



## Wisconsin Department of Transportation

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**DATE:** August 2, 2016

**TO:** Members, Study Committee on the Preservation of Burial Sites  
The Honorable Amy Loudenberg, Chair  
The Honorable Robert Brooks, Vice-Chair

**FROM:** Nate Yahn, Legislative Advisor  
Wisconsin Department of Transportation

**SUBJECT:** Preservation of Burial Sites

The Wisconsin Department of Transportation (WisDOT) would like to provide some important background information and commentary to committee members as you review s. 157.70, Stats., and consider potential modifications to existing procedures and requirements relating to the preservation of burial sites.

To assist the committee, the department will specifically address the following items:

- WisDOT's policies and procedures regarding burial sites.
- Identification of a burial site in a previous construction project.
- Challenges encountered when navigating s. 157.70, Stats.
- Possible modifications to current law.

WisDOT recognizes the significance of the state's rich historic heritage. It is important to achieve an appropriate balance between cultural resource stewardship and the desire for timely and low-cost delivery of projects in Wisconsin.

### **I. WisDOT Policies and Procedures – Burial Sites**

Since the provisions of s. 157.70, Stats., first took effect beginning in 1987, WisDOT has been fully committed to successful compliance of its existing statutory obligations set forth under current law.

The department has three well-defined policies in place that provide guidance and procedural requirements relating to burial site preservation in Wisconsin. These policies are contained in the following agency manuals:

- Facilities Development Manual
- Highway Maintenance Manual
- Construction and Materials Manual

### Facilities Development Manual (FDM)

This manual provides policy, procedural requirements, and guidance encompassing the facilities development process within the department, and represents the department's primary policy on matters covered under s. 157.70, Stats. The requirements and procedures outlined in the manual provide for the uniform development of highway systems and planning processes, and reflect sound engineering practice and measures to minimize environmental impacts.

**Chapter 26** of the FDM provides guidance to project managers on developing projects in compliance with federal and state laws relating to historic preservation and burials. The chapter also contains procedures prescribing the treatment of burial sites that are discovered before or during construction activities, in accordance with s. 157.70, Stats.

#### ➤ **FDM 26-25: "Burial Sites & Burial Related Discoveries"** (attached)

- This policy outlines the specific steps to be followed when a burial site, as defined in s. 157.70(1)(b), Stats., is within or adjacent to a project's *Area of Potential Effects*.

Note: The "Area of Potential Effects" consists of the existing and proposed highway right-of-way, temporary and permanent easements, staging of equipment, or any land activity (including erosion, wetland, etc.).

- Requires the services of a qualified professional (i.e. archaeologists, tribal experts) to assist with determining boundaries of a burial site.
- Requires completion of documentation for cemeteries ("Cemetery Checklist").
- Specifies procedures for obtaining authorization from the Wisconsin Historical Society (WHS) for work at uncataloged and cataloged burial sites.

#### Uncataloged burial sites – s. 157.70(4):

- Submit request to WHS to work within boundaries of burial site.
- Request should include brief project description, nature and extent of proposed work, including methods to be employed and the size of area to be investigated.

- Receive authorization from WHS before proceeding with any ground-disturbing activities.
- Depending on scope of work proposed, mitigation measures (e.g., fencing, monitoring, etc.) may be required to reduce or prevent effect(s) to the site.

Cataloged burial sites – s. 157.70(5):

- Submit request to WHS to work within boundaries of burial site.
- Request should include brief project description, nature and extent of proposed work, including methods to be employed and the size of area to be investigated.
- 30-day comment period given to the Registry of Interested Persons.
- Decision made by WHS director on approval/denial of request to disturb.

Note: For WisDOT projects, the Bureau of Technical Services (BTS) is currently responsible for preparing and submitting the request to WHS.

- Specifies procedures for inadvertent discoveries occurring *before* and *during* construction activities.
  - Requires WisDOT project manager to immediately stop construction activities and fence off the site area where the discovery is encountered.
  - Project manager must immediately notify BTS, who will notify the Federal Highway Administration (FHWA) and interested parties of the discovery.
  - Requires compliance with Wis. Stat. § 157.70 for the treatment of any burial-related discoveries on state or privately owned lands, and considers such discoveries to be a “known uncataloged burial site”.

Highway Maintenance Manual (HMM)

This manual provides guidance for the efficient administration and uniform development of the state’s highway maintenance program, and includes sound engineering practice and reviews of environmental impacts.

**Chapter 9** of the HMM provides guidance and procedures regarding the use and permitting of the right-of-way on the state trunk highway (STH) system. The chapter also contains guidance for requests from utilities to locate or relocate their facilities within the state highway right-of-way.

➤ **HMM 09-15-50: “Environmental Conditions”** (attached)

- This policy details specific responsibilities and the procedures that a utility is required to follow when environmental conditions, such as archeological and burial sites, are encountered in the highway right-of-way.
- *Site assessments:* Investigations done by a utility to determine if the utility’s proposed action will impact an environmental resource.

- *Discovery of environmental conditions:* All utility work must be suspended immediately, regardless of when the discovery occurred, and any necessary steps taken to protect public safety.

## Construction and Materials Manual (CMM)

This manual establishes uniformity in the application and enforcement of construction contract requirements by department personnel.

**Chapter 1** of the CMM focuses on general provisions used to deliver highway improvement projects undertaken by WisDOT that meets the department's and public's expectations for schedule, costs and serviceability.

### ➤ **CMM 01-58:** "*Archaeological and Burial Considerations*" (attached)

- This policy specifies procedures related to archaeological and burial considerations for off-site construction activities occurring on state and privately owned properties.
- *State-owned Land:* Archaeological field surveys are required for off-site construction activities involving borrow sites, batch plants, haul roads, and disposal areas.
- *Private Property:* A literature and archival search must be performed on all off-site areas where material excavation related to the contract will be performed.

Note: Applies to all new borrow and waste sites, pits and quarries, plant sites, or any land to be disturbed by activities associated with project.

- Burial site identification:
  - *Before use:* The contractor is informed of the site, and directed to work with the State Historic Preservation Officer (SHPO) and obtaining professional services of a qualified archaeologies when necessary or to select a different site.
  - *During use (construction):* The contractor is required to stop construction action and immediately notify the Burial Sites Preservation Office at the Wisconsin Historical Society (WHS). Activities cannot resume until permission is obtained from WHS.

## II. Identification of a Burial Site in a Previous Construction Project

The department can encounter a burial site, as defined in s. 157.70, Stats., on a project either during the preliminary design phase, which includes environmental investigation studies, or during the construction phase.

During the preliminary design phase, burial site discovery usually occurs when the department is in the process of fulfilling its existing obligations under Section 106 of the National Historic Preservation Act (NHPA), which includes a robust consultation process. For a construction-related discovery, all consultation and coordination efforts are streamlined to reduce potential project delays, change orders, and local business and community impacts, while still conforming to the existing requirements provided in s. 157.70, Stats.

### Calumetville Project (2010)

During earthwork activities that occurred back in 2010 on the USH 151 reconstruction project in Calumetville, a small unincorporated community between Calumet and Fond du Lac counties, a construction vehicle had exposed human remains that resulted in the coordination and consultation required under s. 157.70, Stats.

#### *Additional discovery details:*

- The construction crew immediately stopped work within the discovery area and notified the WisDOT project manager, who then contacted the cultural resources section in WisDOT's Bureau of Technical Services for necessary guidance and coordination with FHWA, the tribes, and archaeological cultural resource professionals qualified to work with human remains under s. 157.70, Stats.
- At the request of the State Historic Preservation Officer (SHPO), law enforcement was contacted to protect the site until the cultural resource archaeologists were able to properly and respectfully remove/excavate the remains.
- The remains were partially exposed directly beneath the wheel of a construction vehicle, and any forward or backward motion would have created additional damage. In order to prevent this, as well as further disturbances to the burial, the contractor used a backhoe to raise the vehicle up and move it off the burial area.
- While the remains were being removed, the contractor was remobilized to different areas. Due to the high possibility of encountering additional burials, a qualified archaeologist was assigned to monitor all ground-disturbing actions.
- This increased monitoring resulted in a second discovery of remains, which was followed by the same coordination and consultation efforts as done previously.

- Prior to the removal of the human remains, a Tribal Representative also arrived on-site and performed a brief prayer ceremony. During the ceremony, the contractor respectfully ceased all work within the affected area.
- After removal of both burial remains, a qualified archaeologist remained on-site until all ground-disturbing activities related to the project were completed.

### **III. Challenges Encountered when Navigating Wis. Stat. § 157.70**

The challenges referenced below relate to process and terminology issues previously encountered by WisDOT staff, which typically occur before any construction-related activities commence. The department believes increased efficiencies can be achieved in these areas that will help reduce cost overruns, remobilization efforts, and other barriers to project management.

Process Timelines: Authorizations and renewals of cataloged and uncataloged sites.

- Current authorizations are valid for only one year, in which after such time a renewal then needs to be re-submitted.
- This can cause challenges for the contractor and agency when a project takes multiple years to complete, especially if there are construction changes due to on-site conditions.

Terminology: Difficult to understand what is considered a “disturbance”.

- The department sends all actions occurring within a burial site to WHS for authorization, including: sign replacements; mill and overlays; beam guards; and culvert replacements.
- This causes challenges with some work actions able to be completed within a single day, but are delayed until authorization from WHS is received, which can take around 30 days.

Boundaries: Visual, recorded, deeded, and cataloged boundaries.

- Effectively communicating the differences between the various types of boundaries to members of the public, local officials and contractors can become increasingly challenging.
- This effort usually requires additional coordination and increases the likelihood of project delays.

Communications: Method of delivery.

- During construction-related discoveries, all parties usually accept electronic forms of communication. However, pre-construction burial-related submissions

currently need to be transmitted on paper/inter-d mail, which causes potential delay in start times for the contractor.

#### **IV. Possible Modifications to Current Law**

- Clearer statutory definition of the term “disturbance”.
  - *Agency actions, which do not disturb beyond the existing in-place aggregate, should not considered a disturbance.*
- Define or establish overall response timelines associated with the various requirements under s. 157.70, Stats.
  - *This would allow for better planning of when construction operations can resume (e.g., burial authorizations, weekend discoveries, burial contracts).*
- Allowance of electronic transmissions (e-mail, web-based, etc.).

#### **V. Attachments**



## FDM 26-25-1 General

November 17, 2010

### 1.1 Objective

This procedure provides guidance with compliance to Wisconsin Statute § 157.70 regarding any WisDOT-managed or supervised project where a recorded cemetery or other type of burial site is within or adjacent to the project's Area of Potential Effects (APE).

*Note: On federal lands or Tribal lands (in trust, reservation, or allotted status), coordination with BTS Cultural Resource Team and compliance with NAGPRA, ARPA, and relevant Executive Orders is required.*

THE FOLLOWING INFORMATION PERTAINS TO STATE OR PRIVATELY OWNED LANDS.

The APE for archaeology consists of the existing and proposed ROW, temporary and permanent easements, staging of equipment, or any land activity (including erosion, wetland, etc.). The APE may also include additional areas depending on consultation.

Wis. Stat. § 157.70 requires appropriate parties to request in writing authorizations or permits from the WHS before proceeding with ground-disturbing activities at known burial sites (including cemeteries) as delineated in the Wisconsin Archaeological Sites Inventory (ASI). BTS will contact the Wisconsin Historical Society at (608) 264-6507 to initiate the authorization/permit process prior to proceeding with construction. Work may not commence until authorization or a permit has been received. *No ground-disturbing activities* (archaeological, construction, mitigation, etc.) may proceed without authorization or permission from the WHS. This requirement applies to all burial sites as defined under Wis. Stat. § 157.70 whether it is uncataloged or cataloged under that statute.

### 1.2 Documentation

The services of a qualified professional will be required to determine whether the boundary of the cemetery or other type of burial site extends into the project's APE.

Determining whether an archaeological site is recorded as a burial site under Wis. Stat. § 157.70, a qualified professional (usually an archaeologist) must research the site's 'status' (this information is available through the Wisconsin Historical Preservation Database, WHPD).

If the qualified professional determines the boundaries of a burial site or the information in the WHPD is otherwise incorrect, they will contact the WHS and correct the boundaries by submitting an ASI update form.

#### 1.2.1 Cemeteries (formally designated and/or marked grave site(s))

WisDOT form [DT1614](#) (Cemetery checklist) shall be completed. (The PM may wish to consult an archaeologist in completing this form.)

#### 1.2.2 Other Burial Sites (unmarked grave site(s) and/or mounds)

A qualified professional (usually an archaeologist, ethnographer, and/or Tribal expert), through consultation, will need to determine if the boundary of a burial site extends into or is adjacent to the project's APE.

The professional will need to provide a formal response as to whether the boundary does or does not extend into the project's APE.

### 1.3 Process

If it is determined the cemetery or other type of burial site extends into the project's APE, the Director of the Wisconsin Historical Society (WHS) will need to be petitioned for permission to work within the boundaries of the site (cemetery/burial) as stated in Wis. Stat. § 157.70 subs. (4) and (5).

- Depending upon the type of work, this request may or may not be granted.
- Depending on the type of burial site (uncataloged/cataloged under Wis. Stat. § 157.70), it may take 3 months before a decision is determined. This delay is to accommodate the WHS's obligation under Wis. Stat. § 157.70 to send out notices requesting comments from the Registry of Interested Persons.

#### 1.3.1 Procedure for Uncataloged burial sites 157.70 (4)

- Submit request to WHS to work within boundaries of uncataloged burial site (See attached example)
- Request should include brief project description, nature and extend of proposed work including methods to be employed and the size of area to be investigated
- Receive authorization from WHS before proceeding with any ground-disturbing activities.
- Depending on the scope of work proposed, mitigation measures (e.g. fencing, monitoring, etc.) may be required to reduce or prevent effect(s) to the site.

- BTS is currently responsible for preparing and submitting the petitioning request to WHS.

**1.3.2 Procedure for Cataloged burial sites 157.70 (5)**

*Note: Allow time for notification, review, and notice of decision, minimum of 90 days*

- Submit a "Request to disturb" to WHS (See attached example)
- Request should include brief project description, nature and extend of proposed work including methods to be employed and the size of area to be investigated.
- Registry of Interested Persons have 30 days from receipt to respond.
- The WHS Director then makes a decision based on comments to authorize or refuse the disturbance.
- BTS is currently responsible for preparing and submitting the petitioning request to WHS.

**1.3.3 Procedure for Inadvertent discoveries**

- The WisDOT construction project manager shall immediately stop construction activities and fence off the site area if any inadvertent burial related discoveries are encountered. The project manager is responsible for fulfilling other commitments for inadvertent discoveries of human remains as may be stipulated in existing project agreement documents such as MOA or MOU.
- *On state or privately owned lands:* The treatment of burial related discoveries will comply with Wis. Stat. § 157.70 . Any such finds will be considered within the category of a "known uncatalogued burial site", and a Wisconsin Historic Preservation Division standard contract for treatment of human remains will be followed (See attached contract example). This attachment will be completed in the event of a discovery.
- If human remains are discovered, all construction in the area of the discovery will be stopped and the area protected. The project manager will immediately notify BTS and BTS will notify FHWA, and interested consulting parties of these discovery(ies).
- Human skeletal elements discovered in non-burial context (such as an unintended or accidental depositing of human remains) are considered isolated human remains.
  - Isolated remains may include, but not limited to; teeth, bones in previously disturbed context (e.g. fill), and bones in refuse context.
  - Disposition of these remains will be coordinated in consultation with the FHWA, and interested consulting parties.

*Note: On federal or tribal owned lands in trust, reservation, or allotted status.*

The WisDOT construction project manager shall immediately stop construction activities and fence off the site area if any inadvertent burial related discoveries are encountered. Native American human remains and/or objects subject to the provisions of the NAGPRA, i.e. burials, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony, are encountered during construction, WisDOT shall notify and consult with the FHWA, interested consulting parties to determine appropriate treatment measures for the remains and/or objects. It shall be the responsibility of FHWA and WisDOT to either preserve or repatriate the human remains, and associated objects, depending on the agreed upon determination of the consulting parties

**LIST OF ATTACHMENTS**

- [Attachment 1.1](#)           Uncataloged Burial Request (Example)
- [Attachment 1.2](#)           Cataloged Burial Request (Example)
- [Attachment 1.3](#)           Standard Contract (Example)

**UNCATALOGED BURIAL REQUEST (EXAMPLE)**

10/27/2010

Compliance Officer  
Wisconsin Historical Society, Office of Preservation Planning  
816 State Street  
Madison, Wisconsin 53706-1482

RE: Request to work within the boundaries of un-cataloged burial site(s):  
Site # (Site Name) T.R.S. (Town, Range, Section) -  
WisDOT Project ID:  
Title: Termini  
County, Wisconsin

Pursuant to Wisconsin Statute 157.70(4) and Wisconsin Administrative Code HS 2.04(2), the Wisconsin Department of Transportation (WisDOT) is requesting authorization to work within the recorded boundaries of un-cataloged burial site(s) Site # (Site Name).

Undertaking

*Provide a brief summary of the project*

Ground Disturbing Activities

Commitments

*Include any agreed upon commitments eg. Fencing, monitoring, no staging, etc.*

If human bone is discovered during construction, WisDOT will cease work activities immediately and will contact the Wisconsin Historical Society at 1-800-342-7834 for compliance with Wis. Stat. 157.70 regarding the protection of human burial sites.

If I can be of further assistance, or provide additional information please feel call me at (608) 261-0137.

Sincerely,

WHS concurrence authorizes request

\_\_\_\_\_  
Archaeology Program Manager      Date

\_\_\_\_\_  
Office of Preservation Planning      Date

Cc:

**CATALOGED BURIAL REQUEST (EXAMPLE)**

10/27/2010

Compliance Officer  
Wisconsin Historical Society, Office of Preservation Planning  
816 State Street  
Madison, Wisconsin 53706-1482

RE: Request to work within the boundaries of cataloged burial site(s):  
Site # (Site Name) T.R.S. (Town, Range, Section) -  
WisDOT Project ID:  
Title: Termini  
County, Wisconsin

Pursuant to Wisconsin Statute 157.70(5), the Wisconsin Department of Transportation (WisDOT) is requesting permission from the WHS director in obtaining a permit to work within the recorded boundaries of cataloged burial site(s) Site # (Site Name)

Undertaking

*Provide a brief summary of the project*

Ground Disturbing Activities

Commitments

*Include any agreed upon commitments eg. Fencing, monitoring, no staging, etc.*

If human bone is discovered during construction, WisDOT will cease work activities immediately and will contact the Wisconsin Historical Society at 1-800-342-7834 for compliance with Wis. Stat. 157.70 regarding the protection of human burial sites.

As a result, WisDOT is requesting SHPO concurrence with the assessment that the proposed undertaking will result in no effect to burial sites pursuant to 157.70.

If I can be of further assistance, or provide additional information please feel call me at (608) 261-0137.

Sincerely,

Archaeology Program Manager      Date

Cc:

**STANDARD CONTRACT (EXAMPLE)**

This agreement is made with \_\_\_\_\_ (Wisconsin Department of Transportation, 4802 Sheboygan Ave, Madison WI 53707), the Wisconsin Historical Society (WHS) and \_\_\_\_\_, (insert archaeological contractor's name and address) for archaeological and analytical services to be performed at \_\_\_\_\_ (provide address). The purpose of this Contract is to ensure that the excavation and analysis of human remains and associated objects are performed and completed in a timely manner and that sufficient information is provided to the Director of the Wisconsin Historical Society to allow for a disposition decision per Wis. Stat. §157.70(6) and HS 2.05(1) following the completion of the excavation and skeletal analysis.

Deliverables include:

1. The professional archaeological excavation and removal of human remains and any associated objects.
2. The determination of either direct kinship, or the cultural, tribal or religious affiliation of the remains by a "Qualified Skeletal Analyst" as defined in HS 2.02(12) and HS 2.04(6)(b) as well as the minimum and maximum number of individuals identified, including their age, and sex, if possible. To the extent necessary to make the determination, the analysis may also include documentation and description of trauma, evidence for cultural and/or medical intervention, the presence and documentation of pathology, as well as any relevant taphonomic factors. Refer to "Standards for data Collection From Human Skeletal Remains" by J. E. Buikstra and D. H. Ubelaker
3. Soil removed from the bones during cleaning must be retained with the remains for future disposition.
4. It is the responsibility of the archaeological contractor to retain the services of a "Qualified Skeletal Analyst." A current listing of those individuals is appended to this contract and may be found at [http://www.wisconsinhistory.org/hp/burialsites/about/bs\\_skeletalanalyst.pdf](http://www.wisconsinhistory.org/hp/burialsites/about/bs_skeletalanalyst.pdf).
5. The preparation of an overall site map that references the location of the burial(s) relative to a permanent datum point as well as the preparation of an *in-situ* plan view and profile drawings of the excavation and each burial.
6. Scaled photometric documentation of the disturbance, the excavation and any associated objects.
7. The completion and submittal of an archaeological site inventory (ASI) form to the State Archaeologist's office at the WHS.
8. The Wisconsin Department of Transportation shall be responsible for submitting two copies of the report to the director of the WHS for review once the excavation and analysis are completed. The report must include information on the context of discovery and any associated cultural information that would aid in determining the antiquity and direct kinship, or the cultural, tribal or religious affiliation of the remains.
9. The Wisconsin Department of Transportation shall be responsible for transferring all reports generated and copies of field notes, maps, and photographs related to the burial site to the Wisconsin Historical Society, under HS 2.04(10).

A complete literature search and interviews with local residents should be undertaken prior to beginning the excavation. No bone samples may be harvested for study without the expressed permission of the director under HS 2.04(9) and particular care should be taken to follow pages 84-102 of the 1997 Wisconsin Archaeological Survey "Guidelines for Public Archaeology in Wisconsin, as Revised," during the excavation and recording of the human remains and associated objects. It is the responsibility of the archaeological contractor to secure a field permit under Wis. Stat. §44.47(4) from the State Archaeologist prior to initiating fieldwork on state, county or municipal land. No images, pictures, or video of the burial, or work on the human remains, may be used in any public presentation or report. Drawings and illustrations based upon the above and the fieldnotes are appropriate.

The terms of payment shall be arranged between \_\_\_\_\_ (Wisconsin Department of Transportation) and \_\_\_\_\_, (the archaeological contractor), but in no case shall more than 50% of the total agreed upon payment shall be paid to the archaeological contractor until the report is received and approved by the director of the WHS. An archaeologist qualified to excavate burials shall be on-site at all times during the

excavation and the archaeological contractor will hold temporary custody of the remains and any associated artifacts in a secure facility until such time as a disposition decision is made by the Wisconsin Historical Society. If the stipulations stated above are not carried out by the agreed-upon timelines in this contract; the project sponsor (WISDOT) retains responsibility of the remains and shall execute a new contract for the service deliverables contained in this contract. This contract will remain in effect until the work has been successfully completed and agreed upon by the Director or designee of the Historical Society.

The excavation will be completed no later than \_\_\_\_\_. The analysis will be completed by \_\_\_\_\_ and the report will be submitted to the director of WHS no later than \_\_\_\_\_. It is understood by all parties that inadvertent discoveries during the course of the excavation may result in unforeseen delays; such delays must be immediately communicated to and coordinated with the Program Coordinator, at the Wisconsin Historical Society so that a new field completion date may be negotiated. Results of the analysis may not be published or presented in a public forum prior to the acceptance of the final report by the Wisconsin Historical Society.

Signed/Dated: \_\_\_\_\_ (Wisconsin DOT).

Signed/Dated: \_\_\_\_\_ (the archaeological contractor).

Signed/Dated: \_\_\_\_\_ (Wisconsin Historical Society).



# Highway Maintenance Manual

Bureau of Highway Maintenance

Chapter 9 Right-of-Way Use & Permits

December 2010

Section 15 Utility Accommodation

Subject 50 Environmental Conditions

## 1.0 General

This policy specifies responsibilities and the procedures that a utility shall follow when environmental conditions are encountered in the right-of-way (R/W). These conditions include, but are not limited to:

- 1) Cultural resources: archeological sites, historic structures, burial sites, etc.
- 2) Contaminated soils
- 3) Underground storage tanks (USTs)
- 4) Leaking underground storage tanks (LUSTs)

## 2.0 WisDOT Responsibility

Under Wisconsin Administrative Rule [Trans 220](#), WisDOT shall notify a utility when its facilities may be affected by a proposed improvement project. If the utility confirms that its facilities are in the vicinity of the improvement, then WisDOT shall mail the utility at least that portion of the improvement plan that concerns those facilities. WisDOT shall also provide any additional and duplicate plan information needed by the utility to design and layout the removal, relocation, or adjustment of the existing utility facilities and the placement of relocated or additional facilities within the project limits. This includes furnishing a utility with information regarding any environmental conditions when site assessments are performed as a required part of WisDOT's project investigation. This information shall be considered for **informational purposes only** since data may change from the time an investigation is completed until the time a report is reviewed.

## 3.0 Utility Responsibility

When a utility wants to locate its facility on the R/W and WisDOT is not required to furnish the utility with information regarding environmental conditions, the utility has the responsibility of determining if these conditions exist at its proposed site. The utility should perform a site assessment to accomplish this.

## 4.0 Site Assessments

When a utility needs to do site assessments (investigations), the procedures listed in WisDOT's Facilities Development Manual may be used as a guide. Specifically, [Chapter 26](#) has information on cultural resource preservation (archeological, historical, etc.), and [Chapter 21, Section 35](#), has information regarding contaminated sites and remediation.

WisDOT recommends that site assessments be performed by a qualified historian, archeologist, or environmental consultant if the utility does not employ personnel specifically qualified for this work.

## 5.0 Discovery of Environmental Conditions

Whether the discovery of environmental conditions occurs during a site assessment, facility installation, or maintenance operation, **ALL WORK SHALL BE SUSPENDED IMMEDIATELY**. If the site poses a possible health risk, the local police and fire departments shall be notified immediately, and the utility shall take the necessary steps to provide for the safety of people and property in the area. After suspending operations, the utility shall contact the offices listed [Table 1](#) depending upon the type of conditions discovered:

Failure to stop work immediately upon discovery of environmental conditions **may** result in financial responsibility ([Table 2](#)) for the utility due to subsequent site assessments, mitigation, remediation, or possible fines. A checklist has been developed ([Attachment 1](#)) to help utilities obtain the necessary information which may be asked of them by site investigators.

WisDOT will notify the utility when it can resume its operation.

**Table 1: Environmental Conditions Discovery Notification list**

<b>Utility Discovers Environmental Conditions while Working on WisDOT Right-of-Way (R/W)</b>	
Category	Contact Information (Note: Contact All That Apply)
<b>Cultural Resources</b>	
Historic structure	State Historic Preservation Office: (608)264-6506
Archeological site	State Historic Preservation Office: (608)264-6507
Burial site	Burial Sites Preservation Office: (608)264-6503 or (800)342-7834
<b>Contaminated Soils, USTs, LUSTs</b>	
Department of Natural Resources <sup>2</sup>	<a href="http://dnr.wi.gov/topic/spills/report.html">http://dnr.wi.gov/topic/spills/report.html</a> (800)/943-0003 or (888)936-7463
<b>For Any Discovery</b>	
Utility project but no WisDOT project	WisDOT region utility permit coordinator <sup>1</sup>
WisDOT project	WisDOT construction project manager or district construction supervisor <sup>1</sup>
<p>1. These people shall also notify the WisDOT's Bureau of Equity and Environmental Services:  Jim Becker .....(608) 261-0137 ..... Cultural Resources  Shar TeBeest .....(608) 266-1476 ..... Contaminated Soils, USTs, LUSTS, etc.</p> <p>2. Required under Wisconsin law</p>	

## 6.0 Utility Facility Placement Options

When environmental conditions are discovered in the R/W, the Department of Natural Resources, State Historic Preservation Office, or Burial Sites Preservation Office (collectively: Agency) shall determine whether a utility can locate its facility within the affected area. Based upon the Agency's decision, the following may occur:

### 6.1 Utility Entirely Avoids the Affected Area

- 1) An Agency mandates that the area be left in its natural state, and utility facilities shall not be allowed in the area.
- 2) The utility decides that it wants to locate in another area and avoid possible delays to its project due to site assessments, remediation, mitigation, or the possible decision noted in 1.

### 6.2 Utility Locates Around or through the Affected Area

- 1) An Agency orders the site to be completely remediated or mitigated before any utility installation can take place. The utility would then have a clear corridor in which to locate its facility.
- 2) An Agency decides that the area can be left in its natural state, but any area that is disturbed or affected by the utility operation (based upon the Agency's assessment) has to be remediated or mitigated. The utility may also elect to go around the area, if possible, and avoid remediation or mitigation.
- 3) An Agency decides that the area can be left in its natural state, and the conditions do not have to be remediated or mitigated as long as the utility exercises extreme care to avoid any significant disruption to the area. In the case of an archeological or historical site, a utility may be allowed to place a facility in an area that was already disturbed. In the case of a hazardous materials site, a utility would have to utilize construction methods that would prevent any contamination from spreading.

Unless WisDOT has taken charge of the remediation or mitigation process due to a WisDOT project, a utility that decides to locate its facility through an affected area, as described in items 1-3 above, shall document in its permit application that it has contacted the Agency and has received the proper authorization to locate in the area along with its proposed construction methods. These permits may also be routed through the Region's environmental coordinator or the Bureau of Equity and Environmental Services as a final check.

**7.0 Financial Responsibility**

When a utility performs an initial site assessment on WisDOT R/W – either with a project of its own or because a WisDOT project is not required to obtain environmental information – the utility shall bear the cost of the assessment. No matter who performed the initial assessment or even if they were not done, a utility that discovers any environmental conditions shall not be responsible for assessment, mitigation, or remediation costs proved it had complied with section 5.0 of this policy and avoids the site by placing its facility in another location. Table 2 specifies who may have to pay for assessment, mitigation, or remediation costs depending upon the situation.

**Table 2: Financial Responsibility Table**

<b>Utility Discovers Environmental Conditions while Working on WisDOT Right-of-Way and Decides to Locate in the Affected Area</b>	
Category/Activity	Who Pays for the Activity?
<b>Cultural Resources</b>	
Site Assessments (Identification or evaluation surveys) <sup>1</sup>	
• Utility project but no WisDOT project	Utility
• WisDOT project	Utility or WisDOT <sup>2</sup>
Mitigation <sup>1</sup>	
• SHPO or BSPO order	Utility
• No SHPO or BSPO order	Utility
<b>Contaminated Soils, USTs, LUSTs, etc.</b>	
Site Assessments	
• Utility project but no WisDOT project	RP or WisDOT or Utility <sup>3</sup>
• WisDOT project	RP or WisDOT or Utility <sup>3</sup>
Remediation	
• DNR order	RP or WisDOT or Utility <sup>3</sup>
• No DNR order	Utility
<p>1. WisDOT policy is to <b>not</b> spend available resources for assessments or mitigation, but rather preserve archeological sites and historic structures in place. This is in accordance with Section 106 of the National Historic Preservation Act.</p> <p>2. Applicable only when WisDOT is required to obtain environmental information for its project.</p> <p>3. If a utility fails to comply with section 5.0 of this policy, it may be responsible for a percentage of the costs depending upon how much worse the situation becomes due to the utility's actions.</p> <p>If the WisDOT is <b>not</b> the RP, then a utility which incurs costs due to encountering contaminated soils, USTs, or LUSTs will have to recover them from the RP.</p> <p>SHPO = State Historic Preservation Office                      BSPO = Burial Sites Preservation Office                      DNR = Department of Natural Resources                      RP = Responsible Party (owner of the source of the hazard as determined by DNR)</p>	

**Attachment 1: Environmental Conditions Discovery Checklist (Page 1 of 2)**

As soon as environmental conditions are discovered in WisDOT's right-of-way,

**STOP WORK IMMEDIATELY**

and be prepared to report the following information to the contacts listed in [HMM 09-15-50 Table 1](#)

**1. SITE LOCATION**

- a. Highway(s): \_\_\_\_\_ b. Direction<sup>1</sup>:  NB  SB  EB  WB
- c. County: \_\_\_\_\_ d.  City  Village  Town of: \_\_\_\_\_
- e. Distance and direction from nearest public road intersection or mile marker? \_\_\_\_\_
- f. Nearest public road intersection name or mile marker number? \_\_\_\_\_
- g. Other landmarks? \_\_\_\_\_

**2. ENVIRONMENTAL CONDITION – Cultural Resources**

- a. What was found (burial site, building foundation, artifact)? \_\_\_\_\_
- b. Is the location of the find marked?  Yes  No If yes, how is it marked? \_\_\_\_\_
- c. Approximate area (dimensions) of the find? \_\_\_\_\_

**3. ENVIRONMENTAL CONDITION – Contaminated Sites, USTs<sup>2</sup>, LUSTs<sup>3</sup>**

- a. What was found? \_\_\_\_\_
- b. Appearance of soils or liquid? \_\_\_\_\_
- c. Odor of soils or liquid? \_\_\_\_\_
- d. Approximate size of tank or area of contamination uncovered? \_\_\_\_\_
- e. Obvious liquid or product in the tank?  Yes  No
- f. Obvious smell in the tank?  Yes  No If yes, can you describe it (varnish, kerosene, gasoline, diesel, other, unknown)? \_\_\_\_\_
- g. Soil type(s) encountered (sand, gravel, clay, till)? \_\_\_\_\_
- h. Depth to groundwater (if known)? \_\_\_\_\_
- i. Any previous land use knowledge (local history, memory of site as a business)?  Yes  No  
If yes, please describe. \_\_\_\_\_
- j. Is the location of the find marked?  Yes  No If yes, how is it marked? \_\_\_\_\_

**4. STATUS OF UTILITY WORK**

- a. Has the work stopped in the area?  Yes  No **If NO, STOP WORK IMMEDIATELY!**
- b. Has the area been secured (fenced, staked or marked, roped off, or delineated by traffic control devices)?  Yes  No
- c. Can the work continue in another area?  Yes  No If yes, for how long? \_\_\_\_\_
- d. Can the affected area be avoided (utility facility placed in another location)?  Yes  No
- e. Has any completed utility work been clearly marked (staked, painted, or flagged)?  Yes  No
- f. Is any of the completed utility facility active, energized, etc.?  Yes  No
- g. Is this utility being relocated to facilitate a highway project?  Yes  No

<sup>1</sup> Direction is the cardinal or route direction, not the actual compass direction:

NB = Northbound, SB = Southbound, EB = Eastbound, WB = Westbound

<sup>2</sup> Underground storage tanks

<sup>3</sup> Leaking underground storage tanks

**Attachment 1: Environmental Conditions Discovery Checklist (Page 2 of 2)**

**5. CONTACTS**

- a. Was the State Historic Preservation Office (SHPO) contacted if building foundations or artifacts were discovered?  Yes  No  
If yes, date: \_\_\_\_\_ By (name/phone): \_\_\_\_\_  
SHPO contact (name/phone): \_\_\_\_\_
  
- b. Was the Burial Sites Preservation Office (BSPO) contacted if a burial site was discovered?  Yes  No  
If yes, date: \_\_\_\_\_ By (name/phone): \_\_\_\_\_  
BSPO contact (name/phone): \_\_\_\_\_
  
- c. Was the Department of Natural Resources (DNR) contacted if a contaminated site, UST or LUST was discovered?  Yes  No  
If yes, date: \_\_\_\_\_ By (name/phone): \_\_\_\_\_  
DNR contact (name/phone): \_\_\_\_\_
  
- d. Was the WisDOT utility permit coordinator, construction project manager, or other WisDOT project representative (e.g., consultant) contacted?  Yes  No  
If yes, date: \_\_\_\_\_ By (name/phone): \_\_\_\_\_  
WisDOT contact (name/phone): \_\_\_\_\_  
WisDOT contact (name/phone): \_\_\_\_\_  
Consultant contact (name/phone): \_\_\_\_\_
  
- e. Was WisDOT's Bureau of Equity & Environmental Services contacted (Note: this is not a utility responsibility)?  Yes  No  
If yes, date: \_\_\_\_\_ By (name/phone): \_\_\_\_\_  
WisDOT contact (name/phone): \_\_\_\_\_  
WisDOT contact (name/phone): \_\_\_\_\_
  
- f. Other contacts or e-mail addresses: \_\_\_\_\_  
\_\_\_\_\_

**6. RESUMING WORK**

- a. Did WisDOT indicate a timeframe in which someone would respond?  Yes  No
- b. What is that timeframe? \_\_\_\_\_
- c. Who will authorize resuming work? \_\_\_\_\_
- d. When can the work be resumed? \_\_\_\_\_
- e. Date authorization received? \_\_\_\_\_



1-58.1 Archaeological Survey Information Transmittal, Form DT1919

In preparation for a literature search of pits or quarries proposed to be used by the contractor, the contractor should complete department form DT1919, Archaeological Survey Information Transmittal. The completed form should be sent to the Bureau of Equity and Environmental Services (BEES).

Refer to Figure 1 for an example of completed department form DT1919.

Figure 1 Completed Archaeological Survey Information Transmittal, Dept Form DT1919

MATERIAL EXCAVATION SITES		Wisconsin Department of Transportation Bureau of Equity & Environmental Services PO Box 7965 Madison, WI 53707-7965 Telephone: 608-266-0099	
Archaeological Survey Information Transmittal		DT1919 2/2006 (Replaces ED860)	
Project ID	8110-07-71	Highway	STH 64
WISDOT Regional Construction Engineer Name	Jane Engineer	Region	SW - LaCrosse
Contractor Name and Address	Joe Contractor	Area Code - Telephone Number	608-943-1234
		Area Code - Telephone Number	608-943-5678
SURVEY SITE	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Location - County	Dunn		
Township(s)	Sheridan		
Town and Range Lines	T 31 N,R 13W	T N,R	T N,R
Section Number	26		
1/4 Section	SE 1/4 SE 1/4 NW 1/4	1/4 1/4 1/4	1/4 1/4 1/4
Land Owner Name	Landry Nemea		
Address	1230 Joliet, Stillwater, Mn 55083		
Current Land Use	Farmland		
Approximate Acreage to be Used	9		
<b>MAPS REQUIRED:</b> 1. Map showing the precise location of the proposed borrow pit(s). (Section plats and RW plats are examples of such a map.) 2. Sketch map of borrow area. (Other maps which provide equivalent information and reference points are also acceptable.)			
<b>Archaeologist Comments</b>			
<input type="checkbox"/> A1	<input type="checkbox"/> A2	<input type="checkbox"/> A3	1. No Site(s) in Borrow Area
<input type="checkbox"/> A1	<input type="checkbox"/> A2	<input type="checkbox"/> A3	2. Site(s) in Borrow Area
<input type="checkbox"/> A1	<input type="checkbox"/> A2	<input type="checkbox"/> A3	3. Mounds/Cemetery in Area
(Archaeologist Signature)			
<b>Bureau Recommendations</b>			
<input type="checkbox"/> Survey Recommended	<input type="checkbox"/> High Potential - Proceed With Caution	<input type="checkbox"/> Ok to Proceed	
(Bureau of Equity & Environmental Services Representative Signature)			

The guidelines for conducting archaeological studies of off-site construction activities fall into two categories: those in which an archaeological field survey is required and those where a literature and archival search is required.

Archaeological field surveys are required for off-site construction activities involving borrow, batch plants, haul roads, disposal areas, etc., in the following instances:

1. WisDOT's contract specifies the source of material.
2. The off-site activity occurs on state-owned land.

The Bureau of Equity & Environmental Services (BEES) will be responsible for coordination with the State

Historic Preservation Officer (SHPO) and providing the archaeological services for the above.

WisDOT will no longer fund or require on-site archaeological field investigations for construction activities that occur on private property. However, since the department often takes measures to avoid archaeological sites in the design process, FHWA has requested WisDOT to do what it can to avoid them during construction. Thus WisDOT is establishing guidelines to require that a literature and archival search be performed on all off-site areas where material excavation relating to the contract will be performed. This includes all new borrow and waste sites, pits and quarries, plant sites, or any land to be disturbed by construction activities associated with the project.

The contractor will be responsible for requesting the literature and archival search. The literature and archival search will be conducted by the BEES and identify the site as having a high, medium, or low probability of containing archaeological resources. It is then the contractors' responsibility to seek archaeological services as they feel warranted.

WisDOT cannot prohibit construction activities on private property where archaeological resources have been identified except when burial sites or mounds are present. Wisconsin statute 157.7 protects burial sites in Wisconsin on both public and private property.

#### **1-58.1.1 Procedure for Off-Site Construction Activities on Private Property**

1. The contractor will submit the following information to the BEES and the region engineer pertinent to the off-site area:
  - 1.1. Completed Archaeological Survey Information Transmittal, department form [DT1919](#). Refer to [Figure 1](#).
  - 1.2. Project location map.
  - 1.3. A sketch map of the off-site activity area.
2. The BEES will conduct the literature and archival search and will respond to the contractor and the region within three (3) working days with information on any archaeological resources, burial sites, or mounds in the area.
3. The BEES will inform the contractor when the off-site area has been identified as a high probability site and may suggest that the contractor seek archaeological services.
4. The BEES will inform the contractor when the off-site area has been identified to contain burial sites or mounds. The contractor is responsible for contacting the SHPO and obtaining the services of an archaeologist when necessary.
 

State Historic Preservation Officer  
(608) 264-6509
5. The engineer should advise the contractor to contract the SHPO if archaeological resources are encountered at the site during construction. The contractor should also be advised to stop construction activities at the site, but is not prohibited from continuing construction activities until SHPO has been contacted.
6. The contractor must stop construction activity and immediately notify the Burial Sites Preservation office and the WisDOT BEES if unanticipated human remains are encountered at the site during construction.
 

Burial Site Prevention Office  
(608) 264-6502 or (800) 342-7834  
WisDOT Bureau of Equity & Environmental Services  
(608) 266-8216

Construction activity at the site cannot resume until permission is obtained from the Burial Sites Preservation office.
7. The contractor must request a literature and archival search for any proposed sites that are needed after construction activity has begun.