

APPENDIX H

Department of Transportation and Public Facilities (DOT&PF) Procedures and State and Federal Laws Pertaining to the Discovery of Human Remains

DOT&PF Procedures

Purpose and Scope:

This describes the general procedures to be followed in the event of inadvertent discovery of human remains for projects which have not addressed such procedures through a Memorandum of Agreement (MOA). These procedures apply to all Federal Highway Administration (FHWA) Federal-Aid Highway Program (FAHP) projects and 23 U.S.C. 327 assigned projects (NEPA Assignment Program) where the DOT&PF has assumed Section 106 responsibilities.

1. **Step 1: Stop Work at the Discovery Site.** Any time human remains are encountered, that portion of the work affecting the discovery will stop immediately and the DOT&PF Project Engineer will immediately take steps with the Construction Contractor to secure and protect the discovery location.
2. **Step 2: Notifications.**
 - a. The Project Engineer and a DOT&PF professionally qualified individual (PQI) staff (staff meeting the Professional Qualifications Standards established by the Secretary of the Interior [48 FR 44738-44739]) or the DOT&PF Regional Environmental Manager will provide information about the discovery in their notification to the
 - the Alaska State Troopers;
 - the State Medical Examiner (SME);
 - the State Historic Preservation Officer (SHPO); and
 - *For NEPA Assignment Program Projects*, the DOT&PF Statewide Environmental Office (SEO) NEPA Program Manager; or
 - *For non-NEPA Assignment Program Projects*, the Federal Highway Administration (FHWA) Regional Area Engineer.
 - b. The SME will determine if the remains are of a forensic nature and/or subject to criminal investigation. If the remains are part of a crime scene, the SME will take control of the discovery.
3. **Step 3: Consultation.**
 - a. If the human remains are determined or believed to be of or are associated with Tribal descent, the PQI will assist the SEO (or the FHWA for non-NEPA Assignment Program Projects) to concurrently notify any potentially affiliated Tribe and expeditiously consult on the treatment and disposition of such remains.
 - b. If the encounter of human remains occurs on Federal land, the PQI will notify and receive further direction from the respective Federal land manager.

- c. The DOT&PF will also adhere to State laws and protocols in accordance with, AS 11.46.482(a)(6), AS 12.65.5, AS 41.35.200, and AS 18.50.250 of this Section 106 Agreement) pertaining to the discovery of human remains within the State of Alaska.

State (Alaska Statute) Laws

AS 11.46.482(a)(6): Applies to all lands in Alaska, makes the “intentional and unauthorized destruction or removal of any human remains or the intentional disturbance of a grave” a class C felony.

AS 12.65.5: Requires immediate notification of a peace officer of the state (police, Village Public Safety Officer, or Alaska State Trooper [AST]) and the State Medical Examiner when death has “been caused by unknown or criminal means, during the commission of a crime, or by suicide, accident, or poisoning.” The AST has interpreted notification procedures as applicable to all remains, including ancient remains. In addition to a local peace officer (if within a local jurisdiction), notification should include the AST Criminal Investigation Bureau.

AS 41.35.200: Applies only to state lands, makes the disturbance of "historic, prehistoric and archeological resources" (including ‘graves’) a class A misdemeanor.

AS 18.50.250: Requires the issuance of burial-transit and disinterment-reinterment permits by the State Registrar of Vital Statistics or an authorized local registrar under certain circumstances.

Federal (United State Code) Laws

16 USC 470ee (Archeological Resources Protection Act or ARPA): Prohibits the unauthorized destruction or removal of archaeological materials, including human remains (i.e., more than 100 years old) on federal lands and federal trust lands. Violations may be prosecuted as a misdemeanor or felony, as warranted by the severity of the violation. Violations of state or local laws, regardless of land ownership, may be prosecuted under ARPA if the archaeological materials are transported across state boundaries.

25 USC 3001-30013 (PL 101-601) (Native American Graves and Repatriation Act or NAGPRA): Governs the treatment and disposition of human remains on federal or federal trust lands that are determined to be Native American. NAGPRA also applies to Native American human remains from any lands if the remains are curated in an institution that receives federal funds.