

PART II
CHAPTER 10
Post-Review Discoveries

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10-1.0 Overview

This chapter addresses post-review discoveries, including accidental discoveries and unanticipated impacts. The term *post-review* refers to any point after the Section 106 consultation has been completed. Post-review may be considered such soon after the completion of Section 106 consultation or during project implementation. In any case, please refer to the procedures below for complying with both the state and federal requirements to address post-review discoveries.

10-2.0 Post-Review Discoveries (Accidental or Unanticipated Impacts)

Treatment of accidental discoveries and unanticipated impacts is covered by federal and state laws. When a post-review discovery is made, compliance with federal and state law can be approached in a combined procedure. Therefore, it is important to understand both the Section 106 and state law requirements for addressing post-review discoveries. This chapter steps through compliance with both the federal and state laws to more easily explain compliance requirements.

10-2.1 Section 106

In the Section 106 regulations, post-review discovery is covered under [36 CFR Part 800.13](#), which states that if historic properties are discovered or unanticipated effects on historic properties are found after the Section 106 process is completed, the federal agency shall make reasonable efforts to avoid, minimize or mitigate “adverse effects” to such properties.

When a discovery is made on a FHWA/INDOT project, typically the project manager or on-site project engineer will contact INDOT-CRO. Construction should stop within 100 ft. of the discovery until the issue has been resolved. If CRO determines that the discovery requires further assessment, CRO will contact FHWA. At that point, FHWA will determine actions to resolve “adverse effects,” and notify--or direct INDOT to notify--the SHPO and the ACHP within 48 hours of the discovery. The notification shall describe FHWA’s assessment of National Register eligibility of the property and proposed actions to resolve the “adverse effects.” The SHPO will respond within 48 hours of the notification. FWHA will take into account SHPO recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions.

If a project includes an MOA to mitigate adverse impacts to historic properties, check the language of the MOA to determine if it provides instruction on the treatment of accidental discoveries, especially concerning notification of tribes.

10-2.2 Applicable State Laws

Under [IC 14-21-1-29](#), if a person accidentally discovers a burial object or artifact while disturbing the ground for another purpose, the person shall immediately stop and must notify the DNR within two business days. Following notification, a number of results may occur:

1. The ground disturbing activity may continue (with or without conditions), or in accordance with an approved, systematic plan for scientific recovery, analysis, and disposition of the material;
2. The situation may be resolved under other law;
3. Or the area may be protected and avoided.

If the artifact or burial object is accidentally discovered during a transportation project, INDOT-CRO requires that all work stop within 100 ft. of the object and INDOT-CRO be notified immediately. INDOT-CRO will then communicate with the DNR-DHPA regarding the accidental discovery.

Under Indiana Code, an artifact (dating before December 31, 1870) can consist of a fragment of historic or prehistoric pottery, chipped stone tools or flakes, ground stone tools, or prehistoric or historic housing material, among other things. A feature can consist of a subsurface prehistoric garbage pit or cooking pit, the remains of a prehistoric house, a surface historic privy or well, or any burial objects. Burial objects are of particular concern, because they suggest the presence of human remains, which are covered under laws discussed below.

10-2.3 Human Remains (IC 14-21-1-27 and 312 IAC 22)

If any human remains are accidentally encountered during construction, work shall cease and the human remains left undisturbed. INDOT-CRO and DHPA should be notified immediately. INDOT or the DHPA will then contact a county coroner and law enforcement officials ([IC 14-21-1-27](#) and [312 IAC 22](#)). Exposed human remains should be protected from the elements, and at no time should human remains be allowed to be viewed by the public.

Please keep in mind that, although human remains may appear archaeological or historic, they may actually represent a modern or historically recent crime scene, which is why the county coroner always documents the remains first. It is very important to leave the area of the discovery as undisturbed as possible.

Work at the site shall not resume until a plan for the treatment of the human remains is developed and approved in consultation with the DHPA, FHWA and INDOT-CRO. The plan

Remember:

When an accidental discovery is made, work within 100 feet must stop – work may continue in other areas.

INDOT-CRO should be contacted immediately. The contractor should notify the Project Engineer/Supervisors, who will inform CRO of the discovery. The sooner CRO is contacted, the sooner work may be cleared to resume around the discovery.

will comply with IC 14-21-1, 312 IAC 22-3-3, the [*DRAFT-Guidebook for Indiana Historic Sites and Structures Inventory – Archaeological Sites As partially revised by the Division of Historic Preservation and Archaeology in consultation with the Guidebook Committee of the Indiana Archaeology Council in 2008*](#), and all other appropriate federal and state guidelines, statutes, rules, and regulations. Further, any investigation and excavation of human remains will be conducted by archaeologists qualified under IC 14-21-1 and 312 IAC 22-3-4. For additional guidance, please consult with the ACHP’s human remains policy.¹

10-3.0 Examples of Post-Review Discoveries

Some examples of post-review discoveries include (but are not limited to):

- Dark stains containing prehistoric artifacts (such as “arrowheads”, stones, bone, charcoal) or historic artifacts (such as bricks, nails, bottles, broken glass, whole or broken dishes and crocks, metal, bone, charcoal, etc.)



- Concentrations of these types of artifacts with no dark stain visible
- Buried foundations or footers (coursed bricks, mortared stones, limestone piers, etc.)

¹ ACHP Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects, <http://www.achp.gov/docs/hrpolicy0207.pdf>.



- Wells and cisterns (may be lined with bricks)



- Buried wooden posts, planks, and boxes



- Human remains- or *potentially* human remains (human remains and graves are legally protected, and purposely disturbing them is a felony)