

MEMORANDUM OF AGREEMENT

**AMONG THE U.S. FISH AND WILDLIFE SERVICE,
SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
SISSETON-WAHPETON-OYATE,**

AND

OTTER TAIL POWER COMPANY

AND

MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC.,

REGARDING THE

BIG STONE SOUTH TO ELLENDALE 345 kV TRANSMISSION LINE

WHEREAS, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. and Otter Tail Power Company (jointly, the Applicants) propose to construct, own, and operate a single-circuit, 345-kV transmission line (Project), approximately 160 to 170 miles long, extending from Ellendale, North Dakota, to Big Stone City, South Dakota, including construction of a new Ellendale 345-kV Substation, tie lines, and modification of the existing Ellendale 230-kV Substation, near Ellendale, North Dakota.

WHEREAS, the Applicants require a permit and approval from U.S. Fish and Wildlife Service (FWS) on 117.59 acres of protected FWS grassland easements held on privately owned land (See the Environmental Assessment in support of the Letter of Non-Objection); and

WHEREAS, the permitting and approval authority of the FWS over certain portions of the Project require consideration of the effects of their actions on historic properties and are subject to review in accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. Sections 100 and 101 and its implementing regulations, 36 CFR (CFR) Part 800); and

WHEREAS, the U.S Army Corps of Engineers (USACE) has jurisdiction on 103.94 acres over certain activities occurring in waters of the United States pursuant to Section 404 of the Clean Water Act (CWA) of 1972, as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA), as amended; and



WHEREAS, the USACE has determined that no historic properties are situated within their jurisdictional areas and has declined to participate in this Memorandum of Agreement; and

WHEREAS, FWS has defined the undertaking's area of potential effects (APE) as an area that is generally 500 feet wide, or 250 feet on either side of the proposed centerline as it relates to FWS easements and any other facilities (access roads, laydown areas, etc.) that reside on their jurisdictional land; and

WHEREAS, FWS has consulted with the Upper Sioux Community, Spirit Lake Tribe of Fort Totten, Standing Rock Sioux Tribe, Crow Creek Sioux Tribe, Oglala Lakota Nation, Santee Sioux Nation, Lower Brule Sioux Tribe, Yankton Sioux Tribe, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, Rosebud Sioux Tribe of Indians, Oglala Sioux Tribe, and Northern Cheyenne Tribe (Consulting Tribes) regarding the Project and its effects on historic properties; and

WHEREAS, the Sisseton-Wahpeton-Oyate (SWO) Tribal Historic Preservation Officer (THPO) and Standing Rock Sioux Tribe Tribal Historic Preservation Officer (SRST), participated in the identification and evaluation survey to locate properties that retain religious and cultural significance and helped develop construction-design measures to avoid adverse physical effects to these properties; and

WHEREAS, during the early consultation process, the SRST deferred further consultation and their project involvement to the SWO, due to the project crossing through the original Lake Traverse Reservation boundaries; and

WHEREAS, SWO participated in the identification and evaluation of properties of traditional religious and cultural significance to the SWO and SRST, including co-authorship of the archaeological and traditional cultural properties inventory reports for the Project (HDR et.al. 2015a, 2016) and coordinated with other tribes (Flandreau Santee Sioux Tribe, Rosebud Sioux Tribe of Indians, Standing Rock Sioux Tribe, and Northern Cheyenne Tribe) during the survey to obtain their input in matters of identified site interpretation and National Register eligibility; and

WHEREAS, FWS has determined in consultation with the South Dakota State Historic Preservation Officer (SDSHPO), the SWO, Applicants, and other tribes noted above that the undertaking may have an adverse visual effect on historic properties in South Dakota that retain traditional cultural values and qualify for listing in the National Register of Historic Places (NRHP) under criteria A and D (Attachment A), and has consulted with the SDSHPO pursuant to 36 C.F.R. Part 800; and



WHEREAS, in consultation with the North Dakota State Historic Preservation Office (NDSHPO) and the other parties to this agreement, the FWS has determined that the Project will not affect any properties that are eligible for or are listed on the National Register of Historic Places in North Dakota, and as a consequence, NDSHPO chose not to participate and sign this agreement, and the FWS's obligations under Section 106 have been satisfied for the North Dakota segment of the Project; and

WHEREAS, FWS recognizes that portions of the Project which extend beyond the FWS's jurisdictions will be reviewed pursuant to South Dakota Public Utilities Commission's Final Decision and Order; Notice of Entry and Stipulation Agreement dated August 22, 2014, which directed the Applicants to consider the effects of the Project on historic properties pursuant to state law, and that the Applicants will address those effects in accordance with the terms of a Memorandum of Understanding executed by the Applicants, SDSHPO, and SWO, which will become Attachment B to this agreement when executed; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), FWS notified the Advisory Council on Historic Preservation (ACHP) of their adverse effect determination, providing the documentation specified at 36 CFR § 800.11, and on March 10, 2016 the ACHP chose not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, the FWS has invited the Applicants, and the SWO Chairman and THPO to participate in the consultation leading to this agreement and to sign this agreement as invited signatories; and

NOW, THEREFORE, FWS, Applicants, SDSHPO, and SWO (the consulting parties) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties that are under the jurisdiction of the FWS.

STIPULATIONS

FWS shall ensure that the following measures are carried out:

I. SCHEDULING CONSTRUCTION TO ACCOMMODATE TRIBAL MEMBER VISITATION REQUESTS

- A. Prior to initiating construction activities for the Project, the Applicants will work with the SWO to designate up to three specific historic properties where SWO desires to conduct pre-construction visitation by tribal members for historical, cultural, heritage, and ceremonial activities. SWO will coordinate with other tribes



identified as consulting parties in the Preamble to designate the properties where pre-construction tribal visitations are desired. The Applicants and SWO will cooperate to develop a mutually agreeable schedule of specific dates and times during which the above mentioned activities may be conducted. These activities will take place prior to July 1, 2016, when construction activities are scheduled to begin. SWO will notify the Applicants, in writing, of sites where the visitation activities would be conducted and the dates and times when these activities are desired.

- B. Upon receipt of written or electronic notice from SWO, the Applicants will attempt to arrange for access and ensure that no pre-construction activities that may interfere with the visitation activities occur at the locations during specified date and time of the proposed activities. If landowners deny access for Tribal visitation and related activities, no such activities will occur, however, physical avoidance measures will remain in effect.
- C. The Applicants will inform FWS of any such requests from SWO for access to historic properties under their jurisdiction, and of actions taken to accommodate those requests within 30 days of their completion. The Applicants will also notify SHPO via electronic mail of these actions within 30 days of their completion.
- D. Due to location on private (fee) lands, any access arrangements will be among the Applicants, the landowner and SWO.

II. MONITORING FOR DISCOVERIES AND AVOIDANCE PLAN

- A. Prior to the initiation of construction, and in consultation with the parties to this agreement, the Applicants will prepare and implement a Monitoring for Discoveries and Avoidance Plan (Plan) for historic properties, including those of traditional religious and cultural significance, located on FWS easements held on privately owned (fee) lands and for any discovery of archaeological remains that may be encountered on all other lands subject to effects of the Project. The plan will consider properties that are eligible or of unknown eligibility for the NRHP situated within the APE. The Plan will establish monitoring procedures at preselected sites and features and will establish procedures for addressing discovery situations at these locations and anywhere else they may occur along the Project route. The Plan will provide for the following measures, as appropriate:
 - a. Procedures for the consideration of any archaeological remains that may be encountered on all lands subject to the effects of the Project, including;
 - i. On-site monitoring by the Applicants' cultural resource coordinator meeting the Secretary of Interior's professional qualifications standards for archaeology who will consult with the SWO to verify avoidance of sites and associated features situated within the APE in accordance with siting plan modifications intended to accomplish



avoidance; including confirmation of appropriate placement of enclosure fencing, structures and facilities for avoidance purposes.

- ii. Notification, including notification of the SDSHPO, recordation, recovery and disposition procedures for unanticipated exposures of cultural materials within known sites or when sites not previously identified are discovered and affected,
- iii. Procedures for the consideration and treatment of any human remains and cultural items encountered in accordance with state burial laws.
- iv. A provision for the preparation, review, and acceptance of a report of all monitoring and protection activities conducted under the Plan. FWS will ensure the report of the results of these monitoring and discovery activities meet the Secretary of Interior's Standards and NDSHPO and SDSHPO guidelines, as appropriate.

b. Any access arrangements will be among the Applicants, the landowner and SWO.

B. The Applicants will provide a draft of the Plan to FWS. The Plan will be circulated by FWS to the SDSHPO and SWO. The SDSHPO and SWO will be provided 30 days to review the Plan and submit their comments to FWS and the Applicants.

- a. FWS will consult with any party to this agreement that responds with concerns or objections to attempt to resolve them.
- b. If FWS determines that concerns and objections are resolved, FWS will ensure the Plan is implemented.
- c. If FWS determines that the concerns or objections cannot be resolved, FWS will resolve the issue in accordance with Stipulation VI.
- d. If FWS receives no comments from the reviewing parties within 30 days of receipt, FWS will assume their concurrence and proceed to implement the Plan.
- e. Upon approval, the Plan will become Attachment C to this agreement.

III. POST-CONSTRUCTION SITE VISITS BY TRIBAL MEMBERS

A. Upon request, the Applicants shall provide the SWO with landowners' contact information so that the SWO may contact and seek access from private landowners to properties of traditional religious and cultural importance within the Project right-of-way.



- B. Any access arrangements will be between the landowner and SWO. FWS will not be a party to these arrangements.

IV. LONG TERM COMMITMENT BY THE APPLICANTS TO NOTIFY SWO WHEN ACTIVITIES MAY BE CONDUCTED NEAR A SITE

- A. After the Project is constructed, if an operations or maintenance action is proposed in the Project right of way that may cause ground disturbance in the vicinity of a property considered eligible for the NRHP due to its traditional religious and cultural significance, the Applicants will notify SWO THPO via electronic mail within one business week of the proposed action. Under emergency situations, when the required action will be performed in response to a threat to life or property, the Applicants will inform the SWO THPO within 24 hours of the required action. The Applicants will retain cultural site locational information in their System Operations files and rely on GIS plan and profile mapped locational information for systematic avoidance areas. Plan and profile maps will display the areas of potential concern for those locations within the APE that warrant notification to the SWO THPO when an operations or maintenance action is needed.
- B. If the operations or maintenance action requires a FWS approval or permit, the action may be reviewed as a separate undertaking subject to Section 106 procedures and review.

V. DURATION

This MOA will expire if Stipulations I through III are not carried out within 5 years from the date of its execution. Prior to such time, FWS shall either (a) renew this MOA with the concurrence of the Signatories, (b) execute a revised MOA pursuant to 36 C.F.R. § 800.6 and Stipulation VII, or (c) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to its expiration, FWS shall notify the signatories as to the course of action it will pursue.

VI. DISPUTE RESOLUTION

- A. Should any party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FWS shall consult with such party to resolve the objection. If FWS determines that such objection cannot be resolved, FWS will:
- a. Forward all documentation relevant to the dispute, including FWS's proposed resolution to the ACHP. The ACHP shall provide its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FWS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FWS will then proceed according to its final decision.



- b. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, FWS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FWS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
 - c. Ensure FWS's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- B. Should any member of the public object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FWS shall consult with such party to resolve the objection.

VII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories and invited signatories. The amendment will be effective on the date a copy signed by all of the signatories and invited signatories is filed with the ACHP.

VIII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII, above. If within 30 days, agreement on an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories and invited signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, FWS must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. FWS shall notify the signatories and invited signatories as to the course of action it will pursue.

IX. AUTHORIZED REPRESENTATIVES OF SIGNATORIES

Each of the signatories and invited signatories to the parties hereto represent and warrant that they each have received the requisite authority to enter into the MOA on behalf of the party for whom they have each signed.

X. COUNTERPARTS

This MOA may be executed separately by the parties as counterparts. All such counterparts will be deemed to be originals, and upon completion of signatures will be combined together to constitute one and the same instrument. FWS will ensure that, upon receipt of counterparts from the signatories, a copy of the MOA with combined signature page showing all signatures is provided to each of the signatories and invited signatories.



EXECUTION of this MOA by the FWS and SDSHPO, and implementation of its terms evidence that FWS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.



SIGNATORIES:

U.S. Fish and Wildlife Service

By:  Date 4.5.16

Title: Deputy Regional Director



South Dakota State Historic Preservation Officer

By: _____ **Date** _____

Title: _____



South Dakota State Historic Preservation Officer

By: Jay D. Vogt Date 04-09-2016
Title: SD SHPO

INVITED SIGNATORIES

Sisseton-Wahpeton-Oyate

By: Dave Little Date 4-22-16
Title: Tribal Chairman



Sisseton-Wahpeton-Oyate

By: Dianne DeWolfe Date April 22, 2016
Title: Tribal Historic Preservation Officer



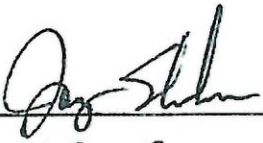
Otter Tail Power Company

By: *A. P. Kelly* Date *3/28/16*

Title: *Project Manager*



Montana-Dakota Utilities Co.

By:  Date 3/28/2016
Title: V.P. ELECTRIC SUPPLY



BIBLIOGRAPHY

- 2016, Level III Intensive Archaeological and Traditional Cultural Property Resources Inventory for the Big Stone South to Ellendale 345 kV Transmission Line Project Brown, Day and Grant Counties, South Dakota. HDR, Sisseton-Wahpeton-Oyate THPO, and Good Schliesman & Associates, March 2016.
- 2015a, Class III Intensive Archaeological and Traditional Cultural Property Resources Inventory for the Big Stone South to Ellendale 345 kV Transmission Line Project, Dickey County, North Dakota to the South Dakota Border, HDR and Sisseton-Wahpeton-Oyate Tribal Historic Preservation Officer. HDR and Sisseton-Wahpeton-Oyate THPO, June 2015.
- 2015b, Class III Intensive Cultural Resources Inventory: Historic Structures Inventory and Evaluation for the Big Stone South to Ellendale 345 kV Transmission Line Project, Dickey County, North Dakota to South Dakota Border Segment. HDR April 2015
- 2015c, Big Stone South to Ellendale 345 kV Transmission Line Project Intensive Historic Building Inventory and Evaluation North Dakota/South Dakota Border to the Big Stone South Substation Segment. HDR July 2015.



Attachment A

Attachment A has been redacted from this version of the MOA / MOU

Attachment B

MEMORANDUM OF UNDERSTANDING

AMONG THE

SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,

SISSETON-WAHPETON-OYATE,

OTTER TAIL POWER COMPANY

AND

MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC.,

REGARDING THE EFFECTS OF THE BIG STONE SOUTH TO ELLENDALE 345 kV TRANSMISSION LINE, SOUTH DAKOTA ON HISTORIC PROPERTIES SITUATED OUTSIDE FEDERAL AGENCY JURISDICTION AND REVIEW UNDER SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

WHEREAS, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. and Otter Tail Power Company (jointly, the Applicants) propose to construct, own, and operate a single-circuit, 345-kV transmission line (Project), approximately 160 to 170 miles long, extending from Ellendale, North Dakota, to Big Stone City, South Dakota, including construction of a new Ellendale 345-kV Substation, tie lines, and modification of the existing Ellendale 230-kV Substation, near Ellendale, North Dakota.

WHEREAS, the U.S. Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers (USACE) have permitting and approval authorities over certain portions of the Project that require consideration of the effects of their actions on historic properties and are subject to review in accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. Sections 100 and 101 and its implementing regulations, 36 CFR (CFR) Part 800); and

WHEREAS, the Section 106 obligations of the USFWS and USACE have been satisfied with the execution of a Project Memorandum of Agreement (MOA) that applies to those portions of the Project subject to Section 106 review; and

WHEREAS, this Memorandum of Understanding (MOU) serves as a companion document to the MOA and applies to those portions of the Project which extend outside the FWS's and USACE's permitting and approval authorities but are subject to South Dakota Public Utilities Commission's (PUC) Final Decision and Order; Notice of Entry and Stipulation Agreement dated August 22, 2014, which directs the Applicants to consider the effects of the Project on historic properties, and



WHEREAS, the Applicants will address the PUC Final Decision and Order to consider effects to historic properties that are not within the jurisdiction of a federal agency and not subject to Section 106 review in accordance with the terms of this MOU; and

WHEREAS, the Applicants in consultation with the South Dakota State Historic Preservation Officer (SHPO) have defined the Project's area of potential effects (APE) as an area that is generally 500 feet wide, or 250 feet on either side of the proposed centerline; and

WHEREAS, the Applicants have consulted with the Sisseton-Wahpeton-Oyate (SWO) Tribal Historic Preservation Officer (THPO) and Standing Rock Sioux Tribe Tribal Historic Preservation Officer (SRST), for which the affected properties retain religious and cultural significance; and

WHEREAS, during the early consultation process, the SRST deferred further consultation and their project involvement to the SWO, due to the project crossing through the original Lake Traverse Reservation boundaries; and

WHEREAS, SWO participated in the identification and evaluation of properties of traditional religious and cultural importance to the SWO and SRST, including co-authorship of the archaeological and traditional cultural properties inventory reports for the Project (HDR et.al. 2015, 2016); and

WHEREAS, the Applicants have determined in consultation with the SHPO and SWO that the Project may have an adverse visual effect on 154 properties in South Dakota that retain traditional cultural values and qualify for listing in the National Register of Historic Places (NRHP) under criteria A and D; and

WHEREAS, the North Dakota State Historic Preservation Officer (NDSHPO) the SWO, and the Applicants have agreed that the Project will not affect any properties that are eligible for or are listed on the National Register of Historic Places on that portion of the Project which extends into North Dakota, and as a consequence, the North Dakota segment of the Project does not require further consideration for purposes of this MOU;

NOW, THEREFORE, the Applicants, SHPO, and SWO (the consulting parties) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties that are not subject to the Section 106 review process.



STIPULATIONS

The Applicants shall ensure that the following measures are carried out:

I. SCHEDULING CONSTRUCTION TO ACCOMMODATE TRIBAL MEMBER VISITATION REQUESTS

- A. Consistent with, and as specified in the MOA for the portion of the Project under federal review, and prior to initiating construction activities for the Project, the Applicants will work with the SWO THPO to designate up to three specific historic properties where SWO desires to conduct pre-construction visitation by tribal members for historical, cultural, heritage, and ceremonial activities. The Applicants and SWO will cooperate to develop a mutually agreeable schedule of specific dates and times during which ceremonial activities may be conducted. The ceremonial activities will take place prior to July 1, 2016, when construction activities are scheduled to begin. SWO will notify the Applicants, in writing, of sites where ceremonial activities would be conducted and the dates and times when ceremonial activities are desired.
- B. Upon receipt of written or electronic notice from SWO, the Applicants will attempt to arrange for access and ensure that no construction activities that may interfere with the visitation activities occur at the locations during specified date and time of the proposed activities. If landowners deny access for Tribal visitation and related activities, no such activities will occur, however, physical avoidance measures will remain in effect.
- C. The Applicants will inform SHPO of any such requests from SWO for access to historic properties outside federal agency jurisdiction, and of actions taken to accommodate those requests within 30 days of their completion.
- D. Due to location on private (fee) lands, any access arrangements will be among the Applicants, the landowner and SWO.

II. MONITORING FOR DISCOVERIES AND AVOIDANCE PLAN

- A. In consultation with the parties to this agreement, the Applicants will prepare and implement a Monitoring for Discoveries and Avoidance Plan (Plan) for properties of traditional religious and cultural significance that are eligible for the NRHP and are situated within the APE. This Plan will be the same document specified under the terms of the MOA and will establish monitoring procedures at preselected sites and features and will establish procedures for addressing discovery situations at these locations and anywhere else they may occur along the Project route. The Plan will provide for the following measures, as appropriate.



- a. Procedures for the consideration of any archaeological remains that may be encountered on all lands subject to the effects of the Project, including;
 - i. On-site monitoring by the Applicants' cultural resource coordinator who will consult with the SWO to verify avoidance of sites and associated features situated within the APE in accordance with siting plan modifications intended to accomplish avoidance; including confirmation of appropriate placement of enclosure fencing, structures and facilities for avoidance purposes.
 - ii. Notification, recordation, recovery and disposition procedures for unanticipated exposures of cultural materials within known sites or when sites not previously identified are discovered and affected,
 - iii. Procedures for the consideration and treatment of any human remains and cultural items encountered in accordance with state burial laws.
 - iv. A provision for the preparation, review, and acceptance of a report of all monitoring and protection activities conducted under the Plan. The Applicants will ensure the report of the results of these monitoring and discovery activities meet the Secretary of Interior's Standards and NDSHPO and SDSHPO guidelines, as appropriate.
 - b. Any access arrangements will be among the Applicants, the landowner and SWO.
- B. The Applicants will provide a draft of the Plan to the SHPOs and SWO
- a. The SHPO and SWO will have 30 days to review and comment to the Applicants regarding the adequacy of the Plan.
 - b. If the SHPO or SWO issue concerns or objections pertaining to the plan as it relates to properties not under federal agency jurisdiction, the Applicants will consult with the SHPOs and SWO regarding any concerns or objections to attempt to resolve them.
 - c. If SHPO determines that concerns and objections are resolved, the Applicants will ensure the Plan is implemented.
 - d. If SHPO determines that the concerns or objections cannot be resolved, the Applicants will resolve the issue in accordance with Stipulation VI.
 - e. If the Applicants receive no comments from the reviewing parties within 30 days of receipt, the Applicants may assume their concurrence and proceed to implement the Plan as it relates to monitoring on lands not under a federal agency's jurisdiction.



III. POST-CONSTRUCTION SITE VISITS BY TRIBAL MEMBERS

- A. Upon request, the Applicants shall provide the SWO with landowners' contact information so that the SWO may contact and seek access from private landowners to properties of traditional religious and cultural importance within the Project right-of-way.
- B. Any access arrangements will be between the landowner and SWO. The Applicants will not be parties to these arrangements.

IV. LONG TERM COMMITMENT BY THE APPLICANTS TO NOTIFY SWO WHEN ACTIVITIES MAY BE CONDUCTED NEAR A SITE

After the Project is constructed, if an operations or maintenance action is proposed in the Project right of way that may cause ground disturbance in the vicinity of a property considered eligible for the NRHP due to its traditional religious and cultural significance, the Applicants will notify SWO THPO via electronic mail within one business week of the proposed action. Under emergency situations, when the required action will be performed in response to a threat to life or property, the Applicants will inform the SWO THPO within 24 hours of the required action. The Applicants will retain cultural site locational information in their System Operations files and rely on GIS plan and profile mapped locational information for systematic avoidance areas. Plan and profile maps will display the areas of potential concern for those locations within the APE that warrant tribal notification to the SWO THPO when an operations or maintenance action is needed.

V. DURATION

This MOU will expire if Stipulations I through III are not carried out within 5 years from the date of its execution. Prior to its expiration the Applicants may either (a) renew this MOU with the concurrence of the SHPO and SWO, or (b) execute a revised MOU.

VI. DISPUTE RESOLUTION

- A. Should any party to this MOU object at any time to any actions proposed or the manner in which the terms of this MOU are implemented, the Applicants shall consult with the parties to this MOU to resolve the objection. If the objection cannot be resolved, the Applicants will defer to the guidance provided by SHPO for its resolution.
- B. Should any member of the public object at any time to any actions proposed or the manner in which the terms of this MOU are implemented, the Applicants will consult with such party to resolve the objection.



VII. AMENDMENTS

This MOU 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 signed by all of the signatories is filed with SHPO.

VIII. TERMINATION

If any signatory to this MOU determines that its terms will not or cannot be carried out, that party shall consult with the other parties to attempt to develop an amendment per Stipulation VII, above. If within 30 days, agreement on an amendment cannot be reached, any signatory may terminate the MOU upon written notification to the other signatories.

IX. AUTHORIZED REPRESENTATIVES OF SIGNATORIES

Each of the signatories and invited signatories to the parties hereto represent and warrant that they each have received the requisite authority to enter into the MOU on behalf of the party for whom they have each signed.

X. COUNTERPARTS

This MOU may be executed separately by the parties as counterparts. All such counterparts will be deemed to be originals, and upon completion of signatures will be combined together to constitute one and the same instrument. The Applicants will ensure that upon receipt of counterparts from the signatories, a copy of the fully signed MOU is provided to the SHPO and SWO THPO.

EXECUTION of this MOU by the Applicants, SWO, and SHPO, and implementation of its terms evidences that the Applicants have taken into account the effects of this undertaking on historic properties situated on lands that are not subject to review by a federal agency under Section 106 of the NHPA.



SIGNATORIES:

South Dakota State Historic Preservation Officer

By: _____ Date _____

Title: _____



SIGNATORIES:

South Dakota State Historic Preservation Officer

By: Jay D. Vogt Date 04-09-2016
Title: SD SHPO

Otter Tail Power Company

By: CRG/SL Date 3/28/16

Title: Project Manager



Montana-Dakota Utilities Co.

By: Jay S. [Signature] Date 3/28/2016

Title: V. P. ELECTRIC SUPPLY



Sisseton Wahpeton Oyate

By: *Dave Hertz* Date 4-29-16

Title: *Chairman*



Sisseton Wahpeton Oyate

By: Dianne Johnson Date 4-29-16

Title: Tribal Historic Preservation Officer

BIBLIOGRAPHY

- 2016, Level III Intensive Archaeological and Traditional Cultural Property Resources Inventory for the Big Stone South to Ellendale 345 kV Transmission Line Project Brown, Day and Grant Counties, South Dakota. HDR, Sisseton-Wahpeton-Oyate THPO, and Good Schliesman & Associates, March 2016.
- 2015a, Class III Intensive Archaeological and Traditional Cultural Property Resources Inventory for the Big Stone South to Ellendale 345 kV Transmission Line Project, Dickey County, North Dakota to the South Dakota Border, HDR and Sisseton-Wahpeton-Oyate Tribal Historic Preservation Officer. HDR and Sisseton-Wahpeton-Oyate THPO, June 2015.
- 2015b, Class III Intensive Cultural Resources Inventory: Historic Structures Inventory and Evaluation for the Big Stone South to Ellendale 345 kV Transmission Line Project, Dickey County, North Dakota to South Dakota Border Segment. HDR April 2015
- 2015c, Big Stone South to Ellendale 345 kV Transmission Line Project Intensive Historic Building Inventory and Evaluation North Dakota/South Dakota Border to the Big Stone South Substation Segment. HDR, July 2015.



Attachment C

Historic Property Monitoring and Discovery Plan

Big Stone South to Ellendale 345kV Transmission Line

Prepared for:

Otter Tail Power Company and Montana-Dakota Utilities Co.

Prepared by:

HDR Engineering, Inc.

1. INTRODUCTION

Otter Tail Power Company and Montana-Dakota Utilities Co (jointly, the Applicants) propose to construct the Big Stone South to Ellendale 345kV Transmission Line Project (Project). The Project is a single circuit, 345 kV transmission line that extends 160-170 miles between Ellendale, North Dakota and Big Stone City, South Dakota. It includes a 150-foot-wide transmission line right-of-way within a 500-foot-wide Cultural Resources Survey Corridor (Survey Corridor) that extends through an area of the Glaciated Plains region of southeastern North Dakota and northeastern South Dakota.

The Survey Corridor crosses U.S. Fish and Wildlife Service (USFWS) easements and U.S. Army Corps of Engineers (USACE) Section 404 permit areas that are subject to review under Section 106 of the National Historic Preservation Act. The remainder of the Survey Corridor is not subject to federal agency jurisdiction, but is considered within the Final Decision and Order and Amended Settlement Stipulation (Order) issued by the Public Utilities Commission of the State of South Dakota (PUC) and within the Certificate of Corridor Compatibility and Route Permit issued by the Public Service Commission (PSC) of North Dakota. The PUC and PSC Orders/Permits require consideration of the Project's impacts on historic properties in consultation with the South Dakota State Historic Preservation Officer (SDSHPO) and North Dakota Historic Preservation Officer (NDSHPO).

An intensive survey of selected segments of the Survey Corridor was conducted by HDR Engineering, Inc. and the Sisseton-Wahpeton-Oyate Tribal Historic Preservation Office (THPO) (HDR et al., 2016), which specified criteria for survey of high potential areas for encountering historic properties. The sample survey design identified about 50 miles of the transmission line route, or approximately 2,187 acres for intensive review, and resulted in the identification of 160 historic properties – all within the South Dakota portion of the Project. A total of 154 identified cultural resource sites are eligible for listing on the National Register of Historic Places (NRHP) as properties of traditional religious and cultural importance (TCPs). The remaining are Euro-American farm-related properties and railroad beds that are outside of the area of direct physical effects. The TCPs encountered in the Survey Corridor are eligible for the NRHP under criteria A and D, and represent places of traditional cultural sensitivity and importance.

Cultural remains may be encountered and inadvertently affected during the course of construction. Discovery situations occur when previously recorded historic properties are affected in an unanticipated manner, or when previously unrecorded properties are encountered within construction zones. This Monitoring and Discovery Plan provides guidance for addressing discovery situations during pre-construction and construction of the transmission line. The procedures provided here are intended to streamline the discovery review process for cultural resource properties that may be encountered.

2. MONITORING STRATEGY

Construction-related activities are those ground disturbing activities conducted as part of the Project (either during pre-construction and/or construction) and have the potential to affect historic properties. Of the 154 TCPs, the Applicants in consultation with the Sisseton-Wahpeton-Oyate (SWO) designated 43 TCPs that warrant monitoring during construction to ensure that avoidance measures are implemented and inadvertent damage does not occur. All construction activities are subject to the discovery procedures outlined in Section 3 of this Monitoring and Discovery Plan. The discovery procedures specify steps to be followed for addressing situations when previously unrecorded properties are affected or previously recorded historic properties are affected in an unanticipated manner.

The purpose of monitoring is to prevent inadvertent damage to identified properties. Table 1 identifies the historic properties where Project activities are to be monitored and the actions to be taken to minimize the potential for damage. Project activities subject to monitoring may include, but are not limited to traffic access, ground preparation, sediment and erosion control Best Management Practices (BMPs), structure construction, staging and storage, and use of heavy equipment for stringing cables.

As noted in the South Dakota Level III cultural resources survey report, Project avoids damage to sites:

During the Level III Inventory, on-site collaboration was conducted among OTP, SWO THPO, and HDR to place Project facilities, access routes, and work areas to avoid physical damage to archaeological features, stone features, and TCP sites. As a consequence, Project plans avoid physical damage to all properties identified within the ROW APE. (HDR et.al. 2016, pg. 282)

Monitoring construction activities at the selected locations (Table 1) will be conducted to ensure that the avoidance measures established during the field reviews are met. Monitoring will be carried out by tribal monitors to the extent that the Applicants and the SWO agree on the terms and circumstances for tribal participation. If the Applicants and SWO are unable to agree on the terms of tribal participation, monitoring will be carried out by archaeologists who meet the Secretary of Interior's professional qualification standards. Monitoring may be performed during two separate phases:

1. Monitoring during preconstruction to ensure the owners have taken adequate preventative measures, such as enclosure fencing, protective matting for movement of equipment through sensitive areas when needed, or other methods, to keep construction traffic and personnel off sensitive site areas that may otherwise be damaged, and to channel access traffic to avoid important sites and features; and
2. Monitoring during construction at select locations where proximity of construction activities to traditional cultural properties warrants careful oversight to ensure avoidance measures are met.

Not later than one week prior to having any access to the Project locations, all monitors will be required to complete Project safety and environmental orientation training before they are

allowed in areas of active construction. Monitors must also be present at the start of the work day for the daily morning safety meetings (Job Hazard Analysis) when construction will occur at the selected locations (Table 1). The Job Hazard Analysis is an opportunity for the monitor to brief the Construction Supervisor. Failure to attend the Job Hazard Analysis will result in the monitors' denial of access to the Project construction corridor and construction zones for that day and will not prohibit construction from taking place at that location, provided that discovery procedures will be followed pursuant to Part 3 below.

The Applicants will ensure that at least 48 hours prior to the initiation of construction activities at monitoring locations in Table 1, the Construction Manager will notify the Tribal Monitor of the proposed schedule of activities and start times (time of the Job Hazard Analysis). The Tribal Monitor will coordinate with the Construction Manager on the proposed schedule, as necessary.

It is anticipated that the Tribal Monitor will follow the construction crew to the monitor location, using his/her own transportation. If the Tribal Monitor does not show up on-site construction will start and the work will be completed in a manner to avoid impact to the site, and documented by the Environmental Monitor. If the Tribal Monitor decides to leave the site, the Tribal Monitor will inform the Construction Manager and Environmental Inspector. The Construction Supervisor and/or Environmental Inspector will incorporate monitoring at the location along with all other expected daily activities.

Construction may proceed without a Tribal Monitor present if the Tribal Monitor determines that monitoring is not necessary based upon Project's preventative measures and previous data. If the Tribal Monitor determines that monitoring is not necessary they will provide written notification to the Construction Manager.

Upon arrival at the monitoring location, the Tribal Monitor will meet with the Environmental Inspector or On-Site Construction Supervisor to brief construction personnel about areas to be avoided and in concert with Environmental Inspector or On-Site Construction Supervisor complete any necessary avoidance measure augmentations. Any conflicts should be forwarded to the Construction Manager for resolution.

If physical damage to the historic property cannot be avoided by construction activities to the satisfaction of the Tribal Monitor they will notify the Construction Manager and the Construction Manager will stop work in the vicinity of the threatened historic property and will initiate the Discovery Procedures specified in Section 3 of this Plan. If avoidance is successful, the Tribal Monitor will complete a summary verification of the effectiveness of the avoidance effort.

The Tribal Monitor will complete a daily report form provided by the Applicants with notes and photographs of monitored locations. The daily report will document all observations and outcomes of monitored locations for inclusion in the Final Summary Report specified at Section 4 below. The reports will be communicated daily, as directed by the Applicants.

Table 1. Properties Where Construction Activities Will Be Monitored by Tribal Monitor

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NOTE: Table 1 has been redacted from this version because of material sensitivity and replaced with the table below

Table 1 (REDACTED VERSION)

STRUCTURE NUMBER
361
366
367
372
371
495
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629
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3. DISCOVERIES DURING CONSTRUCTION

The following discovery procedures specify the steps to be taken whenever monitors or construction personnel encounter or suspect the presence of cultural remains vulnerable to Project-related construction damage. A discovery occurs when previously unidentified cultural remains are encountered or a previously identified historic property is affected in an unanticipated manner. Discoveries may occur during any phase of Project construction. Discoveries occur when cultural remains such as bone, pottery, or flaked or ground stone artifacts, stone features, buried historic debris, foundations, and other similar types of artifacts are encountered or are suspected, and are vulnerable to or are damaged by construction-related activities. When such discoveries occur, Project personnel are obligated to cease all Project activities in the vicinity of the discovery, notify appropriate personnel of the event and circumstances, and await further instruction prior to proceeding with activities that may affect the discovered remains.

Prior to the initiation of Project construction, the Applicants will notify and brief all construction personnel of the necessity to report all discoveries, or suspected discoveries, of archaeological, historic, or human remains encountered during Project construction.

- A. **DISCOVERIES ABSENT HUMAN REMAINS:** A discovery that does not include human remains occurs when a previously recorded historic property has been affected in an unanticipated manner, or when a previously unidentified property is encountered that has been or may be affected. The Applicants, and all construction personnel will adhere to the following procedures (also outlined on Figure 1):
- a. All activities that may disturb the discovery will cease within 100 feet or greater as necessary to avoid further damage to the resource.
 - b. The contractor will immediately notify the Applicant's representatives (Table 2) and Cultural Resource Specialist (an archaeologist who meets the Secretary of Interior's Qualification Standards) of the discovery by phone, email or text message. The Cultural Resource Specialist will advise the construction personnel on how to protect the discovery from further harm or damage.
 - c. Within 48 hours of notification of a possible discovery situation, the Cultural Resource Specialist, will investigate the discovery and validate whether it is a discovered cultural resource.
 - d. If the Cultural Resource Specialist determines the discovery is not a cultural resource, the Cultural Resource Specialist will document his/her findings in a brief memorandum to the federal agency with jurisdiction, if any, Applicants, SHPO, Sisseton-Wahpeton-Oyate THPO and other parties as applicable and recommend to the Applicants' representative (i.e. Construction Manager) that construction resume. The Applicants' representative (i.e. Construction Manager) and/or responsible agency may authorize resumption

of construction upon the Cultural Resource Specialist's verbal description and recommendation to proceed, and prior to receipt of the Cultural Resource Specialist's memorandum.

- e. If the Cultural Resource Specialist determines the discovery is valid, the Cultural Resource Specialist will notify the Applicants, SHPO, THPO, and any federal agency with jurisdiction (the consulting parties) by phone, or electronically, followed with written notice, of preliminary findings and proposed next steps.
- f. The federal agency with jurisdiction in consultation with SHPO, or SHPO where no federal agency has jurisdiction, may assume the NRHP eligibility of the discovery and specify appropriate treatment, either through avoidance, additional study, or other measure.
 - i. An on-site meeting may be requested by the consulting parties to assess the discovery and reach consensus on appropriate avoidance or treatment. This meeting shall occur within 96 hours after the Cultural Resource Specialist's notification.
- g. The Cultural Resource Specialist will prepare an avoidance or treatment plan addressing the cultural values of the discovery and provide it by electronic mail to the consulting parties for review and comment within 48 hours of discovery validation and/or the on-site meeting. Upon acceptance of the avoidance or treatment plan by the federal agency with jurisdiction or SHPO where no federal agency has jurisdiction, the Applicants shall ensure its terms are implemented.
- h. The Applicants may resume construction activities when any required fieldwork has been completed and the Cultural Resource Specialist notifies by electronic mail applicable parties of its completion.
- i. A report following SHPO reporting standards detailing the results of treatment of the discovery shall be prepared by the Cultural Resource Specialist. The Cultural Resource Specialist shall submit electronic and paper copies of the report to each of the consulting parties within one month of completion of any fieldwork and shall complete any other requirements pertaining to the discovery, including disposition of artifact remains and materials in an appropriate repository. Any requirements pertaining to the discovery that have not been completed when the report is submitted to the consulting parties shall be reported to the consulting parties upon completion as an addendum to the original report

- B. DISCOVERIES INCLUDING HUMAN REMAINS:** In the event that human remains are discovered, or suspected, the Applicants and all construction personnel will adhere to the following procedures as required by North Dakota Century Code §

23-06-27 “Protection of Unmarked Human Burials” and administrative rules North Dakota Administrative Code Chapter 40-02-03, “Protection of Prehistoric and Historic Human Burial Sites, Human Remains, and Burial Goods” for such discoveries in North Dakota, or by South Dakota Codified Laws, Title 34, Chapter 27, “Cemeteries and Burial Records,” for such discoveries in South Dakota. The steps are outlined on Figure 2.

- a. All activities that may disturb the discovery shall cease within a minimum of 100 feet of the find or to a greater distance as appropriate, and the discovery location will be secured from further disturbance or vandalism with temporary fencing and signage as appropriate.
- b. The contractor or Applicants’ on-site designee shall contact local law enforcement with jurisdiction of the area (Table 3) and the State Historical Society of North Dakota or the State Archaeologist of South Dakota, as appropriate. Law enforcement will determine whether the finding is associated with a crime scene.
- c. The contractor will immediately notify the Applicants’ representatives and Cultural Resource Specialist of the discovery (Table 2). The Cultural Resource Specialist will help the construction personnel and Applicants protect the discovery from further harm or damage by directing traffic and personnel away from the discovery and erecting temporary fencing and signage as appropriate.
- d. If local law enforcement determines the discovery to be a crime scene they will complete their procedures to document the site and manage the location.
- e. If local law enforcement determines the discovery to not be a crime scene they will relinquish responsibility to the State Historical Society of North Dakota or the South Dakota State Archaeologist, as appropriate. The Cultural Resource Specialist will work with the state representative to help complete appropriate steps. The Cultural Resource Specialist will coordinate with the Applicants, federal and state agencies with jurisdiction, and THPO, as appropriate.
- f. Upon fulfillment of any field work required and with the written approval to proceed by the appropriate state official, the Applicants may allow construction to resume, in accordance with any agreed upon remaining requirements. Written approval may be transmitted electronically.

Table 2 - Discovery Contact Information

Entity	Name	Role	Telephone Number
Cultural Resource Specialist (CRS)	Stephen Sabatke	Cultural Resource Specialist	(763) 354-9313
Otter Tail Power Company	Al Koeckeritz	Project Manager	(218) 739-8416
Montana-Dakota Utilities Co.	Dan Albrecht	Project Manager	(701) 222-7680

Table 3 - Agency Representative Contact Information

Entity	Name	Role	Telephone Number
Tribal Historic Preservation Officer (THPO)	Dianne Desrosiers	THPO	(605)-698-3584
North Dakota State Historic Preservation Officer (SHPO)	Paul Picha	Chief Archaeologist	(701)-328-2666
South Dakota State Historic Preservation Office	Paige Olson	Review and Compliance Coordinator	(605)-773-6004
South Dakota State Archaeologist	Jim Haug	State Archaeologist	(605) 394-1936
USFWS Cultural Representative	Karri Springer and/or Meg Van Ness	Dakotas Zone Archaeologist Regional Historic Preservation Officer	(701)-355-8577 (303)-236-8103
USACE Cultural Representative	ND - Patsy Crooke SD – Cathy Juhas	Project Manager	(701)-255-0015 (605)-224-8531
LOCAL LAW ENFORCEMENT OFFICIALS	Brown,	Sheriff	(605)-626-7100
LOCAL LAW ENFORCEMENT OFFICIALS	Day	Sheriff	(605)-345-3222
LOCAL LAW	Grant	Sheriff	(605)-432-5853

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Historic Property Monitoring and Discovery Plan

ENFORCEMENT OFFICIALS			
LOCAL LAW ENFORCEMENT OFFICIALS	Dickey	Sheriff	(701)-349-3215

4. FINAL SUMMARY REPORT

Upon completion of monitoring and any treatments that may have been conducted under discovery procedures, the Applicants or their representative will ensure that a Final Summary Report is prepared and submitted to the consulting parties for their information. The Final Summary Report will be a summary of the daily report forms. The Final Summary Report will include a table that outlines the locations where monitoring was conducted, monitoring personnel involved at each location, a description of any discovery situations that occurred and their outcomes. The Final Summary Report will also include a description of the actions taken to treat or assure avoidance of damage to historic properties under the discovery procedures, and a repository certification of proper storage of materials and records. This report will be provided to the consulting parties within three months of completion of Project construction.

5. Bibliography

2016, HDR, Inc., Sisseton-Wahpeton-Oyate Tribal Historic Preservation Office and Good Schliesman & Associates. Level III Intensive Archaeological and Traditional Cultural Property Resources Inventory for the Big Stone South to Ellendale 345 kV Transmission Line Project, Brown, Day and Grant Counties, South Dakota. Report prepared for Montana-Dakota Utilities Co. Bismarck, North Dakota and Otter Tail Power Company Fergus Falls, Minnesota.

Figure 1: Discovery Identification Procedures Absent Human Remains

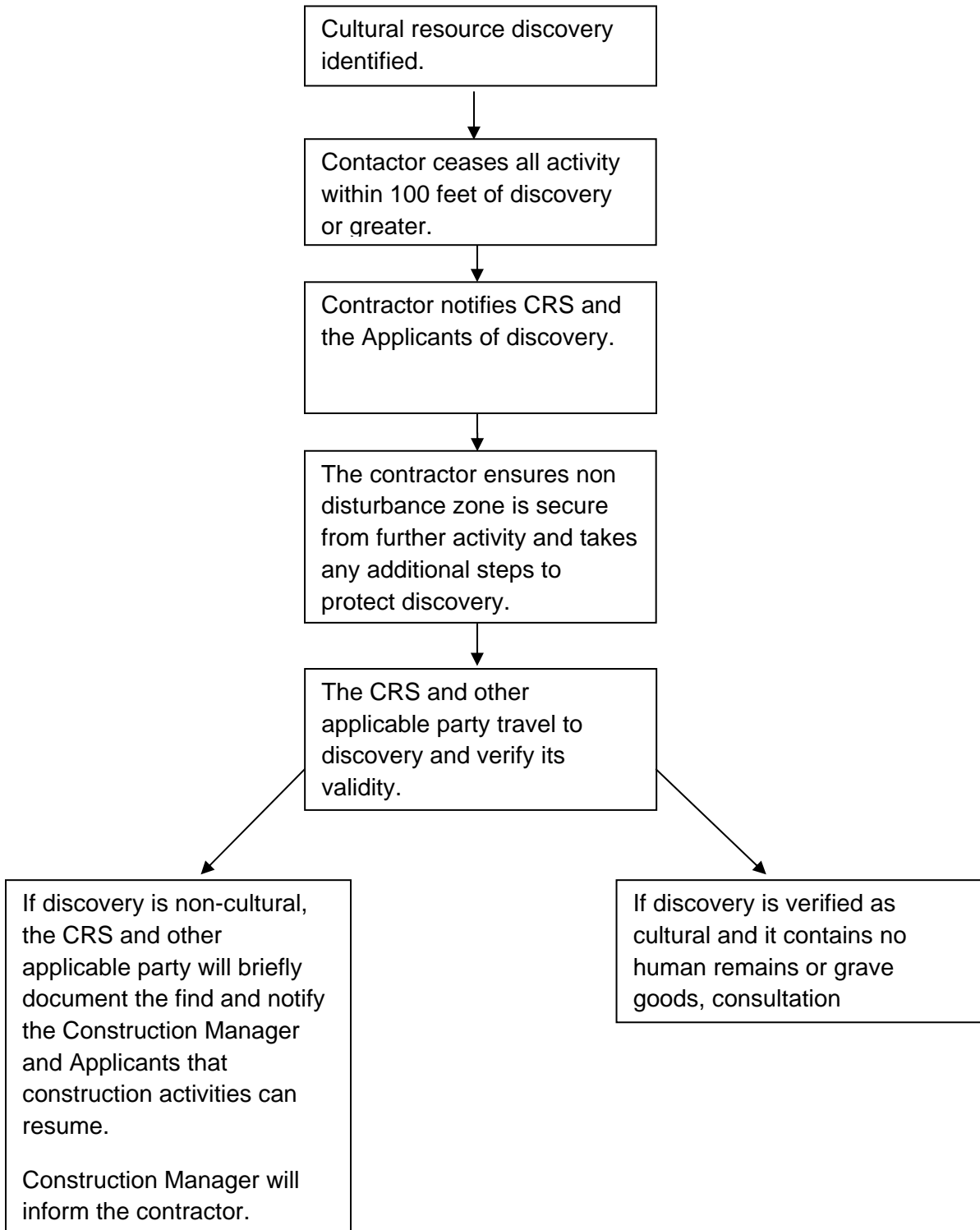


Figure 2: Discovery Identification Procedures That Include Human Remains

