

July 18, 2024

Via Hand Delivery & Electronic Mail

Mr. Steve Kahl
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: Oliver Wind IV, LLC
Oliver Wind IV 345-kV Transmission Line – Oliver & Mercer Counties
Siting Application
Case No. PU-23-318
Our File No. 035218-000083

Dear Mr. Kahl:

Enclosed for filing in the above-referenced matter, please find eight copies of Oliver Wind IV, LLC's Cultural Incursion Memorandum and NDSHPO Correspondence.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

/s/ Casey A. Furey

Casey A. Furey

Enc.
CAF/lh

cc: Victor Schock (via email)
Brian Johnson (via email)
Robert Frank (via email)
Erik Edison (via email)
Tracy Davis (via email)

Cultural Incursion Memorandum

To	Oliver Wind IV, LLC
Subject	Oliver Wind IV 345-kV Transmission Line Cultural Incursions Oliver County, North Dakota
From	Burns & McDonnell Engineering Company, Inc.
Date	July 18, 2024

On April 29, 2024, the North Dakota Public Service Commission approved Findings of Fact, Conclusions of Law and Order, and issued a Certificate of Site Compatibility in Case Number PU-22-318 to Oliver Wind IV, LLC (Oliver Wind IV) for the Oliver Wind IV 345-kilovolt Transmission Line (Project). Oliver Wind IV commenced construction on the Project in May 2024.

Prior to the start of planned construction activities for the Project, Oliver Wind IV’s consultants, Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell) and Swenson, Hagen & Company (Swenson-Hagen), delineated areas containing cultural resources that required avoidance using metal T-posts (fenceposts) connected with gold rope. Construction crews underwent a site orientation prior to the start of construction, at which time they were instructed not to enter these fenced-off areas.

During construction in late June and early July 2024, during on-site monitoring of construction on the Oliver Wind IV wind project, Oliver Wind IV’s cultural and environmental consultants identified three areas along the transmission line construction route where incursions occurred into areas with cultural resources that had been identified for avoidance during construction. Each of these three areas was identified for avoidance as a result of Oliver Wind IV’s Class III: Intensive Cultural Resource Inventories, which were conducted by its consultants in 2020, in coordination with Traditional Cultural Surveyors (TCS) from the Standing Rock Sioux Tribe (Standing Rock), the Rosebud Sioux Tribe, the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Turtle Mountain Band of Chippewa Indians, and the Spirit Lake Tribe (Spirit Lake).

Site Descriptions:

- Archaeological sites 32OL895 and 32OL896 – these sites were recorded during 2020 Class III archaeological field surveys as unassociated rock piles (URPs). Site 32OL895 consisted of two URPs, Features (F.)1 and F.2; Site 32OL896 consisted of three URPs, F.1 through F.3.
 - The 2020 surveys indicated that these sites likely do not represent precontact cairns or Native American archaeological resources because of their locations in former agricultural fields and proximity to fence lines, and the sites did not contain any precontact or historic period Native American or Euro-American artifacts; instead, these sites were preliminarily interpreted as historic field clearing piles with no associated cultural materials, which normally would not require avoidance.
 - However, because the sites were not subject to additional archaeological investigation to evaluate their National Register of Historic Places (NRHP) eligibility, and at the request of Tribes participating in the Class III archaeological field survey, Oliver Wind IV instead identified them as cultural resources that were to be avoided during construction as a precaution.

- Cultural Heritage Site CHFOL20 – this site was identified as a cairn by TCS from Standing Rock and Spirit Lake. CHFOL20 consisted of three small granite boulders set in dense grasses. The cairn appeared undisturbed and was recommended as eligible for the NRHP based on discussions with the participating TCS.

Site Incursions:

In June 2024, while monitoring construction activities at the wind project site, a Burns & McDonnell representative observed that protective fencing had been removed from the buffered area for sites 32OL895 and 32OL896 and these areas had been entered.

Separately, in early July 2024, an Oliver Wind IV inspector observed that unplanned construction was underway at a transmission line pole, in the vicinity of Cultural Heritage Site CHFOL20, and notified a Burns & McDonnell representative.

Site Assessments:

Once these incursion events were identified, Oliver Wind IV was notified and construction work in the vicinity of these sites was stopped immediately. A Burns & McDonnell North Dakota permitted Principal Investigator (PI) in archaeology visited the location to assess conditions. Oliver Wind IV also notified the North Dakota State Historic Preservation Office (NDSHPO) and participating Tribes of the incursions.

Site Condition Assessments:

Burns & McDonnell's assessment of the sites' conditions included using a submeter global positioning system (GPS) unit to re-identify the specific location of the sites' boundaries and, photographing the extent of impacts to the features, conducting systematic pedestrian surveys along transects within disturbed portions of the site boundary to inspect the ground surface for remnants of the sites or any other cultural material, and visual inspection and shovel testing (including screening) the backdirt from the ground disturbance within the site at 5-meter intervals for any artifacts. Burns & McDonnell's PI provided the following assessments of each site:

- 32OL895: Approximately 60 percent of the site, corresponding to the northern portion of the site boundary and its 25-ft buffer, remains intact. However, impacts were observed in the remaining approximately 40 percent of the site, consisting of ground disturbance resulting from blading from a bulldozer or belly scraper, corresponding to the southern portion of the site boundary and the 25-foot avoidance buffer. Surface material from the southern portion of the site and its corresponding 25-ft avoidance buffer was removed and placed nearby in a large back dirt pile. Based on the site's previous recording, the URP comprising F.1 appears to remain undisturbed, while the URP comprising F.2 was completely removed. No artifacts or features were observed in the exposed remaining topsoil at the location of F.2. The nearby back dirt pile was also visually inspected for artifacts but none were observed. Due to the size and depth of the back dirt pile, shovel tests were placed within the pile at approximately 5-meter intervals and soils were screened through ¼-inch mesh. No artifacts were observed utilizing this method.
- 32OL896: Approximately 3 percent of the site, corresponding to the western edge of the site boundary remains intact. However, impacts were observed in the remaining approximately 97 percent of the site, including the 25-ft avoidance buffer area, consisting of ground disturbance resulting from blading from a bulldozer or belly scraper within both the site boundary and the avoidance buffer. Surface material from the site and its 25-ft avoidance buffer was removed and placed nearby in a large back dirt pile. Based on the site's previous recording, the URPs comprising F.1 through F.3 were completely removed and the site area has been stripped down to subsoil. No artifacts or features were observed in the subsoil within the site boundary or on the remaining topsoil around the site boundary. As noted above for site 32OL895, the nearby back dirt pile was also visually inspected for artifacts, but none were observed. Due to the size and depth of the back

dirt pile, shovel test probes were placed within the pile at approximately 5-meter intervals and soils were screened through ¼-inch mesh. No artifacts were observed utilizing this method.

- CHFOL20: Impacts were observed within the entire area comprising the site, consisting of ground disturbance resulting from blading from a bulldozer or belly scraper. Based on the site's previous recording, the cairn has been completely removed, although some topsoil remains. No shovel test probes were completed within the remaining topsoil on site to assess the feature's subsurface integrity due to the culturally sensitive nature of the site. However, no artifacts or features were observed in the exposed remaining topsoil at the location of the cairn. Nearby soils were also visually inspected for artifacts, but none were observed.

Mitigation Measures:

Upon discovering these incursions, Oliver Wind IV immediately stopped construction in these areas and Oliver Wind IV's cultural consultants, Burns & McDonnell and Swenson-Hagen, inspected the areas, reinstalled protective fencing around the areas, and reminded construction contractors of the need to avoid all fenced areas. The NDSHPO and participating Tribes were notified of these incursions, and discussions with the NDSHPO and Tribes are ongoing.

To prevent further incursions into areas with cultural resources that have been recommended for avoidance, Burns & McDonnell recommended and Oliver Wind IV has agreed to implement significant additional mitigation measures as described in more detail below. These mitigative measures were discussed and adopted in consultation with NDSHPO. In July 17, 2024 correspondence attached hereto, NDSHPO states that all 14 of the below measures are appropriate corrective measures and increased vigilance actions to prevent additional incursions.

1. Oliver Wind IV will cease all further construction work in the vicinity of the impacted site locations until:
 - a. NDSHPO and participating Tribes have a chance to visit the site locations.
 - b. A member of NDSHPO staff will conduct the onsite inspection on behalf of NDSHPO.
2. Oliver Wind IV will not resume work in the vicinity of the impacted site locations until authorized by NDSHPO.
3. A Burns & McDonnell cultural resources professional will update the North Dakota Cultural Resource Survey forms for each impacted site.
4. A Burns & McDonnell cultural resources professional will confirm that all areas with cultural resources that require avoidance are clearly marked and visible on construction plans used by contractors in the field.
5. A Burns & McDonnell cultural resources professional will confirm that protective fencing for fenced areas will be changed from one strand of yellow rope hung on metal T-post fence posts to two strands of yellow rope, hung 1-foot apart, on metal T-post fence posts.
6. Oliver Wind IV will increase training of construction contractors regarding:
 - a. the requirement to remain within the construction corridor; and,
 - b. the requirement to avoid fenced areas that may be within the construction corridor.
7. A Burns & McDonnell cultural resources professional will:
 - a. be included in all plan-of-the day (POD) meetings and calls;
 - b. will receive and review daily construction updates; and,
 - c. will receive and review next day plans.
8. A Burns & McDonnell cultural resources professional, Project Environmental Inspector, and Project Construction Manager (or their designated representative) will conduct a weekly review of the upcoming locations of all pre-construction, construction, and post-construction (restoration) activities for the Project for the following three weeks.

9. A Burns & McDonnell cultural resources professional will conduct weekly inspections of fenced areas, including verification of fencing and reestablishing fencing as needed, to confirm the condition and placement of avoidance fencing within the Project.
10. The Project Construction Manager (or their designated representative) will coordinate weekly with the Burns & McDonnell cultural resources professional to confirm that all avoidance fencing is intact prior to beginning work in any new location.
11. Oliver Wind IV will arrange for full-time archaeological monitoring by a permitted (PI Level) archaeological monitor (Archaeological Monitor) on the transmission line regardless of construction activity.
12. The Archaeological Monitor will communicate weekly with NDSHPO by email to keep them updated on the status of construction work, monitoring activities, and any information relevant to cultural resources.
13. Oliver Wind IV will continue archaeological monitoring on the transmission line regardless of construction activity, until:
 - a. A Burns & McDonnell cultural resources professional deems that construction activities within the Project footprint have been adequately completed so that there are no further ground disturbance risks that could impact cultural sites;
 - b. A Burns & McDonnell cultural resources professional meets with NDSHPO to discuss why Oliver Wind IV should be cleared to proceed without an Archaeological Monitor present; and,
 - c. NDSHPO makes the final determination that archaeological monitoring is no longer needed for the Project.
14. A Burns & McDonnell cultural resources professional will submit a monitoring summary report (can be in memo format) to NDSHPO at the completion of the Project.



July 17, 2024

Melinda McCarthy
Burns and McDonnell Engineering Company
3255 Greensboro Drive
Suite 104
Bismarck, ND 58503

SHSND Ref.: 23-0203 Oliver Wind IV, PU-23-318

Dear Melinda,

We reviewed your Cultural Incursion Memorandum, dated July 16, 2024, regarding the sites 32OL825, 32OL826, and CHFOL20. We had previously determined the Oliver Wind IV project would have no adverse effect to significant sites if these sites, among others listed out in the documentation, were avoided. You first notified us of the incursions last week by telephone and then we met in person on July 11th in our office to talk through the incursions, potential corrective actions, and increased vigilance measures for prevention of additional incursions. We agree that all 14 measures listed in the memorandum are appropriate as stated. Regarding the site visit by NDSHPO staff (1.b), our State Archaeologist, Andrew Robinson, is currently planning to conduct site visits on July 22nd.

Please include the SHSND Reference number listed above in further correspondence for this specific project. If you have any questions please contact Lorna Meidinger, Lead Historic Preservation Specialist at (701) 328-2089 or lbmeidinger@nd.gov.

Sincerely,

for William D. Peterson, PhD
Director, State Historical Society of North Dakota

Cc: PSC

23-0203