

REPLACES B.4.13	PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	PART B	SECTION 4	PAGE 13-1
DATED 04/25/2013	PROJECT OFFICE MANUAL	DATE		
SUBJECT CULTURAL RESOURCES				

Commitments that mitigate the impacts of eligible historic properties (also referred to as Cultural Resources) under Section 106 of the National Historic Preservation Act are legally binding when contained within agreement documents or spelled out within environmental documents. Examples of agreement documents include: Memoranda of Agreement, Programmatic Agreements, Letters of Agreement, Memoranda of Understanding, and Letters of Understanding. Examples of environmental documents include: Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements. (e.g., CE, BRPA) which are also legally binding. It is very important that the District's Construction Project Manager carefully monitor any conditions that are placed on the construction activities and the fulfillment of commitments made to minimize or mitigate such effects in the project area.

For those projects requiring changes of contract commitments for this mitigation, the construction contractor is to coordinate with the District Environmental Manager to ensure compliance. This should also include a field visit to review and discuss the requirements and how they will be met in the field. The District Environmental Manager must notify the Bureau of Project Delivery Cultural Resources Professional (CRP) Archaeologist assigned to the District. Construction is to cease in the area specific to the potential changes. A work order may or may not be required.

In the event of "Unanticipated Discoveries," defined as previously unidentified archaeological resources or above-ground historic properties that were previously believed to be unaffected by the project but may now be affected due to changes in project design or implementation, the following notification procedure will be followed. Note: If there is a project-specific agreement document, stipulations in that document will supersede the following guidance.

1. Construction will cease immediately in the area of the discovery to avoid disturbance. The District is to notify the Bureau of Project Delivery, Environmental Policy and Development Section (EPDS) and FHWA of the discovery. Notification of the Bureau of Project Delivery CRP Archaeologist assigned to the District constitutes notification of the Bureau of Project Delivery. Construction activities will continue in the subject areas after the District receives approval from the Bureau of Project Delivery CRP Archaeologist assigned to the District and FHWA.
2. The District is responsible for stabilizing and protecting the area of the discovery.
3. The District, in consultation with EPDS and FHWA, shall arrange to have the District's CRP visit the site within 48 hours of the discovery to determine the nature of the archaeological resources.
4. The Pennsylvania Historical and Museum Commission (PHMC) and federally recognized Tribes/Nations that may attach religious or cultural significance to the

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discovery will be notified within 72 hours of the discovery by the Bureau of Project Delivery CRP Archaeologist assigned to the District. PHMC and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery shall be provided an opportunity to meet in the field with the FHWA, Office of Chief Counsel - Real Property Division, EPDS, and the District to assess the discovery and consult on the plan of action.

5. The CRP shall develop a plan of action based on consultation with the District, EPDS, PHMC, FHWA, and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery. Early in the process of developing the plan, contact the Office of Chief Counsel, Real Property Division for assistance in obtaining any necessary court orders. Although a court order is not required in some circumstances, the Department normally seeks a court order to disinter and rebury human remains.
6. Within 96 hours of the discovery, EPDS, through the CRP, shall provide the PHMC and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery with the plan of action for review and comment. FHWA may also notify the Advisory Council on Historic Preservation (ACHP) and request interim comments within 48 hours.
7. If the PHMC and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery decline to meet or do not comment on the plan within 48 hours of receipt, FHWA shall proceed with the implementation of the plan of action taking into consideration, to the extent feasible, the comments of the ACHP.
8. The Project is to prepare a work order to address time and cost for the effects of the "Unanticipated Discoveries."

Human Remains, Grave Monuments, and Grave-Related Materials/Artifacts:

The policy of the Department is to treat all identified human remains, grave monuments, and grave-related materials/artifacts in a respectful and responsible manner that takes into consideration scientific data and cultural values. When feasible, human remains, grave monuments, and grave-related materials/artifacts shall be preserved in-place rather than excavated for study or reburial. State law (9 P.S. §8) prohibits new highway alignments through cemeteries or burial grounds. Refer to Publication 378, Right-of-Way Manual, Appendix C, Section C.01.E for discussion of legal issues concerning acquisition of cemetery land.

Human remains, potential human remains, burial-related monuments, and other grave-related items may be discovered on a project during either design or construction. If a known cemetery or burial ground is in the immediate vicinity of the project area, it is the responsibility of the CRP and Environmental Manager to establish a Plan of Action that is sensitive and respectful to the human remains that are contained within. If monuments will be temporarily moved prior to

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construction to prevent inadvertent damage, a Monument Conservation Plan would also be required (NPS Preservation Brief 48 should be used as a guideline [2016]). This plan would document the pre-construction location and condition of the monuments, provide recommendations on moving and re-setting, and document the post-construction condition. A copy of that Plan of Action must be reviewed by the construction inspector, Assistant Construction Engineer, and contractor prior to start of work, and a copy must be kept in the construction trailer until the completion of the project. It is recommended that the District CRP attend the pre-construction meeting.

The remainder of this guidance is for circumstances where human remains have not been anticipated within the project area.

1. If human remains or likely human remains, grave monuments, or grave-related materials/artifacts are discovered on a project site, work shall cease immediately and the vicinity of the discovery shall be secured both against the elements and against potential vandalism. The items should also be shielded from public view.
2. The contractor shall notify the construction inspector, who shall then contact the District Environmental Manager and/or the District-assigned CRP archaeologist with the following information:

Name of project

Name and contact information of construction inspector

Date and time of the discovery

Nature of the discovery, e.g., what was located

Whether construction has been stopped and the site secured

3. If the human remains appear to be recent, the State Police shall be notified. Otherwise, the county coroner shall be notified. The list of current county coroners is available at: http://pacoroners.org/coroners_list.php.

Note: the coroner will be the one responsible for “releasing” the remains if they will be moved. Otherwise a court order would be needed.

As per PA Code and discussions with PA Office of Vital Records, a court order is necessary to disinter/reinter remains that will be “exposed to the air,” which would be the case for any burials old enough that the coffin disintegrated and/or if they cannot be disinterred/reinterred within 72 hours. A court order provides a blanket "disinter" permit, which is needed in situation where total number of individuals are not known. Disinter/reinter permits are secured from the local registrar. Pennsylvania Code, Title 28 Chapter 1 Section 1.25.

4. The Environmental Manager and/or assigned CRP archaeologist shall notify the Project Manager, PennDOT Office of Chief Counsel (where appropriate), FHWA, the PA SHPO,

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and any Federally Recognized Tribes with an interest in the area. With specific regard to Federally Recognized Tribes, relevant tribes shall be notified unless the remains are known to be recent. The Environmental Manager is responsible for keeping a call list in the District Office, which is to be maintained by the CRP Archaeologist. A copy of the Discovery of Human Remains Checklist (attached) shall be provided to FHWA within 24 hours of discovery. Most funeral directors and some coroners have storage facilities where remains can be stored until reinterment.

5. If remains will be disinterred/reinterred, a qualified funeral director will need to be contacted. PennDOT should prepare a record of the removal indicating the date of removal and the site or place to which the removal was made. Copies of those records should go to the PHMC, local historical/genealogical societies, other interested parties, and the Office of Vital Records.

Additional guidance can be found in National Register Bulletin 41, *Guidelines for Evaluating and Registering Cemeteries and Burial Places* and the PA SHPO Guidelines for Archaeological Investigations in Pennsylvania, Appendix E, *Policy on Human Remains*.

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Discovery of Human Remains Checklist (to be provided to FHWA) – Page 5

Project Name and description:

Project status Archaeology Preliminary Design ____
 Archaeology Final Design/construction ____
 Construction activities ____

Date and time of discovery _____

Name and title of individual making discovery _____

 Contact information _____

Discovery was: unexpected ____ expected ____ (if expected provide workplan)

Nature of discovery, i.e., what was found:

What is the setting of the discovery, e.g. historic home, industrial setting, farm/rural?

- Construction work has ceased in the immediate vicinity of the discovery
- Work site has been secured
- Pennsylvania State Police has been notified

 Contact information _____

- Coroner has been notified

 Contact information _____

- Environmental Manager has been notified

 Contact information _____

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Discovery of Human Remains Checklist (to be provided to FHWA) – Page 6

- CRP Archaeologist has been notified

Contact information _____

- PA SHPO has been notified

Contact information _____

- Associated church or cemetery association has been notified (where applicable)

Contact information (Name of Contact, Phone, e-mail)

- Federally Recognized Tribe(s) has been notified

Contact information (Tribe, Name of Contact, Phone, e-mail)

- Is there a project-specific mitigation commitment related to burials?

Other information:

Preparer (name) _____ Date _____

Contact information _____