

OHIO HISTORY CONNECTION

American Indian Policy Supplement

*Procedures for the inadvertent discovery and disposition
of American Indian ancestral human remains, funerary
objects, sacred objects, and objects of cultural
patrimony in the State of Ohio*



The Mission of the Ohio History Connection is to spark discovery of Ohio stories:
Embrace the Present, Share the Past, Transform the Future

PURPOSE

The purpose of these procedures is to establish state-wide “best practices” for responding to an inadvertent discovery of American Indian ancestral human remains and/or artifacts on lands within the State of Ohio—

- over which the Ohio State Historic Preservation Officer (SHPO) or the Ohio History Connection has statutory/regulatory authority or administrative influence;
- which are owned, managed, or administered by the Ohio History Connection; or
- which are under the supervision or control of the Ohio SHPO.

These procedures have been developed in collaboration with the Ohio SHPO, the Ohio History Connection, and the Tribal Historic Preservation Officers (THPO) of the historic Tribal Nations affiliated with the State of Ohio¹, and in conformity with the Native American Graves Protection and Repatriation Act (NAGPRA) and implementing regulations².

CURRENT OHIO STATE LAW

We recognize that, at present, the burial protection and preservation laws in the State of Ohio are weak at best. At present, state law prohibits—

- Treating a corpse in a way that the person knows would outrage reasonable family or community sensibilities. [ORC 2927.01\(A\)/\(B\)](#)
- Purposely defacing, damaging, polluting, or otherwise physically mistreating any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery³, thing, or site of great historical or archaeological interest. [ORC 2927.11\(A\)\(3\)](#)
- Anyone from engaging in archaeological survey or salvage work on any land that is owned, controlled, or administered by the state or any political subdivision of the state, or at any archaeological preserve, without first obtaining the written permission of the Ohio History Connection Director. Only qualified persons (as established Chapter 119 of the Revised Code) shall be authorized to engage in archaeological survey and salvage work; based on minimum education, training, and experience requirements. [ORC 149.54](#)

Establishing sound procedures and best practices will help us to fulfill the intent of the Ohio History Connection American Indian Policy as well as NAGPRA and ORC 149.54.

¹ OHC consults with a total of 46 federally recognized tribal nations based on the Greenville Treaty historic tribes, by adjudications of the Indian Claims Commission, and by tribes’ individual determinations of historic occupancy.

² NAGPRA, Pub. L. 101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048; 43 CFR Part 10, Section 10.4.

³ As used in this section, "cemetery" means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains. ORC 2927.11(C)

INADVERTENT DISCOVERY DEFINED

Inadvertent discovery means the unanticipated and unintended encounter, detection or discovery of American Indian ancestral human remains, funerary objects, sacred objects, cultural resources or objects of cultural patrimony⁴ found during any ground-disturbing activity or natural disturbance.

DISPOSITION OF AMERICAN INDIAN ANCESTRAL REMAINS

It is the policy of the Ohio History Connection that the disposition of any American Indian ancestral human remains and/or cultural items that cannot remain in situ within lands in the State of Ohio over which the Ohio SHPO or the Ohio History Connection has statutory or regulatory authority shall remain in the care and custody of the Ohio History Connection until such time as they can be repatriated following NAGPRA principles and requirements.

PROCEDURES

1. Cease all activity. Upon discovery, immediately cease all activity within the project footprint or for a minimum distance of fifty (50) meters from point of discovery, whichever is greater.
2. Delineate and secure the area. Identify and delineate the area of disturbance and ensure that no further disturbance occurs. At a minimum, securing the area will include flagging off the area of discovery and, if the circumstances of the discovery make it reasonable to do so, implementing measures to protect discovery from vandalism and looting including posting a guard or monitor at the site until the proper authorities are notified. The remains will not be touched, moved, or further disturbed.
3. Reporting and notification. The finding of American Indian ancestral remains will be immediately reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The county medical examiner/coroner will assume jurisdiction over the ancestral remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Ohio State Historic Preservation Office or the Cultural Resources Division Director of the Ohio History Connection.
 - a. Examination and analysis of American Indian ancestral remains shall be non-destructive and non-invasive, unless otherwise authorized by the affected tribes⁵.

⁴ "Human remains," "funerary objects," "sacred objects," or "objects of cultural patrimony" shall have the same meaning as found in NAGPRA, 25 U.S.C. 3001.

⁵ "Affected Tribes" means any federally recognized tribe likely to be culturally affiliated with the discovery, who were aboriginal to the area of discovery as determined by the tribes themselves, by land cession treaties, acts of Congress, the Indian Claims Commission, or that are known to have a cultural relationship to the discovery.

- b. Photography of American Indian ancestral remains, funerary objects and sacred objects shall be limited to those essential to forensic examination and criminal investigations and shall be kept secure and confidential. All images shall be subject to tribal repatriation.

4. Additional Expertise. The Ohio History Connection will be responsible for providing the medical examiner/coroner with any special archaeology, anthropology or osteology expertise used to determine if the remains are of American Indian provenance. A NAGPRA Coordinator/Deputy State Historic Preservation Officer or their designee shall be assigned to each inadvertent discovery.

- a. Destructive sampling or DNA (Deoxyribonucleic Acid) extraction from American Indian ancestral remains for scientific or forensic purposes shall not be performed without the unanimous and mutual free, prior, informed consent of all affected tribes.
- b. All material extracted from American Indian ancestral remains for scientific or forensic purposes shall be subject to tribal repatriation.

5. Additional Coordination. The Ohio History Connection will be responsible for notifying any federally recognized Indian tribe which may have a claim of cultural affiliation to the ancestral human remains or based upon any aboriginal territory claims for projects that have no federal involvement or Section 106 application. Tribal notification shall be made within 48 hours of discovery. Provisions shall be made for physical examination of the site by tribal experts. Unrestricted access shall be provided for any requested tribal monitoring or ceremonial activities.

6. Consultation. Within 72 hours of determination that the ancestral human remains are of American Indian provenance, Ohio History Connection and the site management partner shall initiate consultation with the affected tribes.

- a. Notification shall be made by the Site Manager or project supervisor by telephone with follow-up in writing by mail or email to all federally recognized Indian tribes likely to be culturally affiliated with the discovery, who were aboriginal to the area as determined by the tribes themselves, by land cession treaties, acts of Congress, the Indian Claims Commission, or that are known to have a cultural relationship to the discovery. This notification must provide information about the human remains/cultural items discovered, their condition, and the circumstances of their discovery.
- b. This notification shall include an invitation to consult, which includes, a) a proposed date, time, and location or venue for consultation, b) recommend considerations for handling and treatment of the discovery, and c) evaluate whether excavation or removal is appropriate and necessary. Mail a certified return receipt letter to ensure appropriate tracking and documentation.

- c. Initial consultation shall determine if leaving ancestral remains in situ is desirable and feasible; and if the ancestral remains and/or cultural items will not be excavated or removed, determine procedures for any additional measures necessary to secure the site and document the discovery.
 - d. Tribal representatives shall be financially compensated for site visits as necessary to facilitate consultation.
7. Necessary or intentional excavation and removal. If it is deemed necessary to excavate and remove American Indian ancestral remains and/or cultural items from the site where discovered/disturbed, all legal requirements shall be followed:
- a. When on Ohio state or state-controlled lands, the provisions of ORC 149.54 shall be met prior to any further site disturbance. Ohio History Connection's NAGPRA policy shall also be observed.
 - b. When on federal lands in the State of Ohio, all provisions of the Archaeological Resources Protection Act (ARPA) and NAGPRA shall be met prior to any further site disturbance.
 - c. Affected tribes shall be consulted regarding handling, disposition and cultural affiliation determination of American Indian ancestral remains and cultural items. Accommodations shall be made for traditional or ceremonial practices in association with ancestral remains and cultural items.
 - d. Following consultation, the Ohio History Connection must prepare and implement a written Plan of Action. All excavations and removal must be authorized pursuant to ARPA Permit or Ohio History Connection Director Permit must follow current professional archaeological excavation and data recovery standards and be conducted in accordance with the written Plan of Action. Following excavation or removal, and completion of the steps identified and described in the written Plan of Action, the Ohio History Connection will determine disposition in consultation with affected tribe(s).
 - e. Following consultation and the drafting of the written Plan of Action, the Ohio History Connection shall execute a bilateral agreement directly with the affected tribe(s) which contains protocols for the treatment, handling, custodianship, curation, and disposition of the American Indian ancestral remains and cultural items discovered. Affected tribes shall be principal signatories to any such agreement.
 - f. The written Plan of Action shall also include a reinterment or reburial plan which identifies the tribe or tribes taking primary responsibility for the reinterment or reburial and any cooperating tribes, agencies or institutions which may assist in the reinterment or reburial or in establishing a reburial cemetery.

APPENDIX A
Ohio History Connection – Ohio State Historic Preservation Office

INADVERTENT DISCOVERY PLAN

The following Inadvertent Discovery Plan is to be implemented by the Ohio History Connection, in cooperation with the Ohio State Historic Preservation Office, and followed by any contractor or subcontractor working for or on behalf of the Ohio History Connection, as policy to expeditiously address inadvertent discoveries during ground disturbing activities within the State of Ohio.

- This Inadvertent Discovery Plan is appended to and made part of all permits, contracts, and agreements entered into by the Ohio History Connection authorizing ground disturbing activities.

This Inadvertent Discovery Plan (IDP) is to ensure all parties involved are contacted and fulfill their obligations under state and federal laws that include, but are not limited to:

- Public functions of Ohio history connection. [ORS § 149.30]
- Archaeological preserves; dedication; effects; prohibitions; penalties. [ORS § 149.52]
- Desecration of any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery, thing, or site of great historical or archaeological interest. [ORS § 2927.11]
- National Historic Preservation Act [16 USC 470] [36 CFR Part 60]
- Native American Graves Protection and Repatriation Act [25 USC 3001] [43 CFR Part 10]

The laws recognize and codify agency obligations and the tribes' rights in the decision-making process regarding ancestral remains and associated objects. Therefore, both the discovered ancestral remains and/or archaeological objects should be treated in a sensitive and respectful manner by all parties involved.

In accordance with these laws, if previously unidentified archaeological materials or sites are discovered during ground disturbing activities, the following shall occur:

1. Cease all activity. Immediately cease all activity within the project footprint or “Area of Potential Effect” (APE), or for a minimum distance of fifty (50) meters from point of discovery, whichever is greater.

2. The project supervisor⁶ shall immediately notify the responsible agency official⁷ by telephone of the inadvertent discovery and the responsible official shall, in turn, immediately notify a professional archaeologist of the inadvertent discovery. Additionally, if the discovery involves human remains, the responsible official shall immediately notify the medical examiner/coroner and County Sheriff by telephone.
3. The project supervisor shall immediately delineate and secure the area of disturbance to ensure that no further disturbance occurs. At a minimum, securing the area will include flagging off the area of discovery and, if the circumstances of the discovery make it reasonable to do so, implementing measures to protect discovery from vandalism and looting including posting a guard or monitor at the site until the proper authorities are notified. The remains will not be touched, moved, or further disturbed.
4. Within 48 hours of discovery and determination that the inadvertent discovery is of archaeological interest or American Indian provenance, the responsible agency official shall notify the following by telephone or email:
 - a) The Ohio History Connection (OHC), Director of Cultural Resources Division
 - b) Ohio State Historic Preservation Office (SHPO)
 - c) American Indian Tribes of Interest⁸
 - d) Advisory Council on Historic Preservation (ACHP)
5. If ground disturbing activities within the protected area are necessary to determine significance, site boundaries, National Register eligibility or American Indian provenance, an expedited archaeological permit must be applied for by the responsible agency official or the consulting archaeologist and received from the SHPO prior to commencing with any further ground disturbance.
6. Expedited review to prevent an undue threat to the site shall be undertaken in accordance with state and federal law. The SHPO and tribe(s) will attempt to respond within seventy-two (72) hours of notification (excluding Saturdays, Sundays, and any legal or tribal holidays). The project supervisor shall not proceed with any ground disturbing activities within the protected area until concurrence is received from the SHPO. If an appropriate American Indian Tribe of Interest objects (in writing) to an expedited review, an expedited review will not

⁶ "Project supervisor" mean any on-site field representative of the responsible agency official, whether paid employee, contractor, subcontractor, or consultant.

⁷ "Responsible agency official" means any federal, state, county or municipal official responsible for executing or administering decisions, contracts, or agreements which implement any ground disturbing activity.

⁸ "American Indian Tribes of Interest" mean any federally recognized tribe consulting on the project and/or any federally recognized tribe that may attach religious, cultural or historic significance to the affected property, including any federally recognized tribe claiming cultural affiliation to the area based upon any aboriginal territory or ceded territory claims.

proceed and review will proceed in accordance with state and federal laws. The responsible agency official will take into account recommendations for the discovered resources and carry out appropriate actions.

7. The consulting archaeologist or OHC Director of Cultural Resources shall make a preliminary assessment of National Register eligibility of the discovered resource(s) and propose actions to resolve any potential adverse effects at the soonest possible time. The findings will be sent to all consulting parties identified in (4) if human remains are discovered.
8. All inadvertent discoveries must be documented, as appropriate, regarding state historic preservation laws. This may include archaeological site forms submitted to the SHPO, cultural resource evaluation reports, findings of effect, and testing and mitigation reports. All data recovery plans should be coordinated through the Ohio SHPO. If found eligible for the National Register, the site should be avoided, if possible. If not, it will need to be mitigated to minimize impacts.
9. Depending on the project, the nature of discovery and the statutory jurisdiction, the SHPO may ask the responsible agency official to retain a consulting archaeologist to assist in the development of a Recovery and Mitigation Plan. The appropriate jurisdictional agency may need to get involved in discussions to resolve the matter in accordance with their respective authorities.
10. The responsible agency official may conclude this procedure and notify consulting parties, as appropriate, if the disturbance of the historic property or property of traditional religious and cultural importance is minimal so as to have no effect on the historic property and the excavation or disturbance can be relocated to avoid the property, as determined in consultation with the SHPO and appropriate tribes. Concurrence from the SHPO and appropriate tribes is required prior to commencement of any further ground disturbing activities.
11. Documentation of all reports and associated compliance should be kept in the project files. The intent of the IDP is to have a process in place to expeditiously deal with such discoveries. Management of archaeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values.

