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October 12, 2022

Via Electronic Filing

Ms. Tanowa Troupe
Administration/Docketing
Ohio Power Siting Board
180 East Broad Street, 11th Floor
Columbus, Ohio 43215-3793

Re: Scioto Farms Solar Project, LLC, Case No. 21-0868-EL-BGN

Dear Ms. Troupe:

On December 13, 2021, Scioto Farms Solar Project, LLC (“Scioto Farms”) filed an application for a Certificate of Environmental Compatibility and Public Need to develop, construct, an up to 110 megawatt solar-powered electric generating facility in Wayne Township, Pickaway County, Ohio.

On September 8, 2022, Scioto Farms filed the Ohio State Historic Preservation Office’s (“SHPO”) letter in response to Scioto Farm’s *Phase I Archaeology Survey of the Scioto Farms Solar Project, Wayne Township, Pickaway County, Ohio: Final Report*. As a follow-up to that correspondence, attached for filing is a copy of the fully executed MOU with SHPO for the Scioto Farms project.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Sommer L. Sheely

Attachment

Cc: Thomas Crawford (w/Attachment)
Jonathan Pawley (w/Attachment)

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OHIO STATE HISTORIC PRESERVATION OFFICE
AND
SCIOTO FARMS SOLAR PROJECT, LLC
REGARDING THE SCIOTO FARMS SOLAR PROJECT IN
PICKAWAY COUNTY, OHIO**

WHEREAS, on December 13, 2021 Scioto Farms Solar Project, LLC (“Project”) submitted an application for a Certificate of Environmental Compatibility and Public Need in Case No. 21-21-0868-EL-BGN (“Certificate”) from the Ohio Power Siting Board (“OPSB”) pursuant to Ohio Revised Code (“RC”) Chapter 4906-4, and intends to construct and operate the Project, an up to 110 MW alternating current solar-powered electric generating facility to be located in Wayne Township, Pickaway County, Ohio; and

WHEREAS, a Phase I Archaeology Survey and Report and a Phase I History/Architecture Reconnaissance Survey and Report was completed (collectively, the “Reports”); and

WHEREAS, the Project and the Ohio State Historic Preservation Office (“SHPO”) established an Area of Potential Effects (“APE”) for the Survey to include any property that may be physically altered or destroyed by the Project, as well as a visual radius around the Project for visual impacts; and

WHEREAS, the Report identified cultural resources of archaeological or architectural significance; and

WHEREAS, subsurface remnants of site 33PI10 (the Kreisel-Simkins Fort, a precontact Middle Woodland earthwork) may be present in the project footprint; and

WHEREAS, six architectural resources were identified within the visual APE of the Project through the Survey (Ohio Historic Inventory Ref. Nos. PIC0088513, ROS0098503, PIC0088613, PIC0088713, PIC0088813, PIC0089014), which have been determined as requiring additional research or individually eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, three previously recommended eligible resources, identified within the visual APE of the Project through the Survey (Ohio Historic Inventory Ref. Nos. PIC0071113, PIC0071713, PIC0072013), are eligible for listing in the NRHP; and

WHEREAS, two previously recorded and unevaluated resources, identified within the visual APE of the Project through the Survey (Ohio Historic Inventory Ref. Nos. PIC0088913/ OGS #9659, PIC0070913), have been determined as requiring additional research and individually eligible for listing in the NRHP respectively; and

WHEREAS, one historic district previously determined eligible and pending NRHP listing, identified partially within the visual APE of the Project through the Survey (Ohio Historic Inventory Ref. No. HD #SG100003572), retains its status as eligible for listing in the NRHP; and

WHEREAS, one NRHP-listed property, identified within the visual APE of the Project through the Survey (Ohio Historic Inventory Ref. No. PIC0066913/NRHP Ref. No. 80003210), retains its status as NRHP-listed; and

WHEREAS, two of the six resources requiring more research or recommended eligible, were preliminarily identified in the Phase I History/Architecture Reconnaissance Survey Report as having potential indirect adverse effects due to visual impacts from the Project (PIC0088513 and PIC0088613); and

WHEREAS, adverse impacts from the Project are not anticipated to the remaining eleven new and previously recorded resources recommended or determined eligible, requiring additional research, and NRHP-listed (ROS0098503, PIC0088713, PIC0088813, PIC0089014, PIC0071113, PIC0071713, PIC0072013, PIC0088913/ OGS #9659, PIC0070913, HD #SG100003572, PIC0066913/NRHP Ref. No. 80003210), due to their distance from the Project, existing vegetation in the direct vicinity of these resources that assist with screening, existing vegetation at greater distances from the resources that help to obscure portions of the Project's aboveground infrastructure from view, and the continued traditional agricultural use of the surrounding landscape; and

WHEREAS, the Project utilized and made modifications to its existing Landscape Mitigation Plan to address visual impacts to resources PIC0088513 and PIC0088613 from the Project and propose strategies to mitigate adverse impacts, a copy of which is attached as **Exhibit A**; and

WHEREAS, Effects and Mitigation Measures for the foregoing resources have been identified as **Exhibit B**; and

NOW, THEREFORE, the SHPO and the Project agree in the Memorandum of Understanding ("MOU") as follows:

I. RECITALS

The recitals set forth above are incorporated into and are made a part of this MOU.

II. STIPULATIONS

- A. The SHPO agrees that the provisions of Exhibit A specific to the foregoing identified resources and the resource specific mitigation measures in Exhibit B adequately address the impacts to the resources identified in the recitals to this MOU.
- B. The SHPO and the Project agree that if the Project is constructed, the Project shall be implemented in accordance with the following Stipulations to account for the effect of the Project on historic resources.
 - 1. Prior to construction, a geophysical survey of the portion of archaeological site 33PI10 within the most up-to-date footprint will be completed subject to the following conditions:
 - a. A work plan for the geophysical survey will be submitted to the SHPO for review and comment prior to fieldwork;
 - b. Results of the geophysical survey will be presented in a report submitted to the SHPO; and
 - c. The Ohio Archaeological Inventory (OAI) form for site 33PI10 will be updated to reflect results of the geophysical investigation.
 - 2. The Project will implement the Landscape Mitigation Plan to mitigate for adverse effects.
 - 3. Wildlife friendly, agricultural fencing will be used rather than chain-link fencing and maintained in good condition throughout the Project.
 - 4. The Landscape Mitigation Plan is subject to revision upon development of the Project's final facility layout subject to the following conditions:
 - a. Scioto Farms Solar shall maintain agreed upon vegetative screening between architectural resources PIC0088513 and PIC0088613 and any of the above-ground components. The vegetative screening shall be maintained by Scioto Farms Solar for the life of the facility as defined in this agreement document, and shall replace any failed plantings so that, after five years, at least 90 percent of the vegetative has survived. Scioto Farms Solar shall maintain all perimeter project fencing in proximity to that resource for the term of the Project and shall promptly repair any damage as needed. Lighting will be down lit, and switch and motion activated to the extent practicable.
 - b. Changes to the Landscape Mitigation Plan that do not impact views to the resources identified in paragraph (a) above are not subject to SHPO review.

- c. Any reduction in screening between aboveground project components and these resources shall not occur unless an amendment to this MOU is executed pursuant to Section II of this MOU.

III. POST REVIEW DISCOVERIES

1. In the event that the Project results in an archaeological Inadvertent Discovery, such as the discovery of any human or burial remains, the Ohio History Connection American Indian Policy Supplement and Inadvertent Discovery Plan in **Exhibit C** will be followed.

IV. AMENDMENTS

This MOU may be amended upon the written agreement of the SHPO and the Project. The amendment will be effective on the date a copy is signed by all signatories unless otherwise stated and agreed to in the amendment.

V. TERMINATION

If any signatory to this MOU determines that the terms of this MOU will not or cannot be carried out, that party shall immediately consult with the other party to attempt to develop an amendment per Section II of this MOU. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOU upon written notification to the other signatory.

VI. DURATION

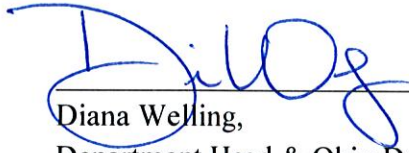
This MOU is effective upon its execution by both SHPO and the Project and shall remain in effect leading up to and upon receipt of a Certificate issued by the Board to the Project or any subsequent transferee. Thereafter, this MOU shall remain in effect until expiration of the Certificate. Should the Board deny the Project's application for a Certificate, then either party may terminate this MOU at its discretion by providing written notice to the other party.

VII. EXECUTION IN COUNTERPARTS

This MOU may be executed in counterparts, with a separate page for each signatory, each of which shall constitute an original, and all of which shall constitute one and the same agreement. Each party will be provided a fully executed copy.

SIGNATORIES:

Ohio Historic Preservation Office

A handwritten signature in blue ink, appearing to read "D. Welling", is written over a horizontal line.

Diana Welling,

10/7/22

Date

Department Head & Ohio Deputy State Historic Preservation Officer for
Resource Protection & Review
State Historic Preservation Office

Contact Information

800 E. 17th Ave.

Columbus, Ohio 43211

(614) 298-2000

dwelling@ohiohistory.org

Scioto Farms Solar Project, LLC

DocuSigned by:

48A2BF89C771483...

9/23/2022

Roy Skinner
Vice President, Project Siting and Execution
Candela Renewables, LLC

Date

Contact Information

360 Pine Street, Suite 500
San Francisco, CA 94104
roy.skinner@candelarenewables.com

Exhibit A: Landscape Mitigation Plan

Exhibit B: Effects and Mitigation Measures for History/Architecture Resources

Exhibit C: OHC American Indian Supplement Policy and Inadvertent Discovery Plan

Exhibit A: Landscape Mitigation Plan



**SCIOTO FARMS SOLAR PROJECT VISUAL
IMPACT MITIGATION PLAN**

May 24, 2022

Prepared for:
Scioto Farms Solar Project, LLC

Prepared by:
Stantec Consulting Services, Inc.

Project Number: 2028113286

Scioto Farms Solar Project Visual Impact Mitigation Plan

Revision	Description	Author	Date	Quality Check	Date	Independent Review	Date



Scioto Farms Solar Project Visual Impact Mitigation Plan

This document entitled Scioto Farms Visual Impact Mitigation Plan was prepared by Stantec Consulting Services Inc. ("Stantec") for the account of Scioto Farms Solar Project, LLC (the "Client"). Any reliance on this document by any third party is strictly prohibited. The material in it reflects Stantec's professional judgment in light of the scope, schedule and other limitations stated in the document and in the contract between Stantec and the Client. The opinions in the document are based on conditions and information existing at the time the document was published and do not take into account any subsequent changes. In preparing the document, Stantec did not verify information supplied to it by others. Any use which a third party makes of this document is the responsibility of such third party. Such third party agrees that Stantec shall not be responsible for costs or damages of any kind, if any, suffered by it or any other third party as a result of decisions made or actions taken based on this document.

Prepared by: _____
Signature

Hannah Lull

Printed Name

Reviewed by: _____
Signature

Daniel Malone

Printed Name

Approved by: _____
Signature

Courtney Dohoney

Printed Name



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1 Introduction

Scioto Farms Solar Project, LLC (Scioto Farms Solar) proposes to develop a solar energy facility on privately owned agricultural land in Pickaway County, Ohio. The Scioto Farms Solar Project (Project) is anticipated to have a footprint of approximately 750 acres of a larger approximately 1,070 acre Project area. The Project would have a generating capacity of up to 110 megawatts alternating current and would include photovoltaic (PV) solar panels (modules) mounted on a single-axis horizontal tracker racking system (mounted on posts) to maximize solar energy capture and electric generation of the array. Additional Project infrastructure will include access roads, inverters, electrical collection system, a substation and switchyard, and a short generation tie-line. The facility will be surrounded by wildlife friendly fencing. A Phase I History/Architecture Reconnaissance Survey and Report was completed by Commonwealth Heritage Group in January 2022 and determined that the Project could have an adverse effect on two structures that require more research in order to determine whether either is potentially eligible for listing on the National Register of Historic Places.

When siting solar facilities, minimization and screening of visual impacts must be considered to preserve the value of surrounding cultural resources and their viewsheds. The Ohio State Historic Preservation Office (SHPO), in their letter dated January 6, 2022, concurred with the conclusions made in the Phase I History/Architecture report and require visual impact mitigation measures for the identified historic structures located within the Area of Potential Effects (APE) where impacts are anticipated. The conceptual screening plan for the Project will mitigate impacts to the nearby historic structures, integrate the Project into the surrounding landscape, and provide ecological benefits.

While existing vegetation and structures can provide screening of solar projects, a project may have locations that lack adjacent vegetation and structures, or these structure and vegetation are not sufficient to prevent or mitigate visual impacts. In some circumstances, existing vegetation must be removed for site construction or to prevent shading of the PV panels. In these areas, adding new vegetation or enhancing the existing vegetative buffer can help to create visual continuity with the existing landscape while reducing visibility of the project. These plantings will reduce the visual impact of the solar facility and better integrate it into its surrounding landscape context.



2 Design Methodology

Design of a visual mitigation strategy is not simply an exercise in creating walls to obscure views of a solar facility. It is also necessary to minimize visual disruption and create continuity with the surrounding area. This is most readily accomplished by mimicking components from the existing landscape so that newly introduced elements resemble their surroundings and do not needlessly call attention to themselves.

The design methodology presented in this plan reflects the agricultural and naturalized context of the surrounding landscape. The strategy is intended to be repeatable, yet diverse enough for plantings to respond to differing conditions throughout the site. The following were considered when developing this plan:

- Distance between historic resource and solar facility to be screened,
- Intervening structures and topography that may screen views, and
- Existing vegetation or structures.

These considerations led us to develop a strategy that filters views and blends the solar facility into the surrounding rural context, as well as provides visual screening as requested by adjacent landowners.

The first visual mitigation strategy for solar facilities includes a screen comprised of solely evergreen trees and shrubs. This strategy provides the most complete visual screen through the use of solely evergreen forms, creating a year-round hedge. This form of screen is often found within rural settings to create a privacy screen at the boundaries of residential properties; however, it can draw attention when this form of planting is extended for long distances. In addition, since the selection of native evergreen screening trees and shrub species suitable for Ohio's growing conditions is limited, the use of ornamental species is incorporated into this planting strategy to increase the diversity of plant material in an effort to prevent a solid row of a single (or limited) species. When selecting species for evergreen screening of solar facilities, mature height must be considered to prevent shading of adjacent solar panels. Of the evergreen trees and shrubs that meet these height considerations, many are non-native species or cultivars of native species. While this planting methodology is best for restricting views, it does not fully provide some of the alternative benefits of a diverse species composition, so its use was limited to areas where views were in closest proximity to proposed panels, or where specifically provided to address adjacent landowner requests (in addition to the historical resource visual impacts mitigation needs).

In contrast, a mix of native deciduous trees and shrubs and evergreen shrubs can be used as an effective screening strategy. This mix consists of shrubs and small understory trees ranging from a maximum mature height of 15 feet to 30 feet, with the majority of species averaging 15 feet at maturity. This allows the screening to strike a balance between filtering views not shading the proposed PV panels. Plantings would be clustered in groupings to mimic a naturalized establishment of vegetation and avoid continuous straightened rows that appear manmade, providing the most context to the surrounding ecological



Scioto Farms Solar Project Visual Impact Mitigation Plan Design Methodology

landscape. Utilizing solely native species maximizes the ecological benefits of the screening of this Project, while providing a screen that best matches the existing character of the landscape. This technique is used when views of proposed panels are not immediately adjacent to the resource requiring visual mitigation.



3 Planting Palette

To create the planting palettes (Figure A.2) for the Project, Stantec considered information from The Ohio State University's Department of Plant Pathology website, the U.S. Department of Agriculture PLANTS website, the Selected Ohio Native Plants for Landscape and Restoration Use guides provided by the Ohio Department of Natural Resources, and the Ohio Department of Agriculture's Prohibited Invasive Plant list.

Existing vegetation in the surrounding landscape is a mix of open areas (primarily row-crop agriculture) and wooded areas. Wooded areas throughout the Project area include woodlots, hedgerows, and forested areas adjacent to streams and wetlands. This vegetation is predominantly deciduous, mixed with some conifers. The palette seeks to mimic this context using a mix of native species and well adapted ornamental species. In some cases, selected cultivars of native species are utilized for individual species in an effort to maximize the native diversity of the screening palette while maintaining the maximum height requirements to reduce shading of photovoltaic panels.



4 Visual Impact Historic Resource Areas

The historic resources identified within the History/Architecture Reconnaissance Survey that could potentially be impacted by construction and operation of the Project are described below along with the approach to screening the resources. The location for the screening relative to the resource is depicted in Appendix A, Figure A.1.

27960 SR 104 (S004) (OHI #PIC0088513)

The historic structure is a former schoolhouse built in 1891 that is currently used as a single family residence. The structure was recommended to be researched further to determine its eligibility for the National Register of Historic Places. To preserve the viewshed of this resource, PIC0088513 will be screened from the west with two rows of various evergreen trees.

2995 Dungan Road (S017) (OHI #PIC0088613)

The historic resource is a single-family house built around 1870, constructed in a double pen style. The structure was recommended to be researched further to determine its eligibility for the National Register of Historic Places. As designed, PIC0088613 will be screened from the north with two rows of mixed deciduous and evergreen trees and shrubs.



5 Location of Visual Impact Mitigation Areas

The proposed conceptual planting screening plan in relation to the historic resources can be found in Appendix A, Figure A.1. Sheet A.2 in Appendix A shows the installation notes and details associated the establishment of this screening. Visual impact mitigation screening is concentrated on the eastern and southern perimeter of the Project area along SR 104 and Dungan Road. Additional screening is proposed to limit views from nearby landowners that is adjacent to the identified historic resources and will further mitigate views of the proposed solar development.



Appendix A Preliminary Landscape Screening Plan





* NATIVE SPECIES.

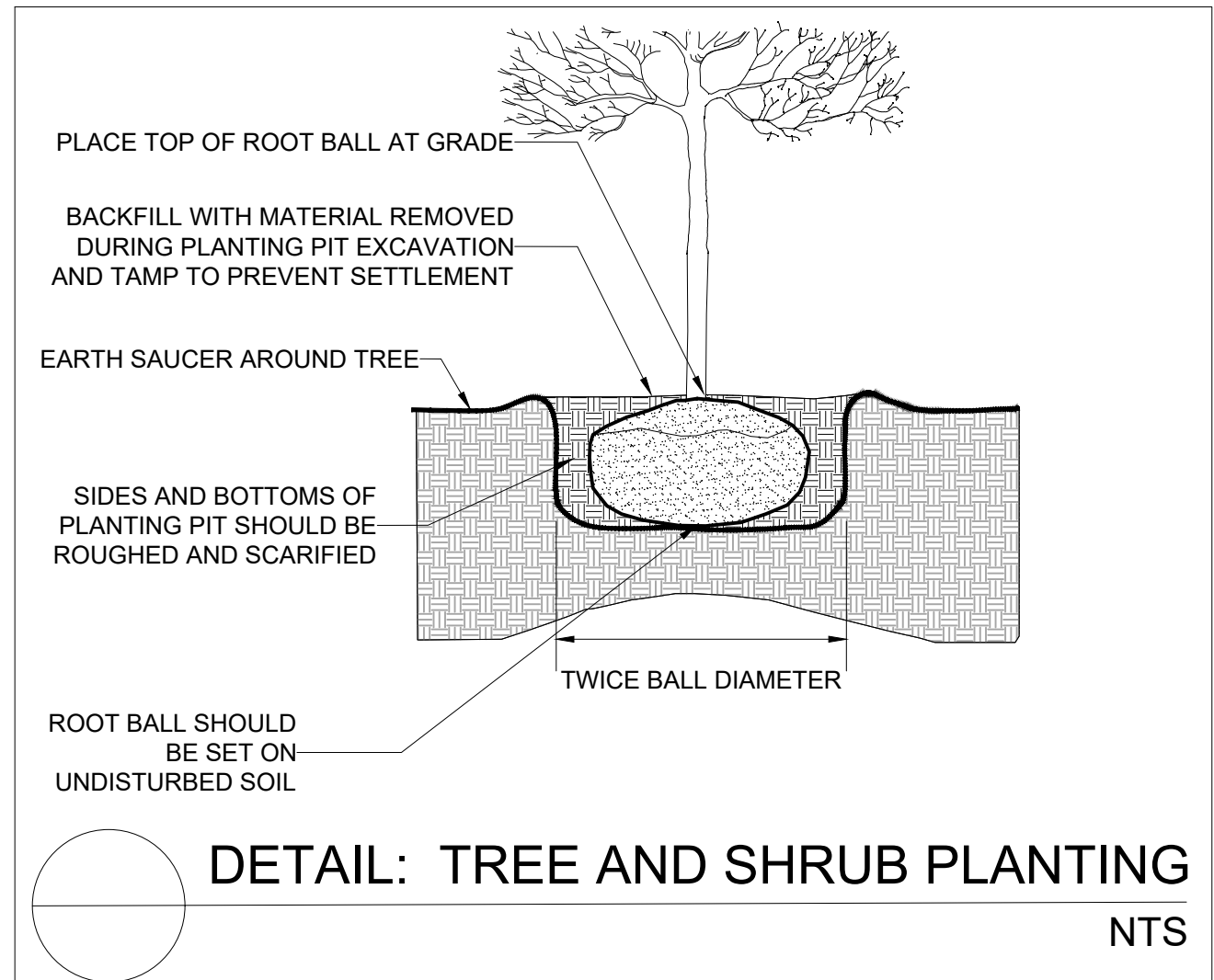


Exhibit B: Effects and Mitigation Measures for Cultural Resources

Scioto Farms Solar Project, LLC: Effects and Mitigation Measures for Cultural Resources

<i>NRHP/ Inventory Number</i>	<i>Description</i>	<i>Address</i>	<i>NRHP Eligibility</i>	<i>Recommendation</i>	<i>Mitigation</i>
33PI10	Precontact earthwork	Parcel P3300010010800 (portion possibly within current footprint)	Requires additional research	Possible Direct Adverse Effects	Additional research will consist of a geophysical survey with ground truthing (if appropriate) to determine presence/absence of subsurface remnants of earthwork. If remnants are identified, project fence line will be moved to avoid earthwork remnants during construction and operation. Protective fencing will be placed 50 feet (15 m) from the edge of earthwork remnants and will be installed to protect earthwork remnants from inadvertent damage during construction and operation.
PIC0088513	School	27960 SR 104	Requires additional research	Indirect Adverse Visual Effects	Vegetative screening along north and west property boundaries along the Project area boundary
ROS0098503	House	179 Davenport	Requires additional research	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 0.45 miles south-southeast of the project area.
PIC0088613	House	2995 Dungan Road/ Twp Hwy 104	Requires additional research	Indirect Adverse Visual Effects	Vegetative screening along north and west property boundaries along the Project area boundary.

PIC0088713	House	4986 Hickory Bend Road/ Twp Hwy 101	Requires additional research	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 1.69 miles northwest of the project area.
PIC0088813	Farmstead	3601 Hickory Bend Road/ Twp Hwy 101	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 0.65 miles north-northwest of the project area.
PIC0089014	Farmstead	29380 S US 23/ Walnut Street	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 1.94 miles east-southeast of the project area.
HD #SG100003572	Ohio and Erie Canal	NVA; southern portion of watered prism/ part of Canal Park Towpath Trail/ Canal Road/ Co Hwy 100	Eligible; pending NRHP listing	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 1.70 miles north-northeast of the project area.
PIC0066913 (NRHP Ref. No. 80003210)	Horsey-Barthelmas Farmstead	25963 St Rt 104	NRHP-listed	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 0.98 miles northeast of the project area.
PIC0070913	Farmstead	28197 Westfall Road/ Twp Hwy 102	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 1.15 miles west of the project area.

PIC0071113	Dungan School	Westfall Road, north of Dungan Road	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property is approximately 0.80 miles west of the project area.
PIC0071713	Farmstead	3066 Hickory Bend Road/ Twp Hwy 101	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property approximately 0.64 miles north-northeast of the project area.
PIC0072013	Farmstead/ Flemming Farm	25043 St Rt 104	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property approximately 1.90 miles north-northeast of the project area.
PIC0088913 (OGS #9659)	Westfall Cemetery	NVA; west of SR 104; north of TR 103	Eligible	No Effect	Not Applicable. Vegetative screening is already in place on property and property approximately 1.62 miles northeast of the project area.

Exhibit C:
**Ohio History Connection American Indian Policy Supplement and Inadvertent
Discovery Plan**

OHIO HISTORY CONNECTION

American Indian Policy Supplement

*Procedures for the inadvertent discovery and disposition
of American Indian ancestral human remains, funerary
objects, sacred objects, and objects of cultural
patrimony in the State of Ohio*



The Mission of the Ohio History Connection is to spark discovery of Ohio stories:
Embrace the Present, Share the Past, Transform the Future

Approved by the Board of Trustees on March 18, 2021

PURPOSE

The purpose of these procedures is to establish state-wide “best practices” for responding to an inadvertent discovery of American Indian ancestral human remains and/or artifacts on lands within the State of Ohio—

- over which the Ohio State Historic Preservation Officer (SHPO) or the Ohio History Connection has statutory/regulatory authority or administrative influence;
- which are owned, managed, or administered by the Ohio History Connection; or
- which are under the supervision or control of the Ohio SHPO.

These procedures have been developed in collaboration with the Ohio SHPO, the Ohio History Connection, and the Tribal Historic Preservation Officers (THPO) of the historic Tribal Nations affiliated with the State of Ohio¹, and in conformity with the Native American Graves Protection and Repatriation Act (NAGPRA) and implementing regulations².

CURRENT OHIO STATE LAW

We recognize that, at present, the burial protection and preservation laws in the State of Ohio are weak at best. At present, state law prohibits—

- Treating a corpse in a way that the person knows would outrage reasonable family or community sensibilities. [ORC 2927.01\(A\)/\(B\)](#)
- Purposely defacing, damaging, polluting, or otherwise physically mistreating any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery³, thing, or site of great historical or archaeological interest. [ORC 2927.11\(A\)\(3\)](#)
- Anyone from engaging in archaeological survey or salvage work on any land that is owned, controlled, or administered by the state or any political subdivision of the state, or at any archaeological preserve, without first obtaining the written permission of the Ohio History Connection Director. Only qualified persons (as established Chapter 119 of the Revised Code) shall be authorized to engage in archaeological survey and salvage work; based on minimum education, training, and experience requirements. [ORC 149.54](#)

Establishing sound procedures and best practices will help us to fulfill the intent of the Ohio History Connection American Indian Policy as well as NAGPRA and ORC 149.54.

¹ OHC consults with a total of 46 federally recognized tribal nations based on the Greenville Treaty historic tribes, by adjudications of the Indian Claims Commission, and by tribes’ individual determinations of historic occupancy.

² NAGPRA, Pub. L. 101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048; 43 CFR Part 10, Section 10.4.

³ As used in this section, “cemetery” means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains. ORC 2927.11(C)

INADVERTENT DISCOVERY DEFINED

Inadvertent discovery means the unanticipated and unintended encounter, detection or discovery of American Indian ancestral human remains, funerary objects, sacred objects, cultural resources or objects of cultural patrimony⁴ found during any ground-disturbing activity or natural disturbance.

DISPOSITION OF AMERICAN INDIAN ANCESTRAL REMAINS

It is the policy of the Ohio History Connection that the disposition of any American Indian ancestral human remains and/or cultural items that cannot remain in situ within lands in the State of Ohio over which the Ohio SHPO or the Ohio History Connection has statutory or regulatory authority shall remain in the care and custody of the Ohio History Connection until such time as they can be repatriated following NAGPRA principles and requirements.

PROCEDURES

1. Cease all activity. Upon discovery, immediately cease all activity within the project footprint or for a minimum distance of fifty (50) meters from point of discovery, whichever is greater.
2. Delineate and secure the area. Identify and delineate the area of disturbance and ensure that no further disturbance occurs. At a minimum, securing the area will include flagging off the area of discovery and, if the circumstances of the discovery make it reasonable to do so, implementing measures to protect discovery from vandalism and looting including posting a guard or monitor at the site until the proper authorities are notified. The remains will not be touched, moved, or further disturbed.
3. Reporting and notification. The finding of American Indian ancestral remains will be immediately reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The county medical examiner/coroner will assume jurisdiction over the ancestral remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Ohio State Historic Preservation Office or the Cultural Resources Division Director of the Ohio History Connection.
 - a. Examination and analysis of American Indian ancestral remains shall be non-destructive and non-invasive, unless otherwise authorized by the affected tribes⁵.

⁴ "Human remains," "funerary objects," "sacred objects," or "objects of cultural patrimony" shall have the same meaning as found in NAGPRA, 25 U.S.C. 3001.

⁵ "Affected Tribes" means any federally recognized tribe likely to be culturally affiliated with the discovery, who were aboriginal to the area of discovery as determined by the tribes themselves, by land cession treaties, acts of Congress, the Indian Claims Commission, or that are known to have a cultural relationship to the discovery.

- b. Photography of American Indian ancestral remains, funerary objects and sacred objects shall be limited to those essential to forensic examination and criminal investigations and shall be kept secure and confidential. All images shall be subject to tribal repatriation.

4. Additional Expertise. The Ohio History Connection will be responsible for providing the medical examiner/coroner with any special archaeology, anthropology or osteology expertise used to determine if the remains are of American Indian provenance. A NAGPRA Coordinator/Deputy State Historic Preservation Officer or their designee shall be assigned to each inadvertent discovery.

- a. Destructive sampling or DNA (Deoxyribonucleic Acid) extraction from American Indian ancestral remains for scientific or forensic purposes shall not be performed without the unanimous and mutual free, prior, informed consent of all affected tribes.
- b. All material extracted from American Indian ancestral remains for scientific or forensic purposes shall be subject to tribal repatriation.

5. Additional Coordination. The Ohio History Connection will be responsible for notifying any federally recognized Indian tribe which may have a claim of cultural affiliation to the ancestral human remains or based upon any aboriginal territory claims for projects that have no federal involvement or Section 106 application. Tribal notification shall be made within 48 hours of discovery. Provisions shall be made for physical examination of the site by tribal experts. Unrestricted access shall be provided for any requested tribal monitoring or ceremonial activities.

6. Consultation. Within 72 hours of determination that the ancestral human remains are of American Indian provenance, Ohio History Connection and the site management partner shall initiate consultation with the affected tribes.

- a. Notification shall be made by the Site Manager or project supervisor by telephone with follow-up in writing by mail or email to all federally recognized Indian tribes likely to be culturally affiliated with the discovery, who were aboriginal to the area as determined by the tribes themselves, by land cession treaties, acts of Congress, the Indian Claims Commission, or that are known to have a cultural relationship to the discovery. This notification must provide information about the human remains/cultural items discovered, their condition, and the circumstances of their discovery.
- b. This notification shall include an invitation to consult, which includes, a) a proposed date, time, and location or venue for consultation, b) recommend considerations for handling and treatment of the discovery, and c) evaluate whether excavation or removal is appropriate and necessary. Mail a certified return receipt letter to ensure appropriate tracking and documentation.

- c. Initial consultation shall determine if leaving ancestral remains in situ is desirable and feasible; and if the ancestral remains and/or cultural items will not be excavated or removed, determine procedures for any additional measures necessary to secure the site and document the discovery.
- d. Tribal representatives shall be financially compensated for site visits as necessary to facilitate consultation.

7. Necessary or intentional excavation and removal. If it is deemed necessary to excavate and remove American Indian ancestral remains and/or cultural items from the site where discovered/disturbed, all legal requirements shall be followed:

- a. When on Ohio state or state-controlled lands, the provisions of ORC 149.54 shall be met prior to any further site disturbance. Ohio History Connection's NAGPRA policy shall also be observed.
- b. When on federal lands in the State of Ohio, all provisions of the Archaeological Resources Protection Act (ARPA) and NAGPRA shall be met prior to any further site disturbance.
- c. Affected tribes shall be consulted regarding handling, disposition and cultural affiliation determination of American Indian ancestral remains and cultural items. Accommodations shall be made for traditional or ceremonial practices in association with ancestral remains and cultural items.
- d. Following consultation, the Ohio History Connection must prepare and implement a written Plan of Action. All excavations and removal must be authorized pursuant to ARPA Permit or Ohio History Connection Director Permit must follow current professional archaeological excavation and data recovery standards and be conducted in accordance with the written Plan of Action. Following excavation or removal, and completion of the steps identified and described in the written Plan of Action, the Ohio History Connection will determine disposition in consultation with affected tribe(s).
- e. Following consultation and the drafting of the written Plan of Action, the Ohio History Connection shall execute a bilateral agreement directly with the affected tribe(s) which contains protocols for the treatment, handling, custodianship, curation, and disposition of the American Indian ancestral remains and cultural items discovered. Affected tribes shall be principal signatories to any such agreement.
- f. The written Plan of Action shall also include a reinterment or reburial plan which identifies the tribe or tribes taking primary responsibility for the reinterment or reburial and any cooperating tribes, agencies or institutions which may assist in the reinterment or reburial or in establishing a reburial cemetery.

APPENDIX A
Ohio History Connection – Ohio State Historic Preservation Office

INADVERTENT DISCOVERY PLAN

The following Inadvertent Discovery Plan is to be implemented by the Ohio History Connection, in cooperation with the Ohio State Historic Preservation Office, and followed by any contractor or subcontractor working for or on behalf of the Ohio History Connection, as policy to expeditiously address inadvertent discoveries during ground disturbing activities within the State of Ohio.

- This Inadvertent Discovery Plan is appended to and made part of all permits, contracts, and agreements entered into by the Ohio History Connection authorizing ground disturbing activities.

This Inadvertent Discovery Plan (IDP) is to ensure all parties involved are contacted and fulfill their obligations under state and federal laws that include, but are not limited to:

- Public functions of Ohio history connection. [ORS § 149.30]
- Archaeological preserves; dedication; effects; prohibitions; penalties. [ORS § 149.52]
- Desecration of any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery, thing, or site of great historical or archaeological interest. [ORS § 2927.11]
- National Historic Preservation Act [16 USC 470] [36 CFR Part 60]
- Native American Graves Protection and Repatriation Act [25 USC 3001] [43 CFR Part 10]

The laws recognize and codify agency obligations and the tribes' rights in the decision-making process regarding ancestral remains and associated objects. Therefore, both the discovered ancestral remains and/or archaeological objects should be treated in a sensitive and respectful manner by all parties involved.

In accordance with these laws, if previously unidentified archaeological materials or sites are discovered during ground disturbing activities, the following shall occur:

1. Cease all activity. Immediately cease all activity within the project footprint or “Area of Potential Effect” (APE), or for a minimum distance of fifty (50) meters from point of discovery, whichever is greater.

2. The project supervisor⁶ shall immediately notify the responsible agency official⁷ by telephone of the inadvertent discovery and the responsible official shall, in turn, immediately notify a professional archaeologist of the inadvertent discovery. Additionally, if the discovery involves human remains, the responsible official shall immediately notify the medical examiner/coroner and County Sheriff by telephone.
3. The project supervisor shall immediately delineate and secure the area of disturbance to ensure that no further disturbance occurs. At a minimum, securing the area will include flagging off the area of discovery and, if the circumstances of the discovery make it reasonable to do so, implementing measures to protect discovery from vandalism and looting including posting a guard or monitor at the site until the proper authorities are notified. The remains will not be touched, moved, or further disturbed.
4. Within 48 hours of discovery and determination that the inadvertent discovery is of archaeological interest or American Indian provenance, the responsible agency official shall notify the following by telephone or email:
 - a) The Ohio History Connection (OHC), Director of Cultural Resources Division
 - b) Ohio State Historic Preservation Office (SHPO)
 - c) American Indian Tribes of Interest⁸
 - d) Advisory Council on Historic Preservation (ACHP)
5. If ground disturbing activities within the protected area are necessary to determine significance, site boundaries, National Register eligibility or American Indian provenance, an expedited archaeological permit must be applied for by the responsible agency official or the consulting archaeologist and received from the SHPO prior to commencing with any further ground disturbance.
6. Expedited review to prevent an undue threat to the site shall be undertaken in accordance with state and federal law. The SHPO and tribe(s) will attempt to respond within seventy-two (72) hours of notification (excluding Saturdays, Sundays, and any legal or tribal holidays). The project supervisor shall not proceed with any ground disturbing activities within the protected area until concurrence is received from the SHPO. If an appropriate American Indian Tribe of Interest objects (in writing) to an expedited review, an expedited review will not

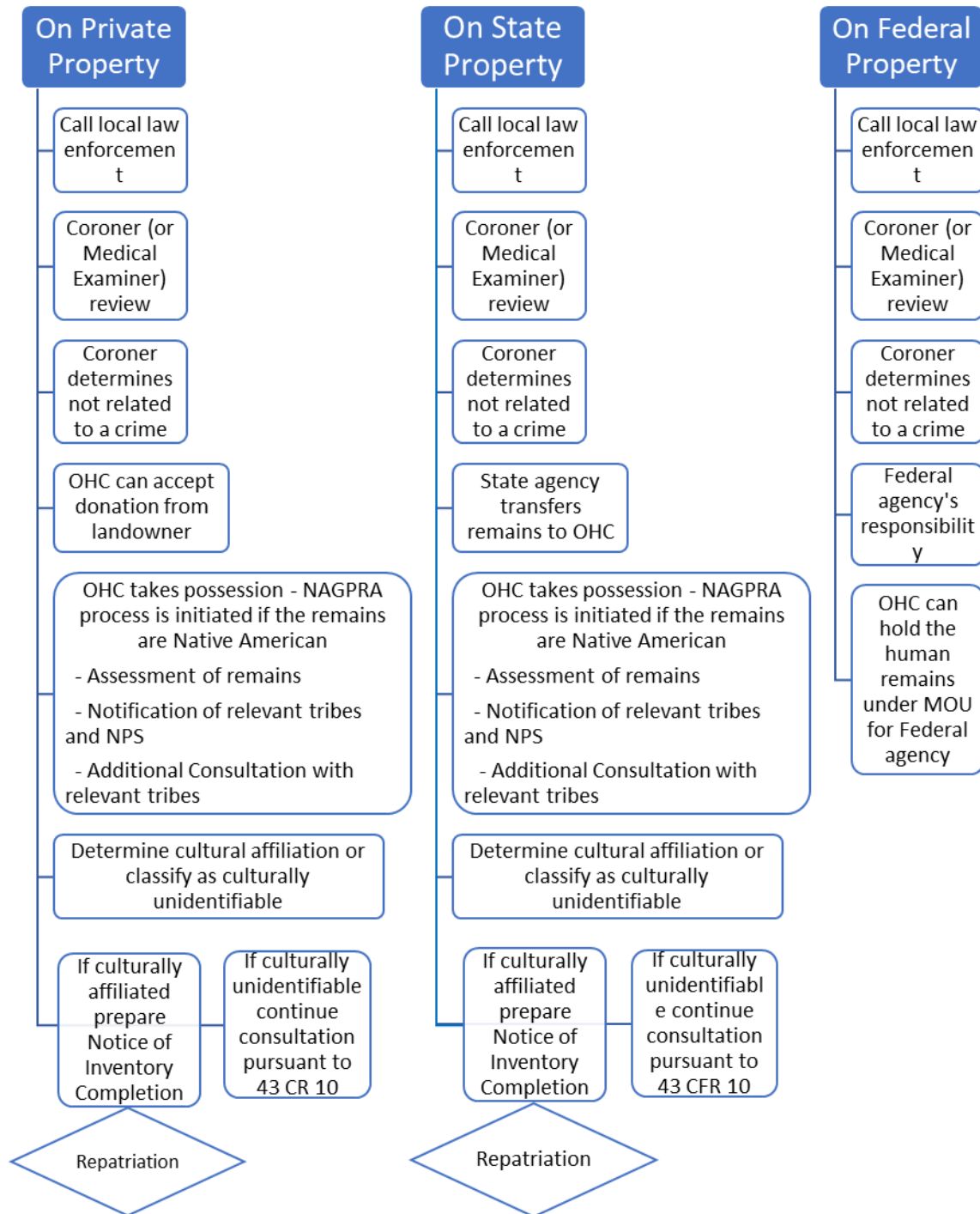
⁶ "Project supervisor" mean any on-site field representative of the responsible agency official, whether paid employee, contractor, subcontractor, or consultant.

⁷ "Responsible agency official" means any federal, state, county or municipal official responsible for executing or administering decisions, contracts, or agreements which implement any ground disturbing activity.

⁸ "American Indian Tribes of Interest" mean any federally recognized tribe consulting on the project and/or any federally recognized tribe that may attach religious, cultural or historic significance to the affected property, including any federally recognized tribe claiming cultural affiliation to the area based upon any aboriginal territory or ceded territory claims.

proceed and review will proceed in accordance with state and federal laws. The responsible agency official will take into account recommendations for the discovered resources and carry out appropriate actions.

7. The consulting archaeologist or OHC Director of Cultural Resources shall make a preliminary assessment of National Register eligibility of the discovered resource(s) and propose actions to resolve any potential adverse effects at the soonest possible time. The findings will be sent to all consulting parties identified in (4) if human remains are discovered.
8. All inadvertent discoveries must be documented, as appropriate, regarding state historic preservation laws. This may include archaeological site forms submitted to the SHPO, cultural resource evaluation reports, findings of effect, and testing and mitigation reports. All data recovery plans should be coordinated through the Ohio SHPO. If found eligible for the National Register, the site should be avoided, if possible. If not, it will need to be mitigated to minimize impacts.
9. Depending on the project, the nature of discovery and the statutory jurisdiction, the SHPO may ask the responsible agency official to retain a consulting archaeologist to assist in the development of a Recovery and Mitigation Plan. The appropriate jurisdictional agency may need to get involved in discussions to resolve the matter in accordance with their respective authorities.
10. The responsible agency official may conclude this procedure and notify consulting parties, as appropriate, if the disturbance of the historic property or property of traditional religious and cultural importance is minimal so as to have no effect on the historic property and the excavation or disturbance can be relocated to avoid the property, as determined in consultation with the SHPO and appropriate tribes. Concurrence from the SHPO and appropriate tribes is required prior to commencement of any further ground disturbing activities.
11. Documentation of all reports and associated compliance should be kept in the project files. The intent of the IDP is to have a process in place to expeditiously deal with such discoveries. Management of archaeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values.



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Case No(s). 21-0868-EL-BGN

Summary: Notice of Filing Memorandum of Understanding with the Ohio State
Historic Preservation Office electronically filed by Teresa Orahod on behalf of
Sommer Sheely