

**APPENDIX E**  
**UNANTICIPATED DISCOVERY PLAN**

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The purpose of this Unanticipated Discovery Plan (UDP) is to assist Liberty Midstream Solutions, LLC (LMS) with meeting the requirements of Section 106 as defined in the Advisory Council on Historic Preservation (Council) regulations "Protection of Historic Properties" (36 Code of Federal Regulation [CFR] Part 800), as well as the applicable North Dakota laws related to human remains. This UDP is specific to LMS construction projects located in North Dakota (Projects) and is to be implemented should cultural resources be found after construction has begun on a Project.

This UDP has been developed in reference to the regulations embodied in "Protection of Historic Properties" issued by the Council (revised August 2004, [www.achp.gov/regs-rev04.pdf](http://www.achp.gov/regs-rev04.pdf)).

Termed "unanticipated discovery" or "post-review discovery," the identification of new cultural resources during implementation of an undertaking typically occurs in the case of projects that involve excavation or ground-disturbing activities. The plan detailed here will be implemented by LMS if previously undiscovered archaeological resources and/or human remains are identified during soil disturbance (excavation, boring, and coring) or during pipeline construction. Development of this plan reflects provisions in 36 CFR 800.13, which state that when agency identification efforts in accordance with Section 800.4 indicate that cultural resources are likely to be discovered during an undertaking, then a plan for treatment of such properties should be developed.

Some projects will have clearances and/or permits with specific requirements and/or mitigation commitments to be followed in the event of an unanticipated discovery, for example on Tribal land. Applicable project-specific requirements must always be followed at a minimum; this plan serves as a supplement to any project-specific requirements.

The following steps will be implemented should an unanticipated discovery be made by an LMS employee, inspector, contractor, or subcontractor during an undertaking:

- 1) Construction activities within the immediate area of an unanticipated discovery will be halted ("immediate area" is a context-specific measure. However, approximately 30 to 50 feet (10-15 meters) feet should be adequate, although special attention should be given to the possible extension of a new find beyond this buffer zone), and the discovery protected from further disturbance.
- 2) LMS will notify their cultural resources consultant (consultants with offices in North Dakota are listed at the end of this plan) on the Project who will notify by telephone the North Dakota State Historic Preservation Office (SHPO) contact, Tribal Historic Preservation Office (THPO) contact and/or Bureau of Indian Affairs (BIA) contact as applicable, and, if necessary, the applicable law enforcement agency and coroner (the latter parties will be notified only in the case of a finding of human remains). These notifications will take place within 24 hours of an unanticipated discovery. In addition, interested Native American tribes will be contacted; these tribes will be identified by the SHPO, THPO, BIA and/or cultural resources consultant.
- 3) Specific SHPO/ THPO/ BIA instructions concerning an unanticipated discovery resulting from the notification as described above will be followed. At a minimum, sufficient archaeological work will be performed on the unanticipated discovery location to stabilize deposits, protect deposits from scavengers or looters, and to collect readily available samples (e.g., for radiocarbon dating) that may help pinpoint the age of deposits or the presence (in the case of burials) of data that may serve to identify lineal or cultural descendants.
- 4) LMS and their cultural resources consultant will consult with the SHPO/ THPO/ BIA to follow

through on the course of action. This may involve further archaeological study or consultation with Native American groups. Construction activities will remain halted until the agency with jurisdiction indicates to LMS that it may proceed in the area of a specific unanticipated discovery.

In the case of an unanticipated discovery of human remains, LMS will follow all relevant federal and/or state law:

**Federal Statutes and Guidelines:**

- Native American Graves Repatriation Act (NAGPRA) – Public Law 101-601; 25 U.S.C. 3001 et seq.
- Advisory Council on Historic Preservation (ACHP) Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.

**North Dakota Statutes and Regulations:**

- North Dakota Century Code §23-06-27: Protection of human burial sites, human remains, and burial goods.
- North Dakota Century Code §55-03-06: Protection of prehistoric sites and deposits: upon sale of land by state or municipality archeological or paleontological materials retained.
- North Dakota Century Code §55-03-07: Protection of prehistoric sites and deposits: violation; penalty.
- North Dakota Administrative Code §40-02-03: Protection of prehistoric and historic human burial sites, human remains, and burial goods

LMS recognizes the importance of providing careful and respectful treatment for human remains recovered as an unanticipated discovery or as part of an archaeological investigation. In the event of an unanticipated discovery of human remains, LMS will contact the applicable SHPO/ THPO/ BIA to identify and coordinate consultation with the appropriate Native American groups. Lastly, in coordination with the SHPO/ THPO/ BIA and other interested parties, a decision will be made for the treatment of the remains (e.g., reburial, preservation in place, scientific study, sacred rituals, or a combination thereof).

The following table provides the contact information for the LMS point of contact, the North Dakota SHPO, and potential cultural resources consultants with offices in North Dakota that can be contacted in the event of an unanticipated discovery during the construction of pipeline projects.

<b>LMS Logistics Contacts</b>	
<b>(Main Contact)</b>	
<p><b>Eric Bengtson – Liberty Midstream Solutions, LLC</b>            Manager, Project Environmental – Logistics            1200 17<sup>th</sup> Street, Suite 2200            Denver, CO 80202            303-749-5757            eric.bengtson@lmsllc.com</p>	
<b>North Dakota State Historic Preservation Office</b>	
<p><b>The State Historical Society of North Dakota</b>            612 East Boulevard Ave.            Bismarck, North Dakota 58505            701-328-2666            histsoc@nd.gov</p>	
<b>Cultural Resources Consultants in North Dakota</b>	
<p><b>Metcalf Archaeological Consultants, Inc.</b>            PO Box 2154            Bismarck, ND 58502            701-258-1215</p> <p><b>Golder Associates Inc.</b>            2000 Schafer St Suite H            Bismarck, ND 58501            701-258-5905</p> <p><b>AECOM</b>            1000 E. Calgary Ave            Bismarck, ND 58503            701-221-4140</p> <p><b>Carlson McCain, Inc.</b>            3831 Lockport St Suite C            Bismarck, ND 58503            701-255-1475</p>	<p><b>KLJ</b>            4585 Coleman Street            Bismarck, ND 58503-0431            701-355-8400</p> <p><b>Barr Engineering Company</b>            234 West Century Avenue            Bismarck, ND 58503            701-255-5460</p> <p><b>SWCA</b>            116 N. Fourth Street, Suite 200            Bismarck, ND 58501            701-258-6622</p>