

Harmony Solar Project
Appendix H
Unanticipated Discoveries Plan

UNANTICIPATED DISCOVERIES PLAN FOR CULTURAL RESOURCES

HARMONY SOLAR ND, LLC SOLAR PROJECT

CASS COUNTY, NORTH DAKOTA

PREPARED FOR:

HARMONY SOLAR ND, LLC

PREPARED BY:

AREA M CONSULTING

JULY, 2024

Revised by Merjent, Inc.



1. INTRODUCTION

This Unanticipated Discoveries (UAD) Plan establishes a protocol for use in the event that archaeological resources or human skeletal remains are inadvertently discovered during construction activities associated with the Harmony Solar Project (Project). Area M Consulting (Area M) has compiled these guidelines in accordance with applicable local, state, and federal precedents and interests; relevant contact information is provided below in the event that a significant UAD is made during Project construction activities.

2. UAD CONDITIONS

Construction activities associated with solar developments have the potential to uncover previously-unrecorded archaeological sites and human skeletal remains. While extensive environmental surveys, such as Class I and Class III cultural resources surveys, can minimize the potential of a UAD during construction, Harmony Solar ND, LLC (Harmony) is aware that project planning should account for these.

Harmony will have primary responsibility for determining whether a UAD is a significant archaeological site or human skeletal remain. If archaeological sites or human remains are identified during construction these will constitute an Environmentally Sensitive Area (ESA). All construction activities in the vicinity of an ESA shall cease, and a coordinated consultation will be initiated that will include Harmony, relevant permitting agencies, landowners, Native American Tribes, and other interested parties, as appropriate. A UAD that is neither a significant archaeological site nor a human skeletal remain would not require a work stoppage or initiation of the consultation process; however, documentation of the event must be made.

When possible archaeological materials or suspected human skeletal remains are identified during ground disturbing activities within the construction corridor, the construction worker (Worker) will immediately notify Harmony's lead onsite designated Environmental Officer (EO) of the discovery.

1. Immediately following notification of the discovery, the lead EO shall:

- (a) Delineate and mark a 25-foot buffer around the edge of the UAD (using flagging and/or fencing), advise the on-site construction manager to halt all ground-disturbing activities within the buffered area until otherwise notified by Harmony, and implement measures to protect the discovery from looting and vandalism, as necessary
- (b) Contact a qualified Professional Archaeologist (possible archaeological materials) and/ or Physical Anthropologist (suspected human skeletal remains) to conduct an assessment of the discovery. The Professional Archaeologist should meet the Secretary of the Interior's qualification standards outlined in 36 Code of Federal Regulations ("CFR") Part 61 in order to conduct the assessment. The Physical Anthropologist must be acknowledged as competent to positively identify human skeletal remains.

2. When contacted by the lead EO, the Professional Archaeologist shall gather additional information from the discovery area and assess the potential significance and condition and integrity of the discovery according to the guidelines established by the National Park Service (“NPS”) in Bulletin 15 and its amendments:
 - (a) The Professional Archaeologist will determine whether or not the discovery is an archaeological site or cultural resource over 45 years of age. If the discovery is an archaeological site or cultural resource greater than 45 years of age, the Professional Archaeologist will record as much information as possible to secure a Smithsonian Trinomial Number from the appropriate state agency. The lead EO would then notify Harmony to initiate the process for the *Discovery of Historic Properties* (outlined below).
 - (b) If the discovery is not an archaeological site or cultural resource greater than forty-five years of age, the Professional Archaeologist will document the discovery for the record and Harmony’s designated EO will advise the on-site construction manager that ground-disturbing activities may resume.
3. When contacted by the lead EO, the Physical Anthropologist shall investigate the site to positively identify any uncovered skeletal remains:
 - (a) If the remains are likely human then the lead EO will notify Harmony, initiating the process the *Discovery of Human Skeletal Remains* (outlined below).
 - (b) If the discovery does not represent human skeletal remains, the Physical Anthropologist will document the discovery and Harmony’s EO will advise the on-site construction manager to restart ground-disturbing activities.

3. DISCOVERY OF HISTORIC PROPERTIES

Upon the discovery of an archaeological site or cultural resource greater than 45 years of age, the Professional Archaeologist will advise Harmony of the proper agency notification procedure and recommend a plan of action for the discovery area.

- (a) If the discovery area is under the jurisdiction of a federal permit and/or approval, or otherwise subject to federally-mandated conditions, Harmony will advise the Responsible Federal Agency (RFA) of the resource and provide information regarding its significance and condition and integrity (see *Federal Agency Jurisdiction* below).
- (b) If the discovery is on state land, Harmony will first advise the land-managing agency of the resource and provide information regarding its significance, condition and integrity and, if directed by the land-managing agency, advise the appropriate State Archaeologist (see *State Lands* below).

- (c) If the discovery is on private land, its disposition will still be subject to the authority of the appropriate State routing agency, unless explicitly documented as otherwise. Harmony will advise the State routing agency of the resource and provide information regarding its significance, condition and integrity (see *Public Lands Subject to State Routing Authority* below).

3.1 Federal Agency Jurisdiction

- (a) Harmony will notify the RFA, straight-away, of any cultural resource identified as a significant UAD and provide information regarding its significance, context, description, condition, and integrity.
- (b) Within 24 hours of notification, the RFA shall provide notice of the discovery to other parties who may wish to participate in consultation, including but not limited to the North Dakota State Historic Preservation Office (“SHPO”), Native American tribal officials (as applicable), and private landowner(s).
- (c) The RFA shall have 5 calendar days following notification to determine the discovery’s eligibility for listing on the National Register of Historic Places (“NRHP”) in consultation with the appropriate SHPO and other consulting parties. The RFA may extend the review period by an additional 7 calendar days by providing written notice to consulting parties prior to the expiration of the 5-day calendar period.
- (d) For properties determined eligible for listing on the NRHP pursuant to (c) above, Harmony shall notify the RFA and other consulting parties of Harmony’s proposed treatment measures to resolve adverse effects to the discovered resource. The consulting parties shall comment on the proposed treatment measures within 48 hours. The RFA shall ensure that the recommendations of the consulting parties are considered prior to granting approval of Harmony-proposed treatment measures. Once approval has been granted by the RFA, Harmony Environment shall carry out the approved treatment measures and, after doing so, Harmony may resume construction.
- (e) In the event of any disagreements between the consulting parties regarding the NRHP eligibility of the newly-discovered properties or the treatment measures proposed to mitigate adverse effects to the property, the RFA shall seek and consider the recommendations of the Advisory Council on Historic Preservation (ACHP). Within 48 hours of receipt of a request, ACHP shall provide the RFA with recommendations on how to resolve the dispute. Tribal organizations and other interested parties shall be consulted and advised as appropriate.
- (f) If, after consultation, the RFA determines that the discovery does not represent an NRHP-eligible resource, the RFA will direct Harmony to resume ground-disturbing activities at the discovery location at its discretion.

3.2 State Lands

- (a) Harmony will notify the land-managing agency of the resource and provide information regarding its significance and integrity. If directed by the land-managing agency to do so, Harmony will advise the North Dakota State Archaeologist.
- (b) The land-managing agency will have 5 calendar days following notification to consult with the appropriate state archaeologist and other consulting parties, as necessary, about the assessment of the discovery. NPS criteria of eligibility for listing on the NRHP may be considered as a guideline to determine the significance of the find and SHPO may be consulted during the assessment, but the state agency is not obliged to apply NPS standards in making its decision. The land-managing agency may assume the resource is eligible for listing on the NRHP while consultation occurs and may require avoidance, impact minimization, or mitigation.
- (c) For properties determined eligible for listing on the NRHP, Harmony shall notify the land-managing agency and other consulting parties of the treatment measures it proposes for resolving adverse effects to the resource. The consulting parties shall provide their views on the proposed treatment measures to Harmony, the land-managing agency and other consulting parties within 48 hours. The land-managing agency shall ensure that the recommendations of the consulting parties are considered prior to granting approval of Harmony's proposed treatment measures. Once approval has been granted by the land-managing agency, Harmony shall carry out the approved treatment measures and, after doing so, Harmony may resume construction.
- (d) If, after consultation, the land-managing agency determines that the discovery does not represent an NRHP-eligible or otherwise important resource, the land-managing agency will direct Harmony to resume ground-disturbing activities, at its discretion, at the discovery location.

3.3 PRIVATE LANDS SUBJECT TO STATE ROUTING AUTHORITY JURISDICTION

- (a) Harmony will notify the state routing authority of the resource and provide information regarding its significance and integrity.
- (b) Within 24 hours of notification, the state routing authority shall provide notice of the resource to other parties, including, but not limited to, the appropriate SHPO, the appropriate State Archaeologist, Native American tribal officials (as applicable), and private landowner(s).
- (c) The state routing authority will have 5 calendar days following notification to consult with the appropriate SHPO and other consulting parties, as necessary, about assessing the discovery. Criteria for eligibility for listing on the NRHP may be considered as a guideline to determine the significance of the find and SHPO may be consulted during the assessment, but the state routing authority is not obliged to apply the standards in making its decision.

The state routing authority may assume the resource is eligible for listing on the NRHP while consultation occurs and may require avoidance, impact minimization, or mitigation.

- (d) For properties eligible for listing on the NRHP, Harmony shall notify the state routing authority and other consulting parties of the treatment measures it proposes to resolve impacts to the resource. The consulting parties shall provide their views on the proposed treatment measures within 48 hours. The state routing authority shall ensure that the recommendations of the consulting parties are considered prior to granting approval of Harmony's proposed treatment measures. Once approval has been granted by the state routing authority, Harmony shall carry out the approved treatment measures and, after doing so, Harmony may resume construction.
- (e) If, after consultation, the state routing authority determines that the discovery does not represent an NRHP-eligible or otherwise important resource, the state routing authority will direct Harmony to resume ground-disturbing activities, at its discretion, at the discovery location.

4. DISCOVERY OF HUMAN SKELETAL REMAINS

1. When unmarked human burial or skeletal remains are encountered during construction activities, Harmony will comply with all applicable laws, specifically North Dakota's "Protection of human burial sites, human remains, and burial goods - Unlawful acts - Penalties - Exceptions" law (North Dakota Century Code ["NDCC"] §23-06-27) and its accompanying administrative rules (North Dakota Administrative Code ["NDAC"] §40-02-03);
2. In the event a human burial or skeletal remains are encountered during ground-disturbing construction activity, Harmony will notify the local law enforcement agency (Cass County Sheriff) and the State Historical Society of North Dakota as required by NDCC §23-06-27. Pursuant to NDAC §40-02-03-03, upon receiving notification of the discovery of human skeletal remains, a human burial, or burial goods, the local law enforcement agency shall, as soon as practicable, report the receipt of such notification to State Historical Society of North Dakota and the North Dakota State Department of Health and Consolidated Laboratories. These two state agencies shall commence the initial examination of the discovery within 24 hours of notification.
3. Harmony shall promptly notify the RFA, land-managing agency, or state routing authority of the find and consult regarding the appropriate measures to handle the discovery.

After permission to resume construction has been issued by the RFA, land-managing agency, or state routing authority, Harmony's EO will advise the on-site construction manager to restart ground-disturbing activities.

CONTACT LIST

TITLE	NAME	CONTACT INFORMATION
Designated Environmental Officer	TBD	TBD
Cass County Sherrif	Jesse Jahner	Cass County Law Enforcement Center 1612 23rd Ave. N. Fargo, ND 58102 (701) 241-5800
Deputy State Historic Preservation Officer & Division Director	Andrew Clark	State Historical Society of North Dakota 612 East Boulevard Ave. Bismarck, ND 58505 (701) 328-2666
ND State Geologist	Edward C. Murphy	North Dakota Industrial Commission, Department of Mineral Resources, North Dakota Geological Survey 1016 East Calgary Ave. Bismarck, ND 58503 (701) 328-8000