

# Unanticipated Discovery Plan

Last updated: April 2026

## Overview

This Unanticipated Discovery Plan (UDP) serves as a resource for Region 5 Regional Response Team (RRT5) Federal On-Scene Coordinators (FOSC) or representatives on handling unanticipated discoveries of historic properties<sup>1</sup> under the Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan (PA) and the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108 and 36 C.F.R. Part 800, when directing, implementing, or funding the response to an oil spill or hazardous substances release under 40 C.F.R. Part 300. It can also be included as part of Contingency Plans prepared at the Area and Sector levels and supplemented with specific tools and consultation measures that have been developed at the more local level. The PA provides an alternative process for considering effects to historic properties before and during a federal emergency response to an oil spill or hazardous substance release under the NCP. This PA is still in effect and serves as the basis for this UDP.

### Other Federal Compliance Laws

In addition to providing information on compliance with the NHPA, this UDP discusses historic properties, which may or may not come under the jurisdiction of Section 106 of the NHPA or other federal laws (e.g., Native American Graves Protection and Repatriation Act (NAGPRA), 42 U.S.C. §§ 3001-3013, the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470mm, the American Indian Religious Freedom Act, 42 U.S.C. §§ 1996-1996a). Even if not under the jurisdiction of an applicable federal law, the FOSC will endeavor to consult with appropriate officials regarding Native American ancestral human remains and historic properties on how to avoid, mitigate, or minimize adverse effects from the federal response.

### Undertaking

At the FOSC discretion, a UDP will be implemented when directing, implementing, or funding an emergency response as defined under the PA,<sup>2</sup> to an oil spill or hazardous substance release under 40 C.F.R. Part 300 by a Federal Agency (federal response). These actions are considered the undertakings, as defined at 36 C.F.R. 800.16(y), covered by this UDP. A UDP will be implemented to the extent

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<sup>1</sup> Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. 36 C.F.R. 800.16(l)(1).

<sup>2</sup> Section I.B. "An 'emergency' shall be deemed to exist whenever circumstances dictate that a response action to a release or spill must be taken so expeditiously that normal consideration of the Section 106 process is not reasonably practicable."

practicable, recognizing that protection of public health and safety is paramount and considering the exigencies of the situation.<sup>3</sup>

The UDP may be used by all federal agencies within RRT5's planning area (Ohio, Indiana, Illinois, Michigan, Minnesota, Wisconsin, the Indian country therein, and the respective coastal zones under U.S. Coast Guard jurisdiction).

#### Pre-Incident Planning

Though this UDP's primary purpose is to serve as a resource for FOSCs and other personnel on how to respond in the event of an unanticipated discovery, the PA also requires FOSCs to engage in pre-planning efforts to identify locations where there is high potential to encounter historic properties. Some of this information can be obtained through consultation with State Historic Preservation Officers (SHPOs), federal land-managing agencies, Tribal Historic Preservation Officers (THPOs), Tribal governments, and other interested parties. A list of these consulting parties and how to notify them in the event of an incident should also be prepared as part of the pre-incident planning. These efforts should be included in Area Contingency Plans (ACPs). Additional information on pre-incident planning can be found in Section V of the PA.

#### Other

Federal Agencies and Departments may have additional policies that apply to NHPA or to consultation with Indian Tribes or other stakeholders (e.g., The Environmental Protection Agency's (EPA) Policy on Consultation with Indian Tribes). This UDP does not supersede or replace any Agency or Department guidance. To the extent there is conflict between the UDP and any applicable statutes, regulations, executive orders, laws, or Agency or Department guidance or policies, those other instruments (and not the UDP) will control.

This document was prepared by the membership of the RRT5 Planning Subcommittee. A list of contributing members and their agencies are below:

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<sup>3</sup> Pursuant to 40 C.F.R. 300.415(j), "[f]und-financed removal actions under CERCLA section 104 and removal actions pursuant to CERCLA section 106 shall, to the extent practicable considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws." Such ARARs include the NHPA. See CERCLA Compliance with Other Laws Manual, CITATION. To determine "whether compliance with ARARs is practicable, the lead agency may consider appropriate factors, including: (1) The urgency of the situation; and (2) The scope of the removal action to be conducted." 40 C.F.R. 300.415(j). Further, waivers may be used for removal actions. See 40 C.F.R. § 300.430(f)(1)(ii)(C). Finally, "[o]ther federal and state advisories, criteria, or guidance may, as appropriate, be considered in formulating the removal action." 40 C.F.R. 300.415(j). This UDP may be considered among such other advisories.

- Kim Churchill, Environmental Protection Agency
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## RECORD OF CHANGES

Maintenance of this plan is the responsibility of the Regional Response Team V (RRT5) Planning Subcommittee. An annual review of the plan will be conducted by the subcommittee; changes made to the plan will be recorded below and shared at the biannual meeting of the RRT. The most current version of the plan will be posted on the RRT5 Website under the Tools menu.

Change Number	Date of Change/Review	Person & Agency Making Change	Description of Change/Update
2026.1			
2026.2			
2026.3			
2026.4			
2026.5			

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## Table of Contents

<b>Introduction</b> .....	1
<b>Definition of Terms</b> .....	1
<b>Process for Identifying Unanticipated Discoveries</b> .....	2
<b>Process for Assessing and Reporting Unanticipated Discoveries</b> .....	3
<b>Human Remains or Funerary Artifacts</b> .....	5
<b>Emergency Situations</b> .....	6
<b>Sensitive Information</b> .....	6
<b>Additional Resources</b> .....	7

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## Introduction

This document summarizes protocols to be followed in order to protect historic properties located in the area affected by the [INSERT NAME OF INCIDENT] Incident. It is intended as a site-specific implementation of the Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substance Pollution Contingency Plan dated 1997 and 1998 between the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and various federal agencies.

Archaeological resources found in and near the project area are important, non-renewable, and fragile resources that can be easily damaged or destroyed during spill response activities. The goal of this document is to provide direction on the handling of unanticipated discoveries of historic properties during the direction, implementation, or funding of a response to an oil spill or hazardous substances release under 40 CFR Part 300.

## Definition of Terms

Terms not otherwise defined have their ordinary definitions or the definitions from 54 U.S.C. Chapter 3003, 36 C.F.R. Part 800, and 40 C.F.R. Part 300 for the purposes of this UDP.

*Archeological Site*: Location recorded in the files of the SHPO or THPO where actual or potential archaeological resources are located.

*Archeological Resource*: The physical remains or evidence of past human activity, over 50 years old, on or eligible for inclusion on the National Register of Historic Places, that are exposed, partially exposed, or beneath the existing ground surface including bottomlands of waterways or bodies of water. These resources can be divided into two broad categories of artifacts and features, defined below.

*Archeologist*: A qualified expert who may conduct a survey and otherwise assist in determining whether any significant archeological sites are in the area meet the criteria for listing on the NRHP. An Archeologist should meet the Secretary of the Interior's Standards and Guidelines, 48 Federal Register 44738-39 (September 29, 1983).

*Artifact*: Any object made, modified, or used by people in the past. Examples include metal tools and hardware, glass bottles, ceramic dishes, items of clothing, toys, butchered animal bones, and many others.

*Feature*: Any remains of past human activity whose removal from the ground would require destruction or disaggregation of the remains. Examples include building foundations, old cistern or outhouse shafts, concentrated trash deposits called middens (often associated with dark soil staining) and non-structural elements of the human-modified landscape (e.g., landfill along a shoreline for the purpose of creating or extending the amount of usable land).

*Faunal Remains*: Animal bones. In an archaeological context, faunal remains may include butchered bones representing food remains or the remains of domesticated animals.

*Historic Property Specialist*: The HPS may be selected or approved by the FOSC. The HPS advises the FOSC on historic property matters and leads efforts to ensure compliance with Section 106. The HPS reports to the FOSC and may elevate historic property issues directly to the FOSC. The HPS may also be

asked to serve as the lead of additional technical experts that are mobilized to support the response (Historic Property Group).

Human Remains: In an archaeological context, human remains typically consist of human bones only.

Unanticipated Discovery: For the purposes of this UDP, the unanticipated and unintended encounter, detection, or discovery of historic property in course of the undertaking.

## Process for Identifying Unanticipated Discoveries

- A. A historic property can be a site, building, structure or object. Some examples of historic properties that may be encountered are listed below.
- Accumulation of shell, burned rocks, or other food related materials,
  - Bones, intact or in small pieces,
  - Area of charcoal or very dark stained soil,
  - Stone tools or waste flakes (for example, an arrowhead or stone chips),
  - Modified or stripped trees, often cedar or aspen, or other modified natural features, such as rock drawings,
  - Agricultural or logging materials that appear older than 50 years. These could include equipment, fencing, canals, spillways, chutes, derelict sawmills, tools, and other items,
  - Clusters of tin cans or bottles, or other debris that appear older than 50 years,
  - Old munitions casings. **Always assume these are live and never touch or remove,**
  - Buried railroad tracks, decking, foundations, or other industrial materials,
  - Remnants of homesteading. These could include metal tools, hardware, building foundations, trash deposits, bricks, nails, household items, toys, food containers, and other items associated with homes or farming sites,
  - Piers, wharves, and bulkheads,
  - Dams and mill-related structures like wheel pits and races,
  - Earthworks and foundations of any structure,
  - Fish weirs, and
  - Watercraft.

In many areas, archaeological resources that are exposed, partially exposed, or beneath the existing ground surface including bottomlands of waterways or bodies of water are not likely to be present at depths of greater than 1.2 m (4.0 ft) below the modern ground surface. However, in some locations – particularly flood plains, shoreline sand dune formations, and areas of historic land infill – archaeological resources may be more deeply buried.

### B. Activation of Personnel

The FOSC should attempt to contact SHPOs/THPOs to alert them to the spill and subsequent response and to initiate consultation Personnel to consider activating include:

#### 1. Historic Property Specialist

This Historic Property Specialist advises the FOSC on historic properties and leads efforts to ensure compliance with Section 106 of the NHPA. The HPS reports to the FOSC and may elevate historic

property issues directly to the FOSC. The HPS should meet the qualifications provided in the Secretary of the Interior Standards and Guidelines, 48 Federal Register 44738-39 (September 29, 1983).

For larger and more complex responses, additional technical experts (archeologists, etc.) may be appropriate. Additional technical experts that are mobilized may be organized into historic property groups led by the HPS. The HPS will work with the FOSC to identify personnel or other resources appropriate for the response. Pre-incident planning should include identification of cultural resource management firms that may be contracted in the event of a spill.

## 2. Representative from SHPO/THPO

A SHPO or THPO may provide a specialist to assist the FOSC. This person's role may include accessing confidential data held by the State or Tribe regarding historic resources, if appropriate and approved by the holding entity, and providing information to the FOSC and the response on use of potential response strategies and methods to mitigate impacts to historic resources.

## 3. Tribal Monitor

If a response occurs in an area that has religious and cultural significance for Tribes and that may be affected by the response, Tribes may provide one or more Tribal Monitors or the FOSC may contract with a Tribal Monitor, as appropriate and determined by the FOSC. The Tribal Monitors generally accompany teams into the field and observe their work, assisting the response in avoiding areas with potential for unanticipated discoveries (to the extent practicable) and suggesting response strategies and best management practices to avoid adverse impacts to historic properties. The purpose of such monitoring is to assist with the following: (1) prompt recognition and evaluation of potential historic properties; (2) avoidance, mitigation, or minimization of adverse effects to historic properties; and (3) implementation of appropriate recommended or culturally appropriate treatment of historic properties.

Together, the onsite archaeologist or other qualified personnel, team lead, SHPO/THPO representative, Tribal monitor, or other personnel working on the Section 106/historic properties aspects of the response may be known as "HP personnel" for the purposes of this document.

## Process for Assessing and Reporting Unanticipated Discoveries

If personnel encounter artifacts or features that may constitute historic properties while conducting work for the response, including in areas of clean-up; repair; equipment or personnel staging; access roads or paths; or borrow, fill, trench or similar areas, the following procedures should be implemented (See the PA and the "Emergency Situations" section below). It may not be immediately apparent to personnel whether an item encountered is an historic property, but all unanticipated discoveries should follow these procedures until a qualified technical expert can determine whether the item found is an historic property.

### 1. Stop

Personnel should halt work activities within the immediate area of the potential historic property. The "immediate area" is generally a minimum of fifty (50) feet around the potential historic property but depends on the specific situation, as recommended by the HPS personnel or FOSC. For ongoing work, give special attention to the possible extension of discovery of a potential historic property beyond the buffer zone.

Personnel should leave the item(s) in place, undisturbed, exactly where discovered and ensure that the FOSC or representative learns of the potential historic property. When notifying the FOSC or representative, information such as GPS coordinates, type of material, description of location, and urgency for follow-up should be communicated to the extent known and non-confidential (protection of confidential information should be attempted, to the extent practicable). Personnel should not pick the item up, touch it, or photograph or otherwise depict it (unless directed to do so by the FOSC, HPS or, other HP personnel).

Personnel may be unsure whether the unanticipated discovery is an historic property. Unanticipated discoveries should be treated as though they are potential historic properties and culturally sensitive until, if applicable and to the extent practicable, qualified HP personnel can reach a determination on the property. If qualified experts (HPS, archeologist, etc.) are not already part of the response structure, the FOSC should determine whether to activate qualified personnel and follow the UDP.

## 2. Protect

Onsite response personnel should immediately delineate and secure the area of disturbance to ensure that no further disturbance occurs, to the extent practicable. Temporary fence, flags, or other barriers, as appropriate for the situation as determined by the FOSC in consultation with the HPS or other HP personnel, should be established to mark the buffer around the potential historic property. HP personnel should notify onsite response personnel of the increased likelihood of encountering other unanticipated discoveries in the area outside the marked buffer.

The potential historic property should be protected from the elements. Onsite response personnel should cover the area with a secured tarp or plastic sheeting, only if directed to do so by the FOSC, HPS, or other HP personnel. Onsite response personnel should implement appropriate measures to protect the potential historic property from vandalism and/or looting, which may include posting a guard or monitor until proper authorities are notified, unless otherwise directed by the FOSC or HP personnel.

Vehicles, equipment, or unauthorized personnel should not be permitted to traverse the potential historic property site, and do not allow work to resume within the immediate area until the requirements of this plan are met, or until directed by the FOSC.

## 3. Notify

The FOSC should immediately notify the HP personnel, particularly the onsite archaeologist and/or monitor (if applicable), and the HPS (if applicable). The FOSC should notify all pre-identified consulting parties (SHPO, THPO, Tribes, etc.) of the potential historic property as soon as is practicable.

In the case of a finding of human remains or suspected human remains, refer to Section V of the UDP.

## 4. Await further direction

The FOSC should provide further direction on how to proceed. Do not resume work in the area of the potential historic property until authorized by the FOSC.

## 5. Consultation, Identification, Avoidance, Mitigation, and Minimization

If an onsite archaeologist/Tribal monitor is activated and available, this person(s) should, within 24 hours of notification, provide recommendations to the FOSC regarding whether the discovery is an historic property and any appropriate or recommended avoidance, mitigation, or minimization efforts. If an onsite archaeologist and/or Tribal monitor is not activated or is not available, the HPS or other HP personnel should take the steps described above. If any of the above HP personnel are not qualified under the Secretary of Interior's Standards (48 Federal Register 44738-39 (September 29, 1983)) to provide advice regarding the potential historic property, the next available and qualified personnel should provide advice. If no qualified personnel are activated or are available, the FOSC should activate a qualified HPS or HP personnel, as appropriate and to the extent practicable. The FOSC, as a representative of the federal agency, is ultimately responsible for the identification of the historic property.

If the confirmed historic property has been affected by the emergency response action, HP personnel or onsite response personnel should report this information to the FOSC and HPS (if applicable), noting the nature and location of the historic property. HP personnel or onsite response personnel should also record any action(s) taken that resulted in an effect to the historic property including a brief description of how the effect occurred.

If the FOSC determines the discovery may be an eligible historic property or may warrant further review, to the extent practicable, the FOSC should contact the SHPO/THPO, Tribal representatives, and other pre-identified parties to invite them to consult under Section 106. The invitation to consult should include a proposed date, time, and location or venue for consultation. The notification should also request recommendations for the avoidance, minimization, or mitigation of adverse effects to the potential historic property.

If the FOSC determines the potential historic property lacks significance and is not eligible for inclusion in the NRHP, the FOSC should consult with the consulting parties regarding resuming response work subject to any further avoidance, minimization, or mitigation that the FOSC determines is appropriate and practicable.

If an historic property needs to be moved to save it from being affected by the response, it should be bagged and boxed with an appropriate description and location information and removed to a secure location\* pending inspection by an appropriate qualified person or consulting party, to the extent practicable. \*Note: if the historic property needs to be moved from a wet context (e.g., from a damp or soggy marsh) it should be kept in the same water in which it was found (i.e., salt or fresh).

## Human Remains or Funerary Artifacts

In the case of a discovery of potential human remains, the FOSC should ensure that onsite response personnel follow all applicable laws and appropriate guidelines regarding the treatment of human remains, to the extent practicable. If the remains are on federal or Tribal land, NAGPRA, 42 U.S.C. §§ 3001-3013, may be applicable and, if so, provides the procedures for handling human remains that are or are suspected to be Native American or Indigenous. In that case, the FOSC should consult with the applicable legal counsel and follow this UDP to the extent consistent with NAGPRA and as practicable.

Onsite response personnel should immediately halt work and initiate contact to the FOSC or representative and await further instructions.

Notifications: The FOSC or representative should immediately notify the police or appropriate authority within the jurisdiction. Then, as soon as is practicable, the FOSC should notify the State or Tribal Archaeologist (as applicable), the SHPO/THPO(s), and any known Tribes or other parties with established cultural affiliation with the area. Generally, these notifications should take place within 24 hours of discovery.

Suspected human remains should not be touched, moved, disturbed, or photographed or otherwise depicted unless directed to do so by the police or jurisdictional authority, FOSC, or representative. The FOSC or representative should generally avoid making such a direction, unless it is necessary to protect human health or safety or property. Further, if the human remains are determined or suspected to be Native American or Indigenous, the FOSC should consult with Tribes regarding treatment of the human remains.

The police or jurisdictional authority is generally responsible for determining whether the human remains are of interest to the police or jurisdictional authority.

- Generally, the police or jurisdictional authority should inform involved persons of their responsibilities while a criminal investigation is conducted.
- If remains are determined not to be of interest to the police or jurisdictional authority, the FOSC should seek to have a qualified physical anthropologist examine the remains, to the extent practicable.
- The qualified physical anthropologist should provide preliminary and final evaluations to the HPS (if activated) and FOSC, who will communicate findings to the State or Tribal Archaeologist (as applicable), and, in cases involving suspected Native American remains, to the appropriate Tribal entities.
- The appropriate authority under applicable law or, if none, the FOSC, in consultation with the police or jurisdictional local authority, the HP personnel, Tribes, THPOs, the State or Tribal Archaeologist, or other appropriate interested parties, and for the purposes of the federal response only, should determine whether the remains are suspected to be Native American or Indigenous and an appropriate method for the respectful treatment of remains or other funerary objects (e.g., reburial, preservation in place, sacred rituals, or a combination thereof), consistent with applicable law and to the extent practicable

## Emergency Situations

As set forth in the PA, an "emergency" exists whenever circumstances dictate that a response must be taken so expeditiously that normal consideration of the Section 106 process is not reasonably practicable. In the event of an emergency, the FOSC will endeavor to consult, as outlined above, to notify the SHPO/THPO(s), Tribes, and other consulting parties about any effects to potential historic properties. Comments received by the consulting parties in a timely manner should be considered and implemented to the extent practicable.

## Sensitive Information

Each entity exchanging information under this UDP is responsible for properly caring for and labeling any information or materials it provides or creates that contain confidential, privileged, personally identifiable, or otherwise sensitive information. Parties who receive properly labelled sensitive information (each portion of the document or materials that is sensitive is marked with "confidential,"

“privileged,” or similar) will endeavor to protect from disclosure such information to the extent permissible under applicable law and the recipient’s internal policies and will endeavor to notify the sending party of any disclosures to the extent such notification is consistent with applicable law and the recipient’s internal policies. Disclosure laws, such as the Freedom of Information Act (5 U.S.C. § 552) and state, Tribal, or local sunshine laws, may require the release of information that some parties consider sensitive. Any party who becomes aware it has received sensitive information that it is not authorized to receive or that it was sent or may have been sent in error should notify the sender immediately and protect such information from disclosure to the extent permitted under applicable law and the recipient’s internal policies.

## Additional Resources

Additional resources associated with unanticipated discoveries, historic properties, compliance with environmental laws and regulations, etc. can be found at the [Regional Response Team 5 website](#).

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