FDM 26-25-1 General

November 15, 2024

1.1 Objective

This section outlines procedures for complying with Wisconsin Statute § 157.70 (157.70) or for any project with Wisconsin Department of Transportation (WisDOT) oversight that involves a recorded burial site within or adjacent to the project's Area of Potential Effects (APE). On federal or tribal lands, additional laws and regulations apply (i.e. Native American Graves Protection and Repatriation Act [NAGPRA], Archaeological Resources Protection Act of 1979 [ARPA], etc.). When working on federal or tribal lands, additional coordination with relevant federal or tribal authorities is required.

1.2 Recorded Burial Sites in Wisconsin

157.70 requires authorization from the Wisconsin Historical Society (WHS) before proceeding with any project activities in a recorded burial site as delineated in the Wisconsin Historic Preservation Database (WHPD) Archaeological Sites Inventory (ASI). Ground-disturbing work, including archaeological investigation or construction, may not commence within the burial site boundary until authorization has been received.

A qualified professional will determine whether the boundary of the burial site extends into the project's APE through the screening process or the Section 106 of the National Historic Preservation Act of 1966 (Section 106) process.

1.3 157.70 Authorization

If it is determined the burial site boundary extends into the project's APE, the WisDOT Cultural Resource Team (CRT) will petition WHS will for authorization to work within the site as stated in 157.70 subs. (4) and (5).

1.3.1 Uncatalogued Burial Sites 157.70 (4)

An uncatalogued burial site is a human burial site that has been destroyed, cannot be located, or has not yet been listed in the Wisconsin Burial Sites Catalog.

It is the project team's responsibility to complete the DT2551 form and email DOTCulturalResources@dot.wi.gov with supporting materials. Once received, WHS has 30 days to review and provide authorization. Depending on the scope of work proposed, WHS may impose mitigation measures (e.g.. fencing, monitoring, etc.) to reduce or prevent effect(s) to the site.

1.3.2 Cataloged Burial Sites 157.70 (5)

A cataloged burial site is a human burial site believed to still contain human remains, is in a known location, and is listed in the Wisconsin Burial Sites Catalog.

Depending on the type of work, this request may or may not be granted. It is the project team's responsibility to complete the DT2551 form and email DOTCulturalResources@dot.wi.gov with supporting materials. If ground disturbance is proposed within a catalogued boundary, coordination with WisDOT CRT should begin at least **one year** before project construction. Once received, WHS has a minimum of 90 days to complete its consultation efforts and authorize or deny the disturbance. Depending on the scope of work proposed, WHS may impose mitigation measures (e.g., fencing, monitoring, etc.) to reduce or prevent effect(s) to the site.

1.3.3 Post-Review Discoveries (Inadvertent Discoveries)

Inadvertent discovery of human remains is the unanticipated encounter or detection of human remains, burial sites, and/or funerary or sacred objects found within the APE after Section 106 is completed.

If human remains are encountered, all construction in the area of the discovery must be stopped and the area protected. The project team will immediately notify CRT, who will notify the State Historic Preservation Office (SHPO), Federal Highway Administration (FHWA), and interested consulting parties of the discovery.

If human remains are encountered, 157.70 and the Inadvertent Discovery Protocol will be followed (Section 106 Delegation PA; see Attachment 2). No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.

- If your project has an existing agreement document such as a Memorandum of Agreement (MOA) or Programmatic Agreement (PA), additional mitigation efforts may be required in addition to the Inadvertent Discovery Protocol.
- *On state- or privately-owned lands*: The treatment of burial related discoveries will comply with 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. This attachment will be completed by CRT and/or the qualified professional in the event of a discovery.
- *On federal or tribal-owned lands in trust, reservation or allotted status.* Native American human remains and/or funerary and sacred objects are subject to the provisions of the NAGPRA. If encountered during construction, WisDOT will notify and consult with the federal agency(ies) and interested Tribes to determine appropriate treatment measures for the remains and/or objects. It will be the responsibility of federal agency(ies) and WisDOT to either preserve or repatriate the human remains, and associated objects, depending on the agreed upon determination of the consulting parties.