

PART III
CHAPTER 4
Accidental Discovery

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4-1.0 Overview

As discussed in Part II, Chapter 10, INDOT and FHWA meets its obligations concerning accidental discoveries by simultaneously following both federal and state guidelines. When a project is 100% state funded then the procedures specified in Chapter 2.0 will be followed exclusively.

4-2.0 State Law Regarding Accidental Discovery (IC 14-21-1-29)

Under [IC 14-21-1-29](#), if a person accidentally discovers a burial object or artifact while disturbing the ground for another purpose (such as construction or utility excavation), the person shall immediately stop work within 100 feet of the discovery and notify DHPA within two business days. Following notification, the DHPA will decide if:

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 another law; or
3. The area requires protection and avoidance.

An artifact (dating before December 31, 1870, as per [IC 14-21-1-2](#)) can consist of a fragment of historic or prehistoric pottery, chipped stone tools or flakes, ground stone tools, glass, or historic housing material, among other things.

An archaeological feature can consist of a subsurface prehistoric garbage pit or cooking pit, the remains of a prehistoric house, a historic privy or well, or any burial objects including human remains. Notification should occur if such features are encountered. Burial objects are of particular concern, because they suggest the presence of human remains.

If any archaeological artifacts (including human remains) are accidentally encountered during construction, work shall cease within 100 feet of the discovery with the artifacts left undisturbed. As per INDOT *Standard Specification* 107.10 the project engineer shall be notified. The project engineer should then immediately notify INDOT CRO staff, and the DHPA. INDOT or the DHPA will then contact a county coroner and law enforcement official.¹ Although human remains may appear prehistoric or historic in nature, they may actually represent a modern or historically-recent crime scene. This is why the county coroner always investigates the remains first. It is very important to leave the area of the discovery as undisturbed as possible.

Work within 100 feet of the discovery shall not resume until a plan for the treatment of the human remains is developed and approved in consultation with the DHPA, FHWA and CRO. The plan will comply with [IC 14-21-1](#), 312 IAC 22, the current *Guidebook for Indiana Historic*

¹ IC 14-21-1-27 and 312 IAC 22.

Sites and Structures Inventory--Archaeological Sites (Appendix V), and all other appropriate federal and state guidelines, statutes, rules, and regulations.

If a project includes a Memorandum of Agreement (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. If it provides instruction, this must be followed as well.

Appendix-Construction Memo Concerning Accidental Discovery



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Michael R. Pence, Governor
Karl B. Browning, Commissioner

December 11, 2013

CONSTRUCTION MEMORANDUM 13-14

TO: District Deputy Commissioners
District Construction Directors
District Technical Services Directors
District Testing Engineers
District Area Engineers
District LPA Coordinators
Field Engineers
Project Engineers/Supervisors
Office of Materials Management

FROM: Mark A. Miller, Director *Mark A. Miller*
Division of Construction Management

SUBJECT: Guidance for Post-Review (Accidental) Discoveries

Per state laws (IC 14-21-1-27 and IC 14-21-1-29) and federal regulation (36 CFR 800.13), INDOT and FHWA must examine and evaluate all post-review discoveries. These are unanticipated finds of prehistoric or historic artifacts or features that are encountered during construction after Section 106 review of the project has been completed, which is why they are termed "post-review" or accidental 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.)



- 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)

If it appears that an accidental discovery is found during construction, it is important that the following steps are taken:

- INDOT Standard Specification 107.10 states that work within 100 feet must stop – work may continue in other areas.
- INDOT- Cultural Resource Office (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.**
- A description of the discovery should be provided, along with digital photographs if possible, to CRO at the time of the discovery (or photographs may be forwarded to CRO by email after notification by phone). In many cases, a set of scaled photographs will allow CRO staff to evaluate the discovery and determine whether work may resume or whether additional documentation will be necessary without the time required for a site visit.
- Through photographs and description of the discovery, CRO may determine that there are no cultural resource concerns and CRO will provide written authorization to the Project Engineer/Supervisor notifying that construction may commence.
- If the discovery is a concern, then the following steps will be followed. INDOT-CRO will inform DNR's Division of Historic Preservation and Archeology (DHPA), FHWA and the Advisory Council on Historic Preservation (ACHP) of the discovery within two (2) business days. CRO will consult with DHPA, FHWA, and the ACHP to determine the level of documentation required and develop a treatment plan as appropriate. In many cases, however, the issue may be resolved by CRO staff visiting the site to document the discovery and providing that documentation to DHPA.
- If human remains, or potential human remains, are encountered, INDOT-CRO will contact the necessary authorities. The area must be considered a potential crime scene until clearance is received from the county coroner and law enforcement.

Please note that INDOT Standard Specification 107.10 prohibits the removal or sale of archaeological materials from construction sites.

The objectives of the INDOT Cultural Resources Office (CRO) are to be sure that INDOT complies with the applicable laws and that projects stay on schedule and are not delayed. When accidental discoveries occur, they are INDOT-CRO's top priority. In the event of an accidental discovery, please contact:

CRO Manager
317-233-2061

Archaeology Team Lead
317-233-6795