
Subject: FW: Inadvertent Discovery Clause Example
Attachments: Federal Lands Project InadvDisc_template.docx

From: Sarah O'Donnell <sodonnell@osagenation-nsn.gov>
Sent: Tuesday, June 21, 2022 9:53 AM
To: Tabachnick, Alan <alan.tabachnick@stb.gov>
Cc: Deseray Helton <deseray.helton@osagenation-nsn.gov>
Subject: RE: Inadvertent Discovery Clause Example

Good Morning Mr. Tabachnick,

Apologies on the wait and many thanks for your patience. Please find attached a draft "template" version of our Inadvertent Discovery Procedures. These procedures are a base used as a starting point for each agency or project that may have contributing factors that require expansion or adaptation.

You may also note this is for federal lands only, we develop procedures separately for those projects that have state/private land holdings depending on that state's burial laws. We have a lot of experience making sure IDP documents comply within the framework of Missouri's law (RSMo 194.400 - 194.410), so I'd be happy to review any draft procedures you develop for this particular project.

Thanks,
 Sarah

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From: Tabachnick, Alan <alan.tabachnick@stb.gov>
Sent: Wednesday, May 18, 2022 9:59 AM
To: Sarah O'Donnell <sodonnell@osagenation-nsn.gov>
Cc: Deseray Helton <deseray.helton@osagenation-nsn.gov>; Colleen A. Bell <colleen.bell@osagenation-nsn.gov>; Andrea Hunter <ahunter@osagenation-nsn.gov>
Subject: Inadvertent Discovery Clause Example

Good morning. We are working on a project in Missouri, the Port KC Rail MRT in Kansas City, and have been coordinating with Dr. Hunter, Deseray Helton, and Colleen Bell on the Section 106 process for the cast. In response to a request from the Osage Nation last fall, we are putting together an Unanticipated Discovery protocol that complies with Missouri's Unmarked Burial Law. We just finished a Section 106 consultation meeting on the project with Deseray and Colleen and they recommended that I reach out to you. We are looking for an example that you have found acceptable so that we can adapt it for use on this project.

I would appreciate any examples you may have to share. We want to make sure that whatever we develop is consistent with what you are currently using, or recently used. Please let me know if you have any questions and feel free to reach out to me at any time.

Thanks very much.

Alan Tabachnick

(he/him/his)

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This procedure should in no way be construed as a substitute for mandated consultation with the Osage Nation, nor is it a justification to excavate any human remains outside the specific and discrete standards of archaeological activity. If the planned activity is also subject to review under Section 106 of the National Historic Preservation Act (16 U.S.C. 470) (NHPA), consultation and any agreement for compliance should be in accordance with the requirements of the NHPA.

The AGENCY and its contractors will safeguard information about properties of religious and cultural significance to the Osage Nation, including location information, or non-public information provided by the Osage Nation to assist in the identification of such properties, to the extent allowed by the provisions of the Freedom of Information Act, Section 304 of the NHPA (54 USC § 307103), the Archaeological Resources Protection Act, and other applicable laws.

A. The AGENCY and the Osage Nation will each designate a primary and secondary point of contact in the event of Inadvertent Discoveries during ground disturbing activities. The primary contact is the contact to which all initial and formal correspondence is sent. If the individual designated as the primary point of contact is not available, communications should be directed to the secondary contact.

Dr. Andrea A. Hunter

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III. PROCEDURES FOR INADVERTENT DISCOVERIES

1. Upon a possible inadvertent discovery of human remains or funerary objects, the AGENCY archaeologist or contractor shall ensure that work shall cease in the immediate vicinity of the discovery and the remains shall be protected *in situ* from any potential disturbance (including vandalism or theft). This includes the establishment of a one hundred (100)-meter buffer area around the burial to ensure avoidance. The remains shall then be covered with canvas and not exposed to public view.
2. Any inadvertent discovery that includes human skeletal material will be treated as a potential crime scene. This means that the site must initially be evaluated by law enforcement. If the remains are determined to be recent human remains and/or associated with a crime, Law Enforcement will assume complete control of the effort.
3. **No Photographs will be taken human remains.** If necessary, only hand-drawn illustrations or plan notes may be used in documentation and other communication. Should unforeseen, unusual circumstances arise, law enforcement may request that photographs be taken in the case of a crime scene. These photographs will, however, be taken only after consultation and with the Osage Nation THPO. After conclusion of the criminal case, all photographs of human remains will be turned over to the Osage Nation THPO for destruction.
4. When the archaeologist/project lead/contractor determines that the inadvertent discovery of human remains or funerary objects has occurred, immediate telephone notification must be provided to the Osage Nation POC within twenty-four (24) hours. This

telephone notification will be followed immediately by written notification that contains all information regarding the current status of the discovery.

5. The Osage Nation be given the opportunity to visit the location and be provided an on-site orientation of the location where the human remains were discovered prior to any further disturbance or excavation in the location
6. It is the preference of the Osage Nation that, wherever possible, burials are left in place (*in situ*) and any further project activities avoid the burial with an appropriate buffer area, to be determined by the Osage Nation THPO on a case-by-case basis.
7. The Osage Nation and the AGENCY will consult to develop a NAGPRA Plan of Action should excavation be deemed necessary by both parties. Under the NAGPRA regulations (43 C.F.R. 10.3-10.5), a Federal agency must prepare, approve, and sign a Plan of Action if the agency intends to excavate or remove, or leave in place NAGPRA cultural items
8. At minimum, this Plan of Action will address the requirements of 43 CFR 10.5(e):
 - a) The kinds of objects to be considered as cultural items;
 - b) The specific information used to determine custody;
 - c) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
 - d) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
 - e) The kinds of analysis planned for each kind of object;
 - f) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;
 - g) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;
 - h) The nature of reports to be prepared; and
 - i) The planned disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony.
9. Neither the AGENCY staff nor any of its contracted employees will conduct excavation, handling, or removal of any human remains without the Osage Nation's consent, per the guidelines established in the NAGPRA Plan of Action.
10. Any construction contractor may resume construction activities in the area of the discovery upon receipt of written authorization from the AGENCY.