



## 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**

<a href="#">Attachment 1.1</a>	Uncataloged Burial Request (Example)
<a href="#">Attachment 1.2</a>	Cataloged Burial Request (Example)
<a href="#">Attachment 1.3</a>	Standard Contract (Example)