

**ATLANTIC COAST PIPELINE, LLC
ATLANTIC COAST PIPELINE**

Construction, Operations, and Maintenance Plans

ATTACHMENT M

Monongahela National Forest Unanticipated Discovery Plan

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APPENDIX 4E

**UNANTICIPATED DISCOVERIES PLAN FOR CULTURAL RESOURCES AND
HUMAN REMAINS POLICY IN THE MONONGAHELA NATIONAL FOREST**

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For:

Atlantic Coast Pipeline Project

Docket No. CP15-554-000

APPENDIX 4E

UNANTICIPATED DISCOVERIES PLAN FOR CULTURAL RESOURCES AND HUMAN REMAINS POLICY IN THE MONONGAHELA NATIONAL FOREST

INTRODUCTION

In order to minimize the potential for accidental discovery of cultural resources, Atlantic Coast Pipeline, LLC (Atlantic) will complete or has completed a detailed archaeological survey of the Project's APE, which includes locations associated with the proposed undertaking where there will be alteration and disturbance of surface and subsurface soils that contain or have potential to contain archaeological sites, including proposed construction areas, access roads, staging areas, etc. That investigation will be conducted in accordance with: 16 U.S.C. 551; 36 CFR Part 251, Subpart B; 36 CFR Part 296; and, the National Historic Preservation Act (NHPA) of 1966.

This Unanticipated Discoveries Plan has been prepared for the Project in order for Atlantic to comply with the relevant state and federal regulations concerning the protection of cultural resources. The following procedures are designed to deal with unanticipated discovery of cultural resources encountered during construction. This plan was developed consistent with 36 CFR §800.13 (Post-Review Discovery clause), as well as the West Virginia Division of Culture and History (WVDCH) *Guidelines for Phase I, II, and III Archeological Investigations and Technical Reports* (Trader 2001); and West Virginia Code §29-1-8a.

Inspectors have the responsibility to monitor altered and disturbed areas for potential archaeological remains throughout construction. Archaeological remains consist of man-made objects or features greater than 50 years of age. These remains include, but are not limited to, items such as artifacts (e.g., stone flakes, stone tools, ceramics, glass, architectural material), fire pits, building foundations, and human remains.

If required by the Monongahela National Forest [MNF], in areas considered to have a high likelihood for significant archaeological remains (as defined in consultation with the MNF) an Archaeological Inspector (AI) will be present onsite during grading or trenching activities in those areas, and will monitor the areas for cultural and physical remains as grading or trenching occurs. The AI will meet the Secretary of the Interior professional qualifications standards for archaeology.

The Lead Environmental Inspector (LEI) and the AI will be responsible for advising the construction contractor's personnel on the procedures to follow in the event that an unanticipated discovery is made. A copy of this Unanticipated Discoveries Plan will be maintained by the Environmental Inspectors, the AI, and at the construction field office. Training will occur as part of the pre-construction on-site training program for foremen, company inspectors, and construction supervisors. The LEI will advise all operators of equipment involved in grading, stripping, or trenching activities to:

- ◆ Stop work immediately if they observe any indications of the presence of cultural materials or possibly human bone.
- ◆ Immediately contact the LEI (or the Construction Inspector [CI] if the LEI is not available).
- ◆ Treat human remains with dignity and respect.

CULTURAL RESOURCES

The following procedures are designed to deal with unanticipated discovery of potential cultural resources encountered during construction. Additional procedures for discovery of potential human remains are outlined under the next heading.

- The LEI or AI will immediately notify the Construction Supervisor who will immediately halt work in the vicinity of the potential find and notify Atlantic's Environmental Project Manager (PM).
- Reasonable effort must be made to protect and secure the discovery. At least a 100-foot buffer between the find and construction activity will be maintained to avoid further impact to the potential cultural resource.
- Atlantic's Environmental PM will immediately by telephone notify the MNF Forest Supervisor and the MNF Heritage Program Manager and within 24 hours will follow-up with a written (via email) notification of the nature of the find.
- If attempts to reach National Forest representatives are unsuccessful (e.g., during construction on weekends), construction in the area will immediately cease, and the area will be marked off with flagging with at least a 100-foot buffer between the find and the construction activity.
- It is the responsibility of the MNF Heritage Program Manager to conduct the preliminary assessment of the find, as well as within 48 hours consult, as necessary, with the Federal Energy Regulatory Commission (FERC), the WVDCH, MNF Tribal partners, and other consulting parties (e.g., FERC records indicate the Delaware Nation asked to be notified in the event of an unanticipated discovery of archaeological sites during construction).
- The MNF Heritage Program Manager will by telephone notify Atlantic's Environmental PM regarding the results of the preliminary assessment.
- If the site is determined to be potentially eligible for inclusion in the National Register of Historic Places (NRHP), additional work, such as a Determination of Eligibility, avoidance, or Data Recovery will be performed as required/approved by the MNF Heritage Program Manager. Further construction work at the site of the discovery will be temporarily suspended until applicable requirements of Section 106 of the NHPA and other related federal and state regulations have been successfully completed.

- Atlantic, in direct consultation with the MNF Heritage Program Manager, will keep construction activities at least 100 feet from the find by installing flagging and/or temporary fencing with signage indicating “Environmentally Sensitive Area” or similar statement as approved by the MNF.
- Atlantic, with consultation and authorization by the MNF Heritage Program Manager, will direct their cultural resources consultant to perform necessary fieldwork and reporting to assist the MNF Heritage Program Manager in determining the site’s eligibility for the NRHP.
- No archaeological excavations will be conducted prior to receiving a FS2700-32 Permit for Archaeological Investigations.
- If the unanticipated discovery does not contain human remains or funerary objects, and is determined by the MNF Heritage Program Manager to be ineligible for inclusion in the NRHP (and the FERC and the WVDCH concur), Atlantic may proceed with the Project only after receiving written authorization from the MNF Forest Supervisor. A binding Data Recovery Plan signed by the Forest Service, the WVDCH, the FERC, and affected tribal organizations (if any), may allow construction activities to resume sooner if those activities are also otherwise lawful.

HUMAN REMAINS

If the unanticipated discovery is determined to contain human remains or funerary objects, the following procedures will be followed.

- The LEI (or CI if LEI is not available) or AI will immediately halt work and immediately notify by telephone Atlantic’s Environmental PM, who in turn will immediately notify by telephone the MNF Forest Supervisor, and the MNF Heritage Program Manager. Within 24 hours, Atlantic’s Environmental PM will follow up with written (via email) confirmation of the discovery to the MNF Forest Supervisor and the MNF Heritage Program Manager.
- If human remains are discovered, the Forest Service will promptly involve Forest Service Law Enforcement (or local law enforcement, as appropriate) and notify the WVDCH, MNF Tribal partners, and the FERC.
- Reasonable effort must be made to protect and secure the discovery. The Construction Supervisor will ensure that human remains are protected from further damage, intrusion, or removal until proper examinations can be performed.
- Atlantic, in direct consultation with the MNF Heritage Program Manager, will keep construction activities at least 100 feet from the find by installing flagging and/or temporary fencing with signage indicating “Environmentally Sensitive Area” or similar statement as approved by the MNF.

- Discovery of human remains should not be made public, including but not limited to conversations with local residents, posting on social media, or communication with news outlets.
- Forest Service Law Enforcement will control the situation until the nature of the remains is officially determined as being forensic or archaeological. If the remains are forensic, Forest Service Law Enforcement will maintain control of the situation.
- Under no circumstances should human remains be removed from the site without completing all permitting and coordination processes with the MNF and, as appropriate, local law enforcement, the medical examiner, the WVDCH, affected tribal organizations, and the FERC.
- Further work at the site will be suspended until all applicable requirements of Section 106 of the NHPA and other related state and federal regulations have been successfully completed. Human remains identified on federal lands may be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) and/or West Virginia Code §29-1-8a or West Virginia Code §37-13.
- The MNF Heritage Program Manager, in consultation with other appropriate parties as necessary (e.g., county sheriff, coroner, WVDCH), will assess whether the remains are historical or modern and/or part of a crime scene.
- If the remains are Native American or if the discovery consists of funerary objects, sacred objects, or objects of cultural patrimony, the Forest Service will act in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) Section 3 and 43 CFR 10.4 in consultation with MNF Tribal partners. The Forest Service shall uphold the responsibility to protect the remains until all questions regarding the status and custody of the remains and cultural objects have been resolved.
- For Native American remains, the activity that resulted in the unanticipated discovery may not resume until 30 days after the authorized officer certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.
- If the remains are not Native American and not associated with a crime scene, the Forest Service will protect the remains until a plan for avoidance or removal is developed in consultation with the WVDCH, the FERC, and interested parties. Actions will be consistent with West Virginia Code §37-13 and guidance in National Register Bulletin 41: *Guidelines for Evaluating and Registering Cemeteries and Burial Places* (Potter and Boland 1992). A reasonable attempt will be made to identify the next of kin.

- In consultation with the MNF (and as appropriate, the WVDCH, affected tribal organizations, and interested parties), Atlantic will attempt to locate and survey alternate areas so the human remains can be avoided. Involved parties will be informed of the results before the alternate area is accepted. If more remains are discovered or if there is no feasible alternate area, involved parties will be consulted about the removal and/or reburial of the human remains. In the case of non-Native American burials, the MNF should also notify the local municipality and discussions should occur with constituencies (such as descendants) regarding removal and reburial of the remains.
- No archaeological excavations will be conducted prior to receiving a FS2700-32 Permit for Archaeological Investigations.
- Archaeological removal of in situ placement of human remains and/or associated grave goods may require a permit from the WVDCH.
- Construction in the area of the find will only continue after Atlantic receives written authorization from the Forest Service. Only after the human remains have been properly removed from the site, or sufficiently avoided, should construction in the site area be resumed.

REFERENCES

Potter E.W. and B.M. Boland. 1992. *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*. U.S. Department of the Interior, National Park Service. Washington, D.C.

Trader, Patrick. 2001. *Guidelines for Phase I, II, and III Archeological Investigations and Technical Reports*. West Virginia State Historic Preservation Office, Charleston, West Virginia.

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