

Appendix D
Draft Unanticipated Discoveries Plan



**Enbridge Pipelines (North Dakota) LLC
Sandpiper Environmental Services
Sandpiper Pipeline Project**

**DRAFT
UNANTICIPATED DISCOVERIES PLAN**

October 14, 2013



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1.0 INTRODUCTION

This Unanticipated Discoveries Plan (“UDP”) sets forth the guidelines to be used in the event archaeological resources or human skeletal remains are discovered during construction of the Sandpiper Pipeline Project. These measures were developed by Enbridge Pipelines (North Dakota) LLC (“Enbridge”) in accordance with applicable state and federal guidelines. Early and frequent communications are essential in meeting both the spirit and law of those guidelines; therefore, Appendix A shows the most current list of relevant contacts in the event of an unanticipated discovery during construction.

2.0 UNANTICIPATED DISCOVERY CONDITIONS

Pipeline construction excavations have potential to uncover previously unknown archaeological sites and human skeletal remains, as well as many other cultural and natural elements such as modern refuse and faunal remains. While extensive project environmental surveys, such as those conducted for Sandpiper, can effectively eliminate most discoveries during project construction, Enbridge is aware that project planning should anticipate even the remote possibility of a discovery.

Enbridge will have the primary responsibility of distinguishing discoveries of significant archaeological sites or human skeletal remains from those that are neither. The former would require ceasing project activities at the find location followed by a coordinated consultation effort among Enbridge, permitting agencies, landowners, and other interested parties. Identification of the latter (neither significant archaeological sites nor human skeletal remains) would not mean 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 project construction corridor, the construction contractor (“Contractor”) will immediately notify Enbridge’s lead onsite Environmental Inspector (“EI”) of the discovery.

1. Immediately following notification of the discovery, the lead EI shall:
 - (a) Establish and delineate a 25 foot buffer around the edge of the discovery (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 Enbridge Environment, and implement measures to protect the discovery from looting and vandalism, including a 24-hour watch, if necessary; and
 - (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 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 EI, 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 EI would then notify Enbridge Environment to initiate the process outlined in *3.0 Discovery of Historic Properties* 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 Enbridge’s lead EI will advise the on-site construction manager to restart ground-disturbing activities.
3. When contacted by the lead EI, the Physical Anthropologist shall investigate the site to make an assessment of the likely nature of the remains:
 - (a) If the remains are likely human then the lead EI would notify Enbridge Environment to initiate the process outlined in *4.0 Discovery of Human Skeletal Remains* below.
 - (b) If the discovery does not represent human skeletal remains, the Physical Anthropologist will document the discovery for the record and Enbridge’s lead EI will advise the on-site construction manager to restart ground-disturbing activities.

3.0 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 Enbridge Environment 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, Enbridge Environment will advise the Responsible Federal Agency (“RFA”) of the resource and provide information regarding its significance and condition and integrity (see *3.1 Federal Agency Jurisdiction* below).
- (b) If the discovery is on state land, Enbridge Environment will first advise the land-managing agency of the resource and provide information regarding its significance and condition and integrity and, if directed by the land-managing agency, advise the appropriate State Archaeologist (see *3.2 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. Enbridge Environment will advise the state routing agency of the resource and provide information regarding its significance and condition and integrity (see *3.3 Public Lands Subject to State Routing Authority* below).

3.1 FEDERAL AGENCY JURISDICTION

- (a) Enbridge Environment will notify the RFA of the resource and provide information regarding its significance and 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 appropriate 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, Enbridge Environment shall notify the RFA and other consulting parties of Enbridge’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 Enbridge-proposed treatment measures. Once approval has been granted by the RFA, Enbridge Environment shall carry out the approved treatment measures and, after doing so, Enbridge may resume construction.
- (e) In the event of any disagreements between the consulting parties regarding the NRHP eligibility of the newly discovered property or the treatment measures proposed to mitigate adverse effects to the property, the RFA shall seek and take into account 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.
- (f) If, after consultation, the RFA determines that the discovery does not represent an NRHP-eligible resource, the RFA will direct Enbridge Environment to resume ground-disturbing activities at the discovery location at its discretion.

3.2 STATE LANDS

- (a) Enbridge Environment 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, Enbridge Environment will advise the appropriate 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, Enbridge Environment 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 Enbridge Environment, 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 Enbridge's proposed treatment measures. Once approval has been granted by the land-managing agency, Enbridge Environment shall carry out the approved treatment measures and, after doing so, Enbridge 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 Enbridge Environment to resume ground-disturbing activities, at its discretion, at the discovery location.

3.3 PRIVATE LANDS SUBJECT TO STATE ROUTING AUTHORITY JURISDICTION

- (a) Enbridge Environment 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, Enbridge Environment 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 Enbridge's proposed treatment measures. Once approval has been granted by the state routing authority, Enbridge Environment shall carry out the approved treatment measures and, after doing so, Enbridge 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 Enbridge Environment to resume ground-disturbing activities, at its discretion, at the discovery location.

4.0 DISCOVERY OF HUMAN SKELETAL REMAINS

1. When unmarked human burial or skeletal remains are encountered during construction activities, Enbridge will comply with all applicable laws, specifically:
 - North Dakota’s “Protection of 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);
 - Minnesota’s “Private Cemeteries Act” (Minnesota Statute [“MS”] §307.08); and
 - Wisconsin Statute §157.70. In Wisconsin, in the case of accidental discoveries, state law does not distinguish between historic or prehistoric burials in the requirements for initial notifications or disinterment.
2. In the event a human burial or skeletal remains are encountered during ground-disturbing construction activity, Enbridge Environment will implement the following notification procedures:
 - (i.) North Dakota – notify the local law enforcement agency (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.
 - (ii.) Minnesota – notify the local law enforcement agency (county sheriff). As required by MS §307.08 Enbridge Environment will also notify the Office of the State Archaeologist of the find.
 - (iii.) Wisconsin – notify the local law enforcement agency (county sheriff) and SHPO as stipulated by Wisconsin Statute §157.70.
3. Enbridge Environment also 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, Enbridge’s lead EI will advise the on-site construction manager to restart ground-disturbing activities.

Appendix A
Contact Lists – North Dakota, Minnesota, and Wisconsin

Contact Lists		
North Dakota, Minnesota, and Wisconsin		
State/County	Contact	Address/Telephone
NORTH DAKOTA	TBD, Lead Environmental Inspector	Cellphone: TBD E-mail: TBD
	Merlan E. Paaverud, Jr., Director/SHPO	State Historical Society of North Dakota 612 East Boulevard Avenue Bismarck, ND 58505-0830 Telephone: (701) 328-2672 Fax: (701) 328-3710 E-mail: mpaaverud@nd.gov
	Edward C. Murphy, State Geologist	North Dakota Industrial Commission, Department of Mineral Resources, North Dakota Geological Survey 1016 East Calgary Ave. Bismarck, ND 58503 Telephone: (701) 328-8000
Williams County	Scott Busching, County Sheriff	223 East Broadway, Suite 301 Williston, ND 58801 Telephone: (701) 577-7700
Mountrail County	Kenneth Halvorson, County Sheriff	101 N Main St Stanley, ND 58784 Telephone: (701) 628-2975
Ward County	Steve Kukowski, County Sheriff	315 SE 3rd Street PO Box 907 Minot, ND 58702 Telephone: (701) 857-6500
McHenry County	Marvin Sola, County Sheriff	407 Main Street South, Room 303 Towner, ND 58788 Telephone: (701) 537-5633
Pierce County	Matt Lunde, County Sheriff	110 Industrial Park Road Rugby, ND 58368-0226 Telephone: (701) 776-5245
Towner County	Vaughn Klier, County Sheriff	315 2nd Street PO Box 366 Cando, ND 58324-0603 Telephone: (701) 968-4350
Ramsey County	Steve Nelson, County Sheriff	222 W Walnut Devils Lake, ND 58301-3596 Telephone: (701) 662-0708
Nelson County	Kelly Janke, County Sheriff	210 B Ave W Ste 102 Lakota, ND 58344-7410 Telephone: (701) 247-2475
Grand Forks County	Bob Rost, County Sheriff	122 South 5th Street Suite 210 PO Box 12608 Grand Forks, ND 58208-2608 Telephone: (701) 780-8280

Contact Lists North Dakota, Minnesota, and Wisconsin		
State/County	Contact	Address/Telephone
MINNESOTA	TBD, Lead Environmental Inspector	Cellphone: TBD E-mail: TBD
	TBD, SHPO	Minnesota State Historic Preservation Office Minnesota Historical Society 345 Kellogg Boulevard West St. Paul, MN 55102-1903 Telephone: TBD E-mail: TBD
	Scott Anfinson, Minnesota State Archaeologist	Office of the State Archaeologist Fort Snelling History Center 200 Tower Avenue St. Paul, MN 55111 Telephone: (612) 725-2411 E-mail: scott.anfinson@state.mn.us
	Jim L. Jones, Jr., Cultural Resource Director	Minnesota Indian Affairs Council 3801 Bemidji Avenue, Suite 5 Bemidji, MN 56601 Telephone: (218) 755-3825
	Harvey Thorleifson, Director	Minnesota Geological Survey 2642 University Ave. St. Paul, MN 55114-1057 Telephone: (612) 627-4780, ext. 224
Polk County	Barb Erdman, County Sheriff	600 Bruce Street P.O. Box 416 Crookston, MN 56716 Telephone: (218) 281-0431
Red Lake County	Mitch Bernstein, County Sheriff	124 Langevin Avenue, PO Box 367 Red Lake Falls, MN 56750 Telephone: (218) 253-2996
Clearwater County	Mike Erickson, County Sheriff	213 Main Avenue North Bagley, MN 56621 Telephone: (218) 694-6226
Hubbard County	Cory Aukes, County Sheriff	301 Court Ave. Park Rapids, MN 56470 Telephone: (218) 737-3331
Becker County	Kelly Shannon, County Sheriff	925 Lake Ave. Detroit Lakes, MN 56501 Telephone: (218) 847-2661
Wadena County	Mike Carr, County Sheriff	415 So Jefferson St Wadena, MN 56482 Telephone: (218) 631-7600
Cass County	Tom Burch, County Sheriff	303 Minnesota Avenue Walker, MN 56484 Telephone: (218) 547-1424, ext. 309
Crow Wing County	Todd Dahl, County Sheriff	304 Laurel St. Brainerd, MN 56401 Telephone: (218) 829-4749
Aitkin County	Scott Turner, County Sheriff	217 2nd St. NW, Room 185 Aitkin, MN 56431 Telephone: (218) 927-7435

Contact Lists		
North Dakota, Minnesota, and Wisconsin		
State/County	Contact	Address/Telephone
Carlton County	Kelly Lake, County Sheriff	317 Walnut Avenue Carlton, MN 55718 Telephone: (218) 384-3236

Contact Lists North Dakota, Minnesota, and Wisconsin		
State/County	Contact	Address/Telephone
WISCONSIN	TBD, Lead Environmental Inspector	Cellphone: TBD E-mail: TBD
	Sherman Banker, SHPO	Wisconsin Historical Society, Division of Historic Preservation 816 State Street Madison, WI 53706-1488 Telephone: (608) 264-6500
	James M. Robertson, State Geologist	Wisconsin Geological and Natural History Survey 3817 Mineral Point Road Madison, WI 53705-5100 Telephone: (608) 262-1705
Douglas County	Tom Dalbec, County Sheriff	1316 North 14th Street Superior, WI 54880 Telephone: (715) 395-1371