

Appendix K
Draft Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG
The U.S. Department of Agriculture, Rural Utilities Service,
The U.S. Army Corps of Engineers,
The U.S. Department of Agriculture, Forest Service,
The Leech Lake Tribal Historic Preservation Office,
AND
The Minnesota State Historic Preservation Office,
REGARDING
Bemidji to Grand Rapids 230-kV HVTL Transmission Project
in Beltrami, Hubbard, Cass and Itasca Counties, Minnesota**

WHEREAS, the Rural Utilities Service (RUS) is authorized to provide assistance in the development of infrastructure in rural America under its Electric Program in accordance with the rural Electrification Act of 1936 (7 U.S.C. §§ 901-950b); and

WHEREAS, under this program RUS receives applications for financial assistance to improve the transmission of electricity to rural areas; and

WHEREAS, Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (the Utilities) propose to construct approximately 68 to 116 miles of new 230kV transmission line between Bemidji and Grand Rapids, Minnesota, with associated aboveground facilities, such as transmission facilities and substations, and ancillary facilities, such as temporary work areas and contractor yards (the BGR Project); and

WHEREAS, Minnkota Power Cooperative, Inc. (Minnkota) has applied to RUS for financial assistance for its part of the construction of the Project; and

WHEREAS, RUS may fund the Project, thereby making it an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (USACE) is evaluating a permit application for the Project to place structures in, under, or over navigable waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and place dredged or fill material in waters of the U.S. pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344; see 33 C.F.R. Part 323), thereby making the Project an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the United States Forest Service (USFS) must approve the Project for consistency with the Chippewa National Forest (CNF) Land and Resource Management Plan, thereby making it an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, RUS, USACE, and USFS have agreed that RUS will be the lead federal agency for purposes of Section 106 of the NHPA in accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, RUS has determined that the area of potential effects (APE) for the undertaking encompasses the 1,000 foot route shown in Attachment A as well as BGR Project related access roads, substation and transmission facilities, environmental crossings, temporary work areas and contractor yards, and other appurtenant facilities, whether contiguous with the route or not; and

WHEREAS, the BGR Project will be constructed within a 125-foot right-of-way (ROW) that lies within the 1000-foot route; and

WHEREAS, RUS has determined that the APE for visual effects will extend for a maximum of one-quarter mile on either side of the center line of the 125-foot ROW; and

WHEREAS, RUS is phasing identification and evaluation of historic properties and application of the criteria of adverse effects in accordance with 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), respectively, because the BGR Project alternatives consisted of corridors covering a large land area; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to approval of the BGR Project; and

WHEREAS, RUS has determined that the undertaking may have an adverse effect on properties which are listed in or eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the Minnesota State Historic Preservation Officer (SHPO) and the Leech Lake Band of Ojibwe Tribal Historic Preservation Officer (THPO) pursuant to 36 CFR Part 800; and

WHEREAS, RUS invited the Assiniboine and Sioux Tribes of the Fort Peck Reservation; Bad River Band of Lake Superior Chippewa; the Bois Forte Band of the Minnesota Chippewa; the Flandreau Santee Sioux Tribe; the Fond du Lac Band of Lake Superior Chippewa; the Grand Portage Band of Lake Superior Chippewa; the Keeweenaw Bay Indian Community; the Lac Courte Oreilles Band of Lake Superior Chippewa; the Lac Vieux Desert Band of Lake Superior Chippewa; the Leech Lake Band of Ojibwe; the Lower Sioux Indian Community; the Mille Lacs Band of Ojibwe; the Prairie Island Indian Community the Red Cliff Band of Lake Superior Chippewa; the Red Lake Band of Lake Superior Indians; the Santee Sioux; the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; the Sokogan Chippewa; the Upper Sioux Community; and the White Earth Band of Ojibwe to participate in government-to-government consultation for the Project; and

[If the Preferred Alternative crosses the LLBO Reservation then the following three clauses will be included:

WHEREAS, RUS has consulted with the **Leech Lake Band of Ojibwe Tribal Historic Preservation Officer (LLBO THPO)** because the Project falls within the

exterior boundaries of the Leech Lake Band of Ojibwe (LLBO) Reservation, where the LLBO exercises its inherent governmental authority; and

WHEREAS, the **LLBO THPO** has authority under Section 101(d)(2) of NHPA for Section 106 review of archaeological sites within that part of the APE lying within the exterior boundaries of the tribe's reservation; and

WHEREAS, the **LLBO THPO** has participated in consultation and is a signatory to this PA; and]

WHEREAS, RUS has determined that the undertaking may have an adverse effect on historic properties and has consulted with the LLBO THPO and the Minnesota State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800; and

WHEREAS, RUS has consulted, and will continue to consult, with the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Bois Forte Band of the Minnesota Chippewa, the Lower Sioux Indian Community, the Mille Lacs Band of Ojibwe, the Santee Sioux of Nebraska, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, and the White Earth Band of Ojibwe and has invited these tribes to concur in this PA; and

WHEREAS, on **[Date]** RUS has notified the Advisory Council on Historic Preservation (ACHP), in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation; and

WHEREAS, on **[Date]** ACHP decided **[not]** to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the terms used in this PA are defined in 36 CFR § 800.16;

NOW, THEREFORE, RUS, USACE, USFS, **[LLBO, ACHP]** and Minnesota SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

RUS, USACE and USFS, as appropriate, shall ensure that the following stipulations are carried out.

I. CONDITIONS

- A. RUS shall ensure that the terms of this PA have been implemented prior to the start of construction of the BGR Project.
- B. **In accordance with 36 CFR § 800.2(c)(2)(i)(A), RUS must consult with the LLBO THPO, in lieu of the SHPO, when taking into account effects to historic properties on tribal lands, as defined in 36 CFR § 800.16(x). The SHPO may participate as a consulting party only under the circumstances identified pursuant to 36 CFR § 800.2(c)(1)(ii).**

II. PROFESSIONAL STANDARDS

- A. The archeological studies and work required under the terms of this PA shall be carried out by or under the direct supervision of a professional who, at a minimum, meets the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44716, September 29, 1983) in archeology **or architectural history, as appropriate**.
- B. Studies of traditional resources **have been and** shall be carried out by or under the direct supervision of a person approved by RUS in consultation with the LLBO THPO.

III. IDENTIFICATION AND TREATMENT

- A. Identification: In accordance with 36 CFR § 800.4(a) through (c), RUS, USFS, LLBO THPO, SHPO, **the Utilities**, and other consulting Indian tribes shall consult **to identify the appropriate level of effort** needed to identify historic properties, including those to which Indian tribes attach religious and cultural significance. The level of effort for the study shall meet the reasonable and good faith regulatory standard [36 CFR 800.6 § 800.4(b)] and be guided by the findings of the reports titled, "*Summary Report of a Records Review and Cultural Resources Sensitivity Model for Proposed Routes of a 230 kV Electrical Transmission Line from Bemidji to Grand Rapids in Beltrami, Cass, Hubbard and Itasca Counties, Minnesota*" (Olmanson & Wells, 2009) **and "A Traditional Cultural Property Survey of the Bemidji to Grand Rapids 230 kV Transmission Line Proposal in Cass and Itasca Counties of Minnesota, on the Leech Lake Reservation"** (Lemon, 2010).
 - 1. In determining the level of effort for identification studies, RUS shall be guided by:
 - a) The ACHP's guidance on conducting archaeology under Section 106 (January 1, 2009);
 - b) Applicable guidance prepared by the CNF, the LLBO THPO and the SHPO; and
 - c) The Secretary of the Interior's Standard and Guidelines for Archaeology and Historic Preservation (48 FR 44716-42, September 29, 1983).
 - 2. RUS shall seek agreement with the consulting parties on the scope of any proposed identification study. When RUS determines that the proposed identification study meets the reasonable and good faith regulatory standard, it shall advise **the Utilities** in writing to implement the approved study.
- B. Upon completion of field testing/data gathering, and analysis, **the Utilities** shall submit a draft report describing the findings of the identification study to RUS for review and approval.

1. The draft survey report shall include a map or maps showing the APE and ROW along with the location of identified archeological, traditional or architectural resources. The draft report also shall contain recommendations regarding the National Register of Historic Places (NRHP) eligibility of identified resources; identify those resources for which additional study might be needed; and make recommendations regarding treatment, including those measures that might avoid adverse effects.

2. If RUS finds the draft acceptable, it shall submit the identification report to the **USFS**, LLBO THPO, SHPO and other consulting Indian tribes for review. The consulting parties shall have thirty (30) days from receipt to provide written comments to RUS on the draft report. RUS shall ensure that written comments submitted in a timely manner are considered by **the Utilities** in preparation of the final identification report.

C. Avoidance: RUS, in consultation with the LLBO THPO, **the Utilities**, **SHPO**, **and consulting tribes** shall use the information contained in identification studies to identify measures that would avoid adverse effects to historic properties. Whenever deemed feasible by RUS, avoidance of adverse effects to historic properties shall be the preferred treatment. RUS will seek agreement with consulting parties on avoidance measures. **The Utilities** shall incorporate those avoidance measures deemed prudent and feasible by RUS into the BGR Project plans and specifications.

D. Evaluation: Wherever avoidance is not feasible, **the Utilities**, **in consultation with the LLBO THPO**, **consulting Tribes**, **USFS** and **SHPO**, shall evaluate identified cultural resources by applying the NRHP criteria. If the parties cannot agree, **the Utilities** will submit the matter to RUS or USFS, as appropriate, for resolution in accordance with 36 CFR § 800.4(c)(2). If the parties can agree, **the Utilities** shall submit the completed evaluation to RUS or USFS, as appropriate, for review and approval. The evaluation shall include a description of the cultural resource, an explanation of why the NRHP criteria are or are not met, and map or maps to show the geographic relationship between historic properties and the APE.

E. Criteria of Adverse Effect: If, on the basis of this evaluation, **RUS and USFS**, **as appropriate**, determine that historic properties are located in the APE, they shall consult with the LLBO THPO, SHPO and consulting Tribes to apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a).

F. Treatment: RUS shall consult in accordance with 36 CFR § 800.6(a) to identify appropriate measures that are in the public interest to avoid, minimize or mitigate adverse effects to historic properties.

1. When agreement between RUS and the consulting parties can be reached on how to resolve the adverse effect, Minnkota shall prepare a Treatment Plan describing the measures to be carried out, the manner in which they will be carried out, and a schedule for their implementation.

2. In resolving the adverse effect, RUS and the consulting parties shall not be limited to data recovery.
3. When mitigation consists of or includes data recovery, the Treatment Plan will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archeological methods to be used, and provisions for public interpretation and education subject to restrictions established by 36 CFR § 800.6(a)(5).
4. **The Utilities** shall submit the Treatment Plan to RUS and USFS, as appropriate, for review and approval. Prior to granting approval, RUS and USFS, as appropriate shall submit the Treatment Plan to the LLBO THPO, SHPO and other consulting Indian tribes for review. These parties shall have thirty (30) days from receipt to submit a written review. RUS and USFS, as appropriate, shall ensure that the approved Treatment Plan takes into account timely comments and recommendations submitted by the consulting parties.
5. RUS shall ensure that **the Utilities** implement the approved Treatment Plan prior to beginning any construction activities.
6. If the agencies and consulting parties cannot agree on measures to resolve adverse effects, the dispute shall be resolved in accordance with Stipulation IX.

IV. CURATION

- A. **The Utilities** shall return all artifacts and materials recovered through implementation of the terms of this PA to the respective landowner.
- B. Any artifacts, materials, or records removed from federal land that are not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) will be curated in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*"
- C. **Artifacts and materials retrieved from the LLBO Reservation lands will be curated in accordance with LLBO THPO standards and policy.**

V. CONSTRUCTION MONITORING

The Utilities will use [Number needed] individual(s) approved by the LLBO THPO to monitor all construction activities within the bounds of the LLBO Reservation. [Are there specific geographic areas of concern elsewhere?] [What standards must monitors meet?] Historic properties discovered or unanticipated effects identified shall be treated in accordance with Stipulation VII.

VI. CONFIDENTIALITY

RUS, USFS, and USACE will protect information about historic properties of religious and cultural significance to Indian tribes, including location information or information provided by Indian tribes to assist in the identification of such

properties, to the extent allowed by Section 304 of the National Historic Preservation Act [16 U. S. C. 470w3], 36 CFR § 800.11(c) and other applicable laws.

VII. POST- REVIEW UNANTICIPATED DISCOVERIES

- A. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during BGR Project construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify **the Utilities** of the discovery and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation VII.A, **the Utilities** shall inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify RUS, USFS, USACE, LLBO THPO, SHPO and other consulting Tribes.
- C. Upon receipt of notification, RUS **or USFS, as appropriate**, shall treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c).
- D. Treatment of Human Remains
 1. When the discovery contains human remains and is located on the CNF or the LLBO Reservation, USFS or RUS, respectively, shall comply with NAGPRA [25 U.S.C. 3001 et. seq.] and its implementing regulations (43 CFR Part 10). **The Utilities** will implement the procedures in Attachment B for inadvertent discoveries of NAGPRA human remains and cultural items on the CNF. **The Utilities** will implement the procedures in Attachment C for inadvertent discoveries of NAGPRA human remains and cultural items on the LLBO Reservation.
 2. If the construction contractor **for the Utilities** believes that a discovery contains human remains and the discovery is not located on federal or tribal lands, the **construction** contractor shall comply with Stipulation VII.A. Immediately upon receipt of such notification, **the Utilities** shall comply with the procedures required by Minnesota Statute 390.005.
 - a. **The Utilities** shall notify the county coroner. Under the terms of this PA, Minnkota also will notify RUS, USFS, USACE, LLBO **THPO**, SHPO and other consulting Tribes of the discovery.
 - b. If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicate antiquity of greater than fifty (50) years, the coroner shall notify the Minnesota **Office of the State Archaeologist (OSA)** and **the Minnesota Indian Affairs Council** in compliance with Section 307-08 of the Minnesota Private Cemeteries Act.

- c. Suspected human remains shall not be further disturbed or removed until disposition has been determined by the OSA and the Minnesota Indian Affairs Council consistent with the guidance titled *State Archaeologist's Procedures for Implementing Minnesota's Private Cemeteries Act*. (Anfinson, 2008).
 3. At all times human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects* (February 23, 2007).
- E. The Utilities shall ensure that the requirements of Stipulation VII are incorporated into all construction contracts.

VIII. REPORTING

- A. Quarterly [Or should a weekly summary be provided?] following the execution of this PA until construction is complete, the Utilities shall submit a written report to RUS, USACE, USFS, the LLBO THPO, the SHPO, and other consulting Tribes describing progress on implementation of the terms of this PA, the development of construction plans and specifications, construction completed during the period covered by the report, any mitigation measures that have been implemented, the schedule for completion of mitigation, the treatment of any post-review discoveries pursuant to Stipulation VII, any scheduling changes proposed, any problems encountered, and any disputes addressed pursuant to Stipulation IX. This report may be submitted electronically to the federal agencies and consulting parties.
- B. The Utilities shall invite the LLBO THPO to inspect construction whenever work occurs within 100 feet of a historic property in which the LLBO THPO has an identified interest.
- C. Upon written request, the Utilities shall grant the LLBO THPO and USFS access to the work site to observe construction.

IX. DISPUTE RESOLUTION

- A. Should any signatory or concurring party to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS, USACE and USFS, as appropriate within the limits of their authority, shall consult with such party to resolve the objection. If RUS, USACE or USFS, as appropriate, determines that the objection cannot be resolved, that agency will:
 1. Forward all documentation relevant to the dispute, including the resolution proposed by RUS, USACE or USFS, as appropriate, to the ACHP. The ACHP shall provide the RUS with its advice, pursuant to 36 CFR § 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on

the dispute, the RUS 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. The RUS will then proceed according to its final decision.

2. Notify RUS, USACE or USFS, as appropriate, that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by RUS, USACE or USFS, as appropriate, in accordance with 36 CFR § 800.7(c)(4).
 3. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, RUS, USACE or USFS, as appropriate, may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the RUS, USACE or USFS, as appropriate, shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- B. The responsibility of RUS, USACE or USFS, as appropriate, to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- C. If at any time during the implementation of the measures stipulated in this PA an objection should be raised by the public, RUS, USACE or USFS, as appropriate, will notify the signatories to this PA and consult with the objecting party to seek resolution. If RUS, USACE or USFS, as appropriate, determines that the objection cannot be resolved, that agency will seek the advice or comment of ACHP in accordance with Stipulation IX.A.

X. TERM OF AGREEMENT

- A. The term of this PA shall be five (5) years from the date of execution by the signatories unless the signatories agree to extend its term. If its stipulations have not been carried out, and prior to work continuing on the BGR Project, RUS, USACE or USFS, as appropriate, shall either (a) execute another agreement pursuant to 36 CFR § 800.6, or request, take into account and respond to the comments of the ACHP pursuant to 36 CFR § 800.7.
- B. Six (6) months prior to the date on which the PA will expire, Minnkota shall notify the other signatories of the impending expiration. RUS, USACE or USFS, as appropriate, may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XI. RUS, USACE or USFS, as appropriate, shall notify the signatories as to the course to be pursued.

XI. AMENDMENT

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories and filed with ACHP.

XII. TERMINATION

- A. If any signatory to this PA 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 XI. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on the BGR Project, RUS, USACE or USFS, as appropriate, must either (a) execute an agreement pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of ACHP under 36 CFR § 800.7. RUS shall notify the signatories as to the course of action it will pursue.

EXECUTION of this PA by RUS, USACE, USFS, [LLBO, ACHP] and the Minnesota SHPO, and implementation of its terms evidence that RUS has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatories:

US DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE

By: _____ Date: _____

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

US DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By: _____ Date: _____

US ARMY CORPS OF ENGINEERS

By: _____ Date: _____

LEECH LAKE BAND OF OJIBWE TRIBAL HISTORIC PRESERVATION OFFICER (if tribal lands are involved)

By: _____ Date: _____
Gina Lemon
Tribal Historic Preservation Officer

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____

Invited Signatories:

MINNKOTA POWER COOPERATIVE, INC.

By: _____ Date: _____

OTTER TAIL POWER COMPANY

By: _____ Date: _____

MINNESOTA POWER

By: _____ Date: _____

Concurring parties:

ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

By: _____ Date: _____

THE BOIS FORTE BAND OF THE MINNESOTA CHIPPEWA

By: _____ Date: _____

LOWER SIOUX INDIAN COMMUNITY

By: _____ Date: _____

SANTEE SIOUX OF NEBRASKA

By: _____ Date: _____

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN

By: _____ Date: _____

THE MILLE LACS BAND OF OJIBWE,

By: _____ Date: _____

THE WHITE EARTH BAND OF OJIBWE

By: _____ Date: _____

ATTACHMENT A: Area of Potential Effect

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ATTACHMENT B:

**PLANS FOR THE UNANTICIPATED DISCOVERY OF
HUMAN REMAINS OR BURIALS ON
CHIPPEWA NATIONAL FOREST LANDS
DURING CONSTRUCTION OR MODIFICATION OF
BEMIDJI TO GRAND RAPIDS 230 kV TRANSMISSION FACILITIES**

- I. For construction or modification of Bemidji to Grand Rapids 230 kV Project transmission facilities on Chippewa National Forest lands:**
1. When an unmarked human burial or unregistered grave is encountered during construction activities, the USFS shall comply with the Native American Graves Protection and Repatriation Act (1990) and implementing regulations, as amended.
 2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor **for Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (the Utilities)** will immediately stop work within a one-hundred (100) foot radius from the point of discovery and provide immediate telephone notification followed by written confirmation (e.g. certified letter) to the Chippewa National Forest (CNF). The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
 3. Immediately following receipt of such notification, CNF will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and will assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
 4. The CNF will notify appropriate law enforcement, the **CNF** Project Manager, and the Tribal and/or State Historic Preservation Office (THPO and/or SHPO) as soon as possible but no later than three (3) working days after receipt of written confirmation of the discovery (43 CFR Part 10.4(d)). After law enforcement has concurred that the human burial is archaeological, CNF will initiate consultation with the appropriate Indian Tribe(s) or known lineal descendants concerning the disposition of the human remains and associated objects.
 5. **The Utilities** may resume construction activities in the area of the discovery thirty (30) days after certification by CNF of receipt of the written notification of discovery if the activity is otherwise lawful, and at any time that a written, binding agreement **developed in coordination with the LLBO THPO** and executed with the affiliated Indian Tribe(s) that adopts a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

ATTACHMENT C:

PLANS FOR THE UNANTICIPATED DISCOVERY OF HUMAN REMAINS OR BURIALS ON THE LEECH LAKE BAND OF OJIBWE RESERVATION DURING CONSTRUCTION OR MODIFICATION OF BEMIDJI TO GRAND RAPIDS 230 KV TRANSMISSION FACILITIES

- I. **For construction or modification of Bemidji to Grand Rapids 230 kV transmission facilities on Tribal lands:**
1. When an unmarked human burial or unregistered grave is encountered during construction activities, the requirements stipulated in the Native American Graves Protection and Repatriation Act (1990) shall apply.
 2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor **for Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (the Utilities)** will immediately stop work within a one-hundred (100) foot radius from the point of discovery and **provide immediate telephone notification followed by written confirmation (e.g. certified letter) to** the Leech Lake Band of Ojibwe (LLBO) Tribal Historic Preservation Officer (THPO), and all other consulting Tribes and parties. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
 3. Immediately following receipt of such notification, the THPO will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
 4. **LLBO THPO** will notify **LLBO Tribal law enforcement** within forty-eight (48) hours of the discovery. Immediately upon receipt of such notification, the **LLBO THPO** will notify **the Minnesota Indian Affairs Council and the Minnesota Office of the State Archeologist**, and other consulting Tribes and parties of the discovery.
 5. **The LLBO THPO** will determine the treatment, including mitigation, and disposition of the unmarked human burial or unregistered grave in accordance with the Minnesota Private Cemeteries Act. **The LLBO THPO** will implement all treatment and disposition measures deemed appropriate **with the approval of consulting Tribes**.
 6. **The Utilities** may resume construction activities in the area of the discovery upon receipt of written authorization from THPO.

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