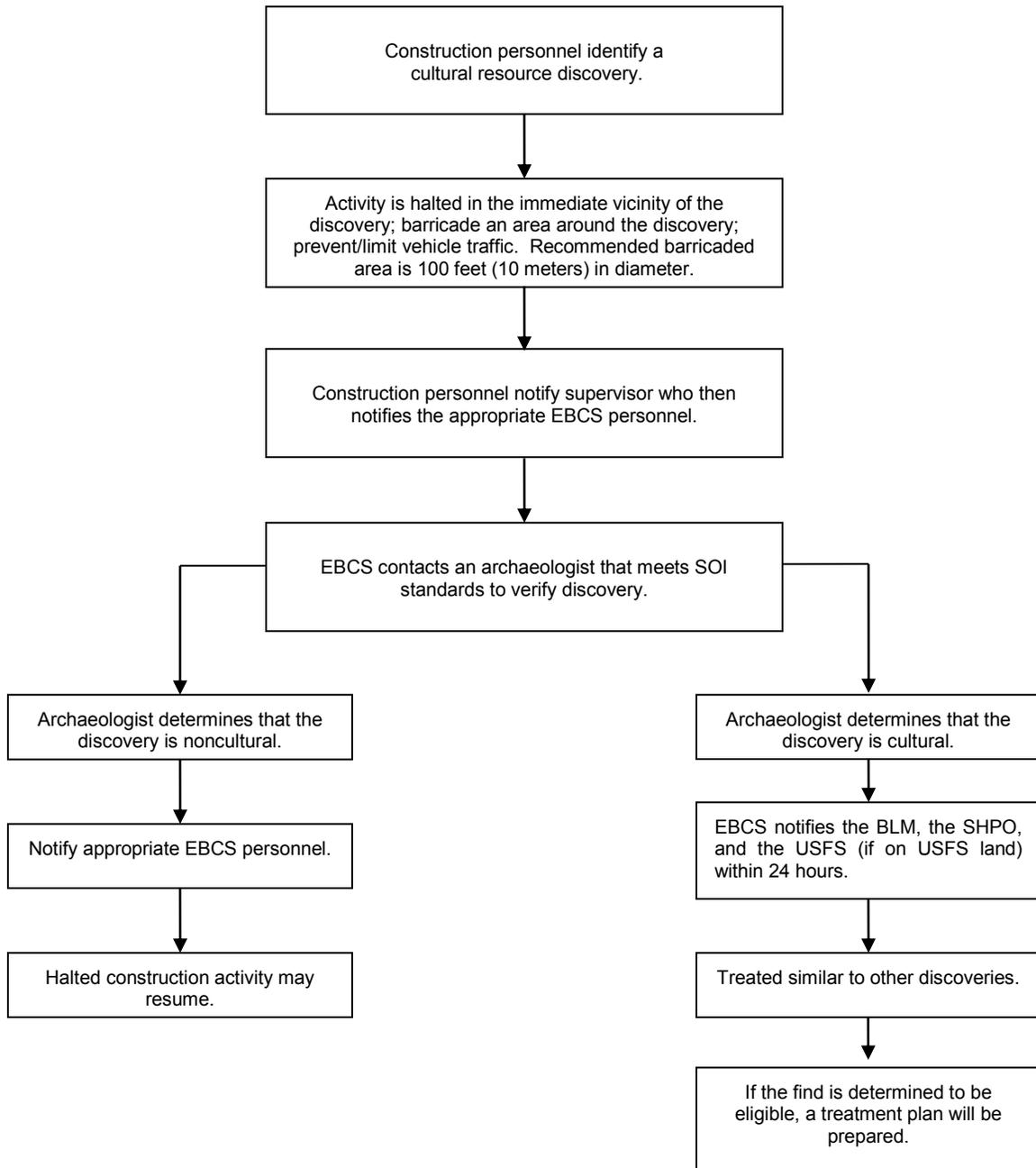
1. The Contractor will cease work immediately within the area of the find to protect the integrity of the find as stipulated in the contract and will immediately notify EBCS' Environmental Inspector (EI) (see contact information in section 5.0). The Contractor will not restart work in the area of the find until approved by the EI and no cultural material will be transported from its original location.
2. The EI will immediately notify EBCS' Environmental Project Manager or his representative (e.g., Cultural Resource Manager) who will coordinate with the Archaeological Consultant 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 Archaeological Consultant 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 EBCS and the Bureau of Land Management (BLM) regarding the preliminary evaluation of the significance of the find.
5. If the Archaeological Consultant 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 EBCS within 5 business days and for submittal to the BLM.
6. If the Archaeological Consultant determines that the find represents a potentially significant, complex find of cultural materials, the Archaeological Consultant will notify EBCS and the BLM the same day and the procedures in section 3.0 of this plan will be followed.
7. If the Archaeological Consultant 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 EBCS Environmental Project Manager or his representative (e.g., Cultural Resource Manager) will direct the Archaeological Consultant to begin a more detailed assessment of the significance of the find and the potential effect of construction on the find.
2. EBCS 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 within 24 hours.
3. EBCS 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 EBCS 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 EBCS 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 EBCS 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**



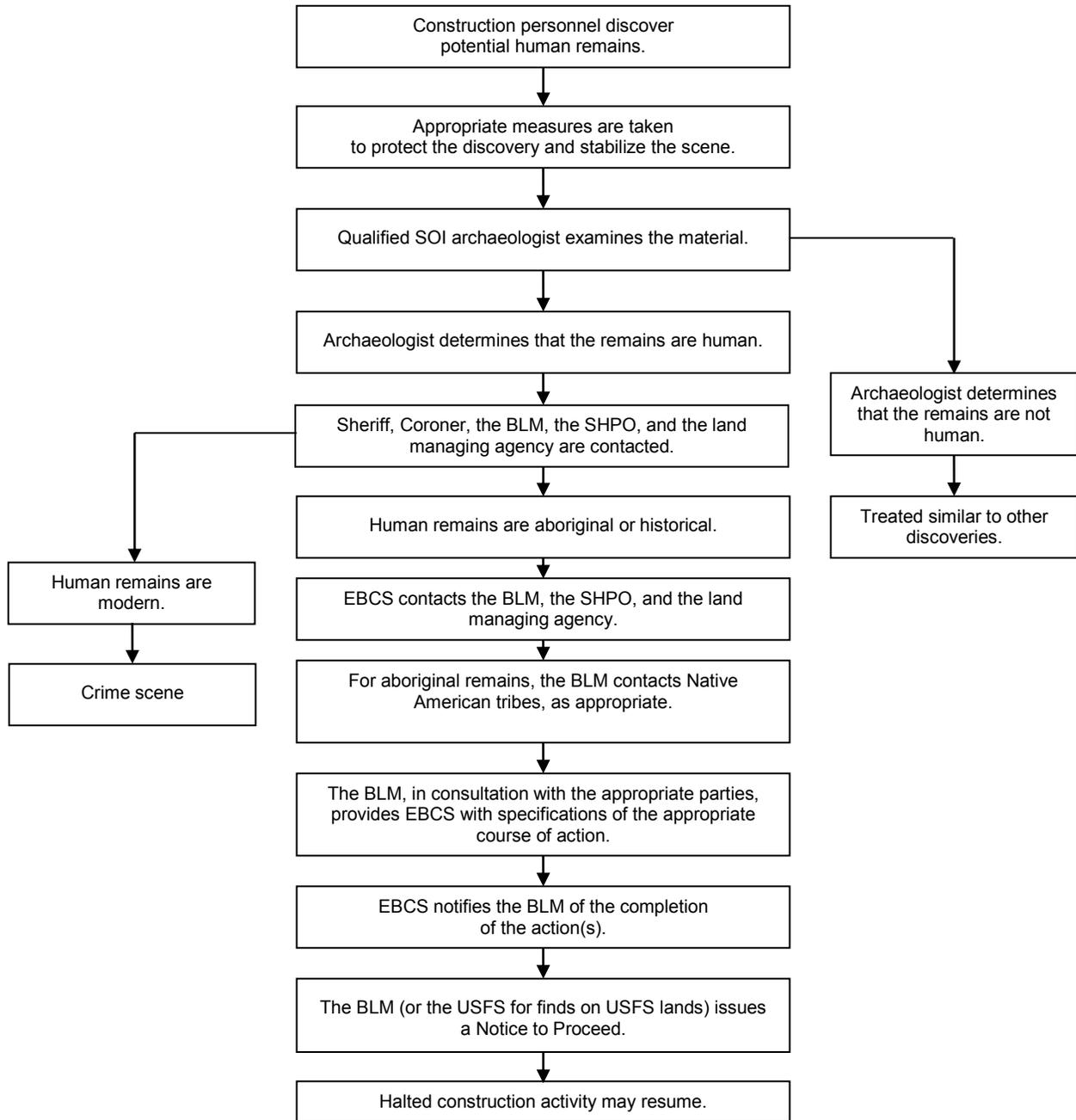
#### 4.0 DISCOVERY OF HUMAN REMAINS

If an unmarked human burial or skeletal remains are encountered during construction activities, EBCS 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 it is not certain whether the remains are human, the on-site EI will temporarily flag or fence off the site and will ensure that appropriate measures have been taken to protect the discovery from further disturbance. All work will immediately cease within a 200-foot radius from the point of discovery and 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. All human remains regardless of ancestry will be treated with dignity and respect.
3. The EI will notify the EBCS 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. EBCS, 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 and Forest Service archaeologist, if the discovery is on Forest Service lands. 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 EBCS has received formal written notice from the BLM to proceed with construction at the site of the discovery.
9. EBCS 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

### **EBCS Environmental Inspector:**

Name: TBD  
Cell: TBD  
Email: TBD

### **Cultural Resource Manager:**

Name: DeAnn Thyse  
Office: (612) 347-7157  
Cell: (612) 219-8269  
Email: dmthyse@nrg-llc.com

### **EBCS Environmental Project Manager:**

Name: Erik Dilts  
Office: (318) 429-3275  
Cell: (318) 402-6459  
E-mail: Erik.Dilts@centerpointenergy.com

### **EBCS Archaeological Consultant:**

Name: Jack Pfertsch  
Company: Alpine Archaeological Consultants  
Phone: 970-249-6761 ext. 15  
E-mail: jack\_pfertsh@alpinearchaeology.com

### **BLM Project Manager:**

Name: Lowell Hassler  
Direct: (406) 538-1909  
Cell: (701) 290-4235  
Email: lhassler@blm.gov

### **BLM Project Archaeologist:**

Name: Shannon Gilbert  
Direct: (406) 683-8029  
Email: sgilbert@blm.gov

### **State Historic Preservation Office:**

Name: Merlan Paaverud, Jr.  
Director, State Historical Society of North Dakota  
Direct: (701) 328-2672  
Email: mpaaverud@nd.gov

### **USFS Archaeologist:**

Name: Liv Fetterman  
Office: (701) 250-4443 x108  
Cell: (701) 516-4009  
Email: lfetterman@fs.fed.us

### **McKenzie County Sheriff:**

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