

**PROGRAMTIC AGREEMENT  
BETWEEN  
THE UNITED STATES DEPARTMENT OF THE INTERIOR,  
THE ICE AGE NATIONAL SCENIC TRAIL, AND THE NORTH COUNTRY  
NATIONAL SCENIC TRAIL, AND  
THE WISCONSIN HISTORICAL SOCIETY  
STATE HISTORIC PRESERVATION OFFICE  
REGARDING THE NATIONAL HISTORIC PRESERVATION ACT  
SECTION 106 REVIEW PROCESS, AND  
SPECIFIC PROVISIONS OF THE ADVISORY COUNCIL ON HISTORIC  
PRESERVATION'S IMPLEMENTING REGULATIONS AT 36 CFR 800**

**WHEREAS**, the United States Department of the Interior, National Park Service (NPS) Ice Age and North Country National Scenic Trails (Trails) provide assistance to private organizations, municipalities, counties, state, and other federal agencies; and

**WHEREAS**, the NPS has determined by its administration of the Trails that federal undertakings may result in effects to historic properties as defined under 36 CFR §800.16(1); and

**WHEREAS**, the NPS and the Advisory Council on Historic Preservation (ACHP) have in place a Nationwide Programmatic Agreement (NPA) constituting a program alternative as defined by 36 CFR §800.14; and

**WHEREAS**, ACHP was invited but declined to participate in a park-specific agreement; and

**WHEREAS**, the NPS and the Wisconsin Historical Society State Historic Preservation Office (SHPO) agree this Programmatic Agreement (PA) represents a Subsequent Agreement as described by section IX of the NPA and constitute a program alternative per 36 CFR §800.14(b); and

**WHEREAS**, the NPS and the SHPO agree that each agency has responsibilities under the National Historic Preservation Act (NHPA), and the ACHP implementing regulations at 36 CFR §800 that are neither referenced in, nor incorporated into, this PA; and

**WHEREAS**, this PA applies to all Trails undertakings throughout the state of Wisconsin; and

**WHEREAS**, this PA does not pertain to any undertakings pursuant to the NHPA, or the ACHP's implementing regulations at 36 CFR §800 over which a Tribal Historic Preservation Officer (THPO), or official tribal designee, established pursuant to §101(d)(2) of the NHPA, and further described at 36 CFR §800.2(c), retains jurisdiction; and

**WHEREAS**, the definitions given in 36 §CFR 800.16 are applicable throughout this PA.

**NOW, THEREFORE**, the NPS and the SHPO agree that Trails undertakings shall be carried out in according with the following stipulations.

## Stipulations

### I. Personnel

- A. The NPS shall designate a single staff person through a delegation memo for each trail (Staff) to coordinate with the SHPO per §106 of the NHPA consultations, and act as the contact with the SHPO for all matters concerning this PA. The Superintendent of the Trails, or designee, is responsible for ensuring all NPS responsibilities of the PA are carried out. NPS Staff has designated cultural resource management Teams to consult with as required by the NPA.
- B. The NPS shall notify the SHPO of any Staff changes as needed. If, at any time during the duration of this PA, the NPS does not have Staff in place to carry out the provisions of this PA, the NPS and the SHPO shall consult to develop alternative administrative procedures for implementing the PA.
- C. The SHPO shall designate a single staff person for each trail through a delegation memo to coordinate with the NPS per §106 of the NHPA consultations, and act as the contact with the NPS for all matters concerning this PA. The State Historic Preservation Officer, or designee, is responsible for ensuring all SHPO responsibilities of the PA are carried out.
- D. The SHPO shall notify the NPS of any staff changes as needed. If, at any time during the duration of this PA, the SHPO does not have staff in place to carry out the provisions of this PA, then the NPS and the SHPO shall consult to develop alternative administrative procedures for implementing the PA.

### II. Review Process NPS

In pursuance of the NHPA §106 review process, the following procedures outline the NPS review procedure for all proposed federal undertakings. All undertakings will follow either the process in Section II.A, the Streamlined process as established in the NPA or the Standard Review process as outlined in 36 CFR 800.

#### A. Projects requiring no further review

- 1. A list of undertakings for which a determination of No Historic Properties

Affected properties is found in Appendix I. These undertakings have been reviewed by both the NPS and SHPO and will need no further review by the Cultural Resources Management (CRM) Team or SHPO provided the Trails Staff ensure the undertakings meet all requirements specified.

2. The NPS shall include information about the application of Section II.A in the annual and biennial reports provided to the SHPO.

#### B. Corridor Planning Process

1. The NPS shall consult the Wisconsin Historic Preservation Database (WHPD) early in the project planning, and shall summarize the information derived therein into the specific corridor plan. The SHPO shall maintain and update the WHPD.
2. The NPS and the SHPO agree that the WHPD contains all listed property on the Wisconsin Register of Historic Places consistent with the National Register of Historic Places (NRHP). The WHPD also includes information on other historic properties that may meet NRHP eligibility criteria, but lack an official Determination of Eligibility.
3. The SHPO shall provide the NPS access to the WHPD, subject to the License Agreement with the SHPO for access to said database. Access may include use of viewers or other subsets of WHPD data that may allow for identification, and evaluation, of NRHP eligibility of historic properties within the undertaking's Area of Potential Effect (APE) for the purposes of carrying out the terms of this PA.

#### C. Construction (For Activities not listed in Appendix I)

1. Ground Disturbing Undertakings
  - a. Upon notification of a proposed undertaking, the NPS shall determine the proposed undertaking's APE. The NPS and the SHPO agree an APE is influenced by the scale and nature of the project, and may be different based on type of effects caused by a project. The APE may not include the entire Trail Planning Corridor.
  - b. Prior to commencing any proposed undertaking that may affect a property listed, or eligible for inclusion, on the NRHP, the NPS shall comply with the provisions of the NHPA §106 review process, including consultation

of the WHPD, and conducting all extensive field investigations, including archaeological field surveys and historic architecture reconnaissance surveys, necessary to determine the presence of, and potential impact on, any historic properties within the APE of the proposed federal undertaking.

- c. If, through consultation of the WHPD, and all field investigations, the NPS determines an historic property located within the APE will be adversely effected, and cannot be avoided, the project must be submitted to the SHPO for review and comments pursuant to the provisions of the NHPA §106 review process.
- d. If the historic property within the APE cannot be avoided and is recorded in the WHPD, but has not been formally evaluated by the SHPO, then the NPS shall apply the NRHP criteria for evaluation of historic properties to determine whether the historic property is eligible for inclusion on the NRHP. If the historic property is determined eligible for inclusion on the NRHP through NPS' evaluation, the NPS shall continue with the proposed undertaking review pursuant to the terms prescribed in the NHPA §106 review process contained herein.
- e. If an historic property within the APE is encountered during field investigations, the NPS shall apply the NRHP criteria for evaluation of historic properties to determine whether the historic property is eligible for inclusion on the NRHP. If the historic property is determined eligible for inclusion on the NRHP through NPS' evaluation, the NPS shall continue with the proposed undertaking review pursuant to the terms prescribed in the NHPA §106 review process contained herein.
- f. The NPS shall ensure that Trails construction personnel receive pertinent information derived from the WHPD, and all exhaustive field investigations, including specific historic property site location information, NRHP eligibility determinations, and impact considerations, early in the project planning.

## 2. Non-Ground Disturbing Undertakings

- a. Upon notification of a proposed undertaking, the NPS shall determine the proposed undertaking's APE. The NPS and the SHPO agree an APE is influenced by the scale and nature of the project, and may be different based on type of effects caused by a project.

- b. Prior to commencing any proposed undertaking that may affect a property listed on, or eligible for inclusion on the NRHP, the NPS shall comply with the provisions of the NHPA §106 review process, including consultation of the WHPD, and conducting all extensive field investigations, including archaeological field surveys and historic architecture reconnaissance surveys, necessary to determine the presence of, and potential impact on, any historic properties within the APE of the proposed federal undertaking.
- c. If, through consultation of the WHPD, and all field investigations, the NPS determines an historic property is located within the APE will be adversely effected and cannot be avoided, then the proposed undertaking must be submitted to the SHPO for review and comments pursuant to the provisions of the NHPA §106 review process.
- d. If the historic property within the APE is recorded in the WHPD, but has not been formally evaluated by the SHPO, then the NPS shall apply the NRHP criteria for evaluation of historic properties to determine whether the historic property is eligible for inclusion on the NRHP. If the historic property is determined eligible for inclusion on the NRHP through NPS' evaluation, the NPS shall continue with the proposed undertaking review pursuant to the terms prescribed in the NHPA §106 review process contained herein.
- e. If an historic property within the APE is encountered during field investigations and cannot be avoided, the NPS shall apply the NRHP criteria for evaluation of historic properties to determine whether the historic property is eligible for inclusion on the NRHP. If the historic property is determined eligible for inclusion on the NRHP through NPS' evaluation, the NPS shall continue with the proposed undertaking review pursuant to the terms prescribed in the NHPA §106 review process contained herein.
- f. The NPS shall ensure that Trails construction personnel receive pertinent information derived from the WHPD, and all exhaustive field investigations, including specific historic property site location information, NRHP eligibility determinations, and impact considerations, early in the project planning.

- D. The NPS shall retain comprehensive project files for all federal undertakings to provide adequate documentation of said federal undertakings should it receive a request for such documentation, particularly from the SHPO per Stipulation VII of this PA.

### III. Review Process SHPO

In pursuance of the NHPA §106 review process, the following procedures outline the SHPO's review procedure for all proposed federal undertakings.

#### A. Projects requiring no further review

- 1. A list of undertakings for which a determination of No Historic Properties Affected properties is found in Appendix I. SHPO will review these projects only if the Trails Staff determine the undertaking does not meet the criteria specified in Appendix I

#### B.

- 2. The SHPO shall review the annual and biennial reports provided by the NPS about the application of Section II.A.

#### C. Projects Requiring Standard Review

- 1. The SHPO shall review the NPS' submitted federal undertaking's proposal materials and will either concur or not with the NPS determination effect The SHPO may request additional information to meet the requirements of 36 CFR 800.11.
- 2. If the SHPO concurs that the proposed federal undertaking will not adversely affect historic properties, the SHPO shall respond to the NPS indicating as such within thirty (30) days.
- 3. If the SHPO concurs that the proposed federal undertaking may adversely affect historic properties, the SHPO shall respond to the NPS indicating the need to develop avoidance measures to minimize the impact, or request further consultation to mitigate potential adverse impacts within thirty (30) days pursuant to the NHPA §106 review process. The NPS and the SHPO agree such consultations may result in negotiation of an agreement to address, and mitigate, the proposed undertaking's adverse impact to historic properties.

#### IV. Emergencies

From time to time, federal undertakings may be wholly, or partially funded, or carried out in response to natural or human-induced disasters, including, but not limited to, floods, tornadoes, wind storms or fires. Per 24 CFR 58.34(a)(10), such federal undertakings may be exempt from federal environmental review requirements. If the NPS shall commence an undertaking resulting from such an emergency, then 36 CFR 800.12 shall be initiated with immediate SHPO notification. Additionally, an accelerated consultation process shall be initiated within thirty (30) days of the official emergency declaration.

#### V. Inadvertent Discoveries

In the event an historic property is inadvertently discovered during the construction phase, all work shall cease within a 15 meter radius of the historic property, and the SHPO notified immediately. Work may not continue within this buffer zone until a determination of the property's NRHP eligibility is made. Work may continue outside of 15 meter buffer zone.

#### VI. Human Burials

##### A. Project Planning Phase on Private and/or State Lands

Under the requirements of Wisconsin's Burial Sites Preservation law, Wis. Stat. 157.70 (Appendix II), for projects located on private and/or state lands, the NPS shall early in the undertaking planning process identify the presence of any catalogued or uncatalogued burial sites that may be contiguous, in whole or part, with the undertaking's APE. Should a catalogued or uncatalogued burial site be encountered within the undertaking's APE on private or state lands, the NPS shall submit a "Request to Disturb a Human Burial Site" form (Appendix III) prior to commencing any work. All consultations regarding the presence of said sites shall be considered in the undertaking's planning.

##### B. Construction Phase on Private and/or State Lands

If, during the construction phase, human remains and associated burial items are encountered, all work shall cease within a 15-meter radius of the burial, and the SHPO notified immediately. Work within the buffer zone may not resume until the discovery has been investigated by a Qualified Archaeologist, and consultations regarding whether project plans can be modified have completed.

Work may continue outside of the 15-meter buffer zone. The NPS and the SHPO agree that preservation in place is the preferred alternative.

- C. For work on state land, the NPS shall first obtain a Wisconsin Public Lands Field Archaeology Permit from the State Archaeologist

- D. Project Planning / Construction Phase on Federal or Tribal Lands

For work on tribal lands, the NPS shall consult with the respective Tribal Historic Preservation Officer, or duly appointed tribal official. Consequently, for work located thereon, the NPS shall obtain appropriate archaeological field permits, including, but not limited to, an Archaeological Resources Protection Act (ARPA) prior to commencing work. If human remains and associated burial items are encountered on federal or tribal lands, all work shall cease within a 15-meter radius of the burial, and the NPS agrees to initiate consultations with the SHPO and/or THPO pursuant to the 25 USC 3001 *et seq*, the Native American Graves Protection and Repatriation Act (NAGPRA). Work may continue outside of the 15-meter buffer zone. Work within the buffer zone may not resume until the discovery has been investigated by a Qualified Archaeologist, and consultations regarding whether project plans can be modified have completed. The NPS and the SHPO agree that preservation in place is the preferred alternative.

## VII. Documentation

- A. Documentation required by the SHPO for consultation per the provisions of this PA may include written descriptions of the project and affected historic properties, reports demonstrating historic property NRHP eligibility determinations, photographs, and APE maps.
- B. All documentation generated for review purposes under the terms of this PA shall meet the requirements and provisions of 36 CFR §800.11.
- C. Two hard copies and one digital copy of any archaeological reports, or historic property documentation generated under the terms of this PA will be provided to the SHPO. Standalone photographic documentation of existing conditions will also be submitted as individual digital files outside of reports.
- D. The NPS shall retain documentation concerning all undertakings carried out pursuant to this PA.



- E. The NPS, when requested, shall provide the SHPO a report summarizing the undertakings carried out pursuant to this PA. This periodic review may be carried out to evaluate the adequacy of the provisions of this PA, and assess compliance with the terms herein.

VIII. Technical Assistance

The SHPO shall notify the NPS of training opportunities, provide technical assistance, or help develop training for NPS partners in areas of mutual concern and need.

IX. Monitoring

After providing reasonable notice to the NPS, the SHPO may monitor any phase of any undertaking.

X. Other Laws, Rules, Regulations

- A. No provision of this PA, whether expressed or implied, is intended, or designed, to exempt either the NPS or the SHPO from their respective obligations, duties or responsibilities pursuant to any provisions of the NHPA and/or the ACHP's implementing regulations at 36 CFR §800 not specifically referenced herein, or the provisions of any other federal, state, or local law, regulation, rule or ordinance not specifically referenced herein.
- B. The provisions of this PA do not apply to other required consultations by the NPS.
- C. It is the responsibility of the NPS and the SHPO to recognize, understand, and carry out each of their respective obligations, duties, and responsibilities under the NHPA §106 review process, and the ACHP's regulations at 36 CFR §800 not otherwise referenced herein.

XI. Amendments

This PA may be amended by the NPS or the SHPO if both parties decide, in consultation, that terms herein need revision, updated or changed for any reason.

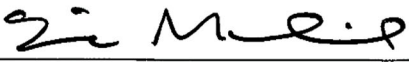
XII. Termination

- A. Either the NPS or the SHPO may terminate this PA by providing written notice describing the reason for termination to the other party. This PA shall remain in effect for thirty (30) days from receipt of notice to terminate. The NPS and the SHPO shall consult prior to actual termination to resolve the written reason for termination, and if possible, amend the PA accordingly, or seek other actions that would prevent termination.
- B. In the event this PA is terminated, the NPS shall continue to comply with the NHPA, and 36 CFR §800 for any undertakings that may affect historic properties.

XIII. Sunset Provision

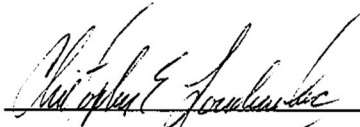
- A. This PA shall remain in force for ten (10) years from the date of the final signature unless terminated, or superseded by another PA.
- B. Within six (6) months prior to the expiration of this PA, the NPS and the SHPO agree to negotiate terms for a new PA, extension of the terms of the existing PA, or reversion to specific provisions of the NHPA and 36 §CFR 800.

Signatory Parties



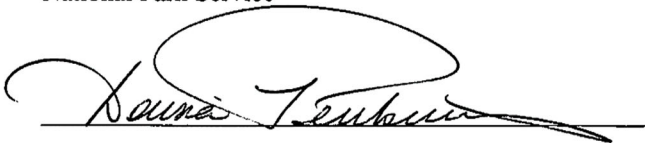
Date: 12/10/21

Eric Gabriel  
Superintendent  
Ice Age National Scenic Trail,  
National Park Service



Date: 29 NOV 21

Chris Loudenslager  
Superintendent  
North Country National Scenic Trail  
National Park Service



Date: 11/11/2021

Daina Penkiunas, PhD  
State Historic Preservation Officer  
Wisconsin State Historic Preservation Office

# Appendix I

Activities where no historic properties will be affected.

The NPS and SHPO agree the following undertakings have a determination of no historic properties affected pursuant to the ACHP's regulations at 36 CFR § 800.4(d)(1). If the Park Section 106 Coordinator determines an activity is on this list no further consultation with the CRM Team or SHPO will be required.

With respect to these undertakings, if the NPS finds reason to believe that an undertaking may affect a property eligible for or listed on the National Register of Historic Places (hereinafter "NRHP"), then that individual undertaking shall be reviewed pursuant to other applicable provisions of this programmatic agreement. The NPS shall retain comprehensive project files on these undertakings so that it may provide adequate documentation should a request be received.

## Administrative

- Certification of trail segments.

- Land acquisition and the development of land protection plans.

## Trail Development and Construction activities

- Temporary activities associated with the layout and design of the trail, such as the use of marking tape and pin flags.

- Fill placed on upland locations: Spreading of fill on upland locations, where there is no associated ground disturbing activity at the upland locations.

- Undertakings where ground disturbance will be less than 6 inches that occur on "made land" of such a thickness as to preclude any reasonable undertaking from ever having the potential to impact the prehistoric resources which may lie beneath it. For example, former railroad grades or extensive fill may be considered "made land."

- Tile Breaks: Removing or disabling a section of drain tile in previously disturbed ground.

- Ditch Plugs: Filling a ditch with soil that had been excavated previously from the ditch, or culturally sterile soil.

## Trail Maintenance activities (existing Trail)

- Blazing Trail: Trail marking and identification including painting on trees and affixing signs or other markers to trees

Posts: Installation of up to 4-inch posts for marking the trail (where blazing trees is not possible) or for marking property boundaries.

Mowing: cutting vegetation growth to facilitate pedestrian use, including manual (scythe, slingblade) and machine (walk-behind or riding mower, tractor with mower deck, string trimmer) techniques up to 20 feet wide.

Fencing: Repairing of non-historic fences and fence components at trails crossings

Vegetative Management: Pesticide application; prescribed burning; and the cutting, trimming, pruning, and harvesting of trees that does not involve removing stumps or roots.

Trail surface repair

Completing minor (no more than 15 meters parallel to the existing trail tread) trail reroutes due to unplanned and unpredictable obstacles or irreparable damage in the landscape (e.g., rockslides, storm damage, downed trees) that return to existing trail as soon as possible after rerouting around the obstacle.

#### Building and Structure maintenance

Undertakings that will only affect a property that is 50 years old or older but that previously (within 10 years from the date of the current project review) has been determined not eligible for listing on the NRHP

#### Additional streamlined activities.

The following are undertakings that fall under the provisions of the NPS Nationwide Programmatic Agreement Section III. These undertakings will follow the review process as outlined in that provision. Projects will be reviewed by the Park Section 106 Coordinator in consultation with the CRM Team and if it is determined that there will be no adverse effect and that it is an activity listed then no further consultation with the SHPO is required.

1. Seed Bed Preparation/Prairie Planting: Restoring prairie from previously cultivated cropland and limiting the ground disturbance to the depth of the existing plow zone.
2. Minor trail relocation more than 15 meters from existing trail where ground is previously disturbed as determined by a qualified archeologist
3. Trail expansion to include widening, lengthening, or rerouting in areas that have been previously surveyed and inventoried, and no historic properties were discovered.
4. Development of compatible trail networks on logging roads or other established routes

5. Routine grounds maintenance including snow removal and mowing at the Cross Plains Interpretive site to keep the site's grounds clear of debris and safe and accessible to the visiting public and park staff.
6. Routine Building and Structure Maintenance: general routine, preventative and corrective maintenance, as well as custodial practices, performed on the park's non-historic buildings and structures. Includes the replacement of existing trail structures with an in-kind or similar structure.
7. Actions in Hydric Soils: All actions that occur exclusively within hydric soils. Note: actions taken in wetland areas are restricted by other agencies

## APPENDIX II

### 157.70 Burial sites preservation.

**(1)** DEFINITIONS. In this section:

**(a)** "Board" means the burial sites preservation board.

**(b)** "Burial site" means any place where human remains are buried.

**(c)** "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c) or s. 157.70 (2) (a), 2015 stats., or s. 157.70 (2) (b), 2015 stats.

**(cm)** "Dedicated" has the meaning given in s. 157.061 (4).

**(d)** "Director" means the director of the historical society or his or her formally appointed designee.

**(e)** "Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.

**(em)** "Division" means the division of hearings and appeals in the department of administration.

**(f)** "Human remains" means any part of the body of a deceased person in any stage of decomposition.

**(g)** "Interest" means an interest based on any of the following:

1. Direct kinship.

2. A cultural, tribal or religious affiliation.

3. A scientific, environmental or educational purpose.

4. Land use.

5. A commercial purpose not related to land use which is consistent with the purposes of this section.

6. Any other interest which the board deems to be in the public interest.

**(gm)** "Notify" means to communicate by letter or by electronic mail or other electronic means approved by the director.

**(h)** "Owner" means a person who owns or leases land on which a burial site is located.

**(hm)** "Person" includes the state.

**(i)** "Qualified archaeologist" means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full-time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

**(1m)** APPLICABILITY. This section does not apply to the disturbance of cataloged land contiguous to a cataloged burial site if the cataloged burial site was recorded under sub. (2) (i) before August 9, 1989.

**(2)** DIRECTOR'S DUTIES. The director shall:

**(a)** Identify burial sites in this state and, for burial sites that are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance. For any such burial site for which the director determines there is sufficient evidence under sub. (2c), the director shall notify every owner of the burial site and contiguous land so identified that the site or land will be recorded in a catalog unless the owner requests a hearing under sub. (2g) (a). The director shall include in the notice the date by which the director intends to record the site or land in the catalog, which shall be no less than 30 days after the date of the notice. If the director's determination is not contested under sub. (2g) (a), the director shall record the site and land so identified in a catalog. If the director's determination is contested under sub. (2g) (a), the director shall record the site and land in the catalog only as subsequently permitted by a final decision of the board, the division, or a court. Whenever a burial site and land are recorded in the catalog under this paragraph, the director shall notify every owner and any county or local historical society in the

county where the burial site or the land is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to the burial site, is not subject to s. 19.35 (1). A notice of a recording in the catalog shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information. The director may, in order to carry out his or her duties under this paragraph, obtain a special inspection warrant as provided in s. 66.0119 if entry to the site has been refused. In this paragraph, "sufficient contiguous land" means land that is within at least 10 feet from any part of a burial site, unless the director determines based on the unique characteristics of the land that a shorter distance is sufficient to protect the burial site from disturbance.

- (c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.
- (d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.
- (e) Establish a registry for any person whom the board determines to have an interest in a burial site or class of burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person is determined to have an interest. Any information in the registry related to the location of any burial site, the disclosure of which would be likely to result in disturbance of the burial site, is not subject to disclosure under s. 19.35 (1).
- (g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.
- (h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.
- (i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (1) (a).
- (j) Submit an annual report to the legislature under s. 13.172 (2) containing all of the following:
  - 1. The director's current recommendations under par. (c).
  - 2. The number of burial sites recorded in the catalog at the time the report is prepared.
  - 3. A summary of disturbance activities authorized under sub. (4), including a summary of information submitted to the board in written reports under sub. (4) (f), since the previous report was issued.
  - 4. A summary of applications received under sub. (5) since the previous report was issued, and information regarding the approval or denial of those applications by the director or the division.
  - 5. A summary of appeals to the board under sub. (5) (c) 5. made since the previous report was issued.
  - 6. A summary of any other activities of the board since the previous report was issued.
  - 7. A summary of all violations of this section and all penalties imposed as a result of those violations.

**(2c) RELEVANT EVIDENCE FOR RECORDING IN THE CATALOG.**

**(a) In this subsection:**

- 1. "Grave marker" means any surface indication of a burial, including monuments, spirit houses, wooden crosses, or Indian mounds.
- 2. "Historical documentation" means information from any of the following types of independent sources:
  - a. Church records.
  - b. Deeds.
  - c. Maps.
  - d. Other written and oral sources.



**(b)** In determining whether to record burial sites in the catalog under sub. (2) (a), the director shall consider the following types of evidence from any person:

1. Physical evidence, as demonstrated by archaeological or written historical reports showing the presence of human remains or grave markers.
2. Historical documentation.
3. Oral depositions or affidavits.
4. Oral histories.

**(2g) PROCEEDINGS TO CONTEST RECORDING IN THE CATALOG.**

**(a)** If an owner wishes to contest a determination by the director under sub. (2) (a), the owner may, prior to the date stated in the notice under sub. (2) (a) that the director will record the burial site and land in the catalog, request a hearing before the board to review the director's determination. If such a request is made, the board shall hold a hearing within 90 days after the date of the request. At the hearing, the director has the burden of proving, using the types of evidence described under sub. (2c) (b), that a burial site is present on the land. If a hearing is requested under this paragraph and the director has not yet physically inspected the land in question as permitted under sub. (2) (a), the director shall do so prior to the hearing. Following the hearing, the board shall issue a decision regarding whether to record the burial site or land in the catalog and, no later than 60 days after the hearing, shall send a copy of its decision to the director and the owner. A hearing held under this paragraph is not a contested case hearing under ch. 227.

**(b)** Within 30 days after the date of the board's decision under par. (a), the owner shall have the right to a contested case hearing regarding whether the director should record the burial site or land in the catalog. A hearing under this paragraph shall be conducted by the division.

**(c)** From the time of the notice under sub. (2) (a) that the site or land will be recorded in the catalog unless the owner requests a hearing under par. (a) until all proceedings under this subsection are concluded, notwithstanding sub. (4), no person may conduct any soil disturbance activity on the site or land, except that the proposed activity may be conducted if the director determines that the proposed activity will not disturb the burial site.

**(2j) REMOVAL FROM CATALOG.**

**(a)** The director shall, on his or her own initiative or in response to a request from the owner or another interested person, propose that land be removed from the catalog if the director determines that no burial site is present on the land because of any of the following:

1. Naturally occurring changes to the landscape.
2. Removal of human remains from the burial site under sub. (4) (c) 3. a. or (5) (c) 3.
3. Newly discovered evidence that, if known at the time of the determination to record in the catalog, and taking into account the types of evidence required to be considered under sub. (2c), would have resulted in a determination not to record the burial site or land in the catalog.

**(b)**

1. If the director proposes to remove land from the catalog under par. (a), the director shall notify the owner, interested persons listed on the registry under sub. (2) (e), county or local historical societies, the relevant municipality, and, if applicable, the person who submitted an application to have the site recorded in the catalog of the director's proposal to remove the land from the catalog, and invite those persons to submit comments on the proposal. The director shall allow comments for a period of no less than 60 days.
2. Following the expiration of the comment period under subd. 1., the director shall review any comments submitted, make any appropriate modifications in response to those comments, and issue a decision regarding removal of the land from the catalog. The director shall provide notice of his or her decision to the persons notified under subd. 1.

3. Within 30 days after the date of the notice described in subd. 2., a person notified under subd. 1. may appeal the director's decision to the board. The board shall review the director's decision and issue a decision as to whether the land should be removed from the catalog.
  4. Within 30 days after the date of the board's decision under subd. 3., a person notified under subd. 1. shall have the right to a contested case hearing regarding whether the land should be removed from the catalog. A hearing under this subdivision shall be conducted by the division.
  5. If no appeal of a decision to remove land from the catalog is filed within the period specified under subd. 3., if a decision to remove land from the catalog is upheld by the board following an appeal to the board under subd. 3. and no hearing is requested under subd. 4., or if a decision to remove land from the catalog is upheld by the division following a hearing requested under subd. 4., the director shall immediately do all of the following:
    - a. Remove the land from the catalog.
    - b. Submit a request to the register of deeds for the county in which the land is located to record a notice that the land has been removed from the catalog.
- (2m) BOARD DUTIES.** The board shall:
- (a) Meet at least every 3 months.
  - (b) Determine which Indian tribes have an interest in any burial site or class of burial sites and notify the director for entry in the registry under sub. (2) (e).
  - (c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a burial site or class of burial sites.
  - (d) As it deems necessary, review determinations of the director and the division under sub. (5).
  - (e) As it deems necessary, review disposition actions taken by the director under sub. (6).
  - (f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.
  - (g) Hold hearings and issue decisions under sub. (2g) (a).
  - (h) Review decisions of the director and issue decisions regarding removal of land from the catalog under sub. (2j) (b) 3.
- (2p) APPLICATION FOR REGISTRY.** Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.
- (2r) SITE DISTURBANCE PROHIBITED.** Except as provided under subs. (4) and (5) and ss. 157.111 and 157.112, no person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. This subsection does not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.
- (3) REPORT OF DISTURBED BURIAL SITES.**
- (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).
  - (b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged.
- (4) PROCEDURE FOR UNCATALOGED BURIAL SITES.**
- (a) If the director determines that a burial site reported under sub. (3) (a) is not cataloged, he or she shall immediately provide the person who made the report under sub. (3) (a) with confirmation that the report has been received and shall also immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may notify the board, and any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

**(b)** No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2. or (d).

**(c)**

1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Subject to s. 157.111, authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

**(cm)** The director shall notify an owner under par. (c) 2. or 3., whichever is applicable, within 30 days after confirming receipt of a notification of a disturbance or possible disturbance under sub. (3) (a), except that if the director cannot make a determination under par. (c) 2. or 3. within that period, he or she shall notify the owner that additional time, which may not exceed 30 days, is necessary to make the determination, and include in that notification the reasons he or she needs additional time to make the determination.

**(d)** If the director determines that an owner has satisfied the requirements under par. (c) 3., he or she shall, within 30 days after making that determination, notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

**(e)** If under par. (c) 3. a. all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

**(f)** The director shall submit a written report to the board of any determination which he or she makes under this subsection.

**(5) PROCEDURE FOR CATALOGED BURIAL SITES.**

**(a)** No person may intentionally cause or permit the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director issued under this subsection.

**(b)**

1. Any person who intends to cause or permit any activity on a cataloged burial site or on cataloged land contiguous to a cataloged burial site which in any way might disturb the burial site or the land shall apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance.

2. The director shall notify any person shown on the registry under sub. (2) (e) to have an interest in the burial site of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site or the land.

**(c)**

1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division to conduct a hearing on whether a permit should be issued to disturb the burial site or the land which is the subject of the request. If in any part of

the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

- 1m.** If a hearing is not requested or determined to be necessary under subd. 1., the director shall determine whether a permit should be issued to disturb the burial site or the land which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land, the director shall grant a permit to disturb the burial site or the land. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the director determines that any of the following classes of interest are represented, the director shall weight the interests in the following order of priority:
  - a.** Direct kinship.
  - b.** A cultural, tribal or religious affiliation.
  - c.** A scientific, environmental or educational purpose.
  - cm.** Historical and aesthetic significance of the burial site.
  - d.** Land use.
  - e.** A commercial purpose not related to land use which is consistent with the purposes of this section.
  - f.** Any other interest which the director deems to be in the public interest.
- 2.** If a hearing is requested or determined to be necessary under subd. 1., the division shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site or the land which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:
  - a.** Direct kinship.
  - b.** A cultural, tribal or religious affiliation.
  - c.** A scientific, environmental or educational purpose.
  - cm.** Historical and aesthetic significance of the burial site.
  - d.** Land use.
  - e.** A commercial purpose not related to land use which is consistent with the purposes of this section.
  - f.** Any other interest which the board deems to be in the public interest.
- 2m.** If the division makes a determination for granting a permit to disturb a burial site that is the subject of the hearing under this paragraph, the division may, except as provided in subd. 2o., determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).
- 2o.** If human remains and objects related to the burial in the burial site are determined by a qualified archaeologist approved by the director to be of tribal descent, the division shall request that the Wisconsin Inter-Tribal Repatriations Committee or its designee determine the appropriate disposition of the remains or objects. If the Wisconsin Inter-Tribal Repatriations Committee or its designee declines the director's request, the division shall determine the person to whom the remains and objects should be transferred as otherwise provided in subd. 2m. The Wisconsin Inter-Tribal Repatriations Committee or its designee shall submit to the director a written report of any disposition action taken under this subdivision.
- 3.** If the determination under subd. 1m. or 2. is for granting a permit to disturb a burial site, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground

conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection shall be subject to s. 157.111 and may be subject to any other condition or exemption deemed necessary to limit the disturbance of a burial site or the land or to minimize any other burden on any person affected by granting the permit.
5. Any determination made by the director or the division under subd. 1m. or 2. may be appealed to the board.

(d)

1. The director may charge a fee to recover the cost of excavation of a cataloged burial site under par. (c) 3. on the basis of the historical society's assessment of the costs associated with excavation of the cataloged site.
2. The director may charge a fee to recover costs incurred by the historical society to analyze and reinter or otherwise dispose of human remains and other material under par. (c) 2m.

**(6)** DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES.

- (a)** Except as provided in par. (bm), if human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a. or (5) (c) 3. and the division has not determined under sub. (5) (c) 2m. the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Any other interest which the board deems to be in the public interest.

- (b)** If the director cannot identify any person with an interest in reintering the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

- (bm)** If human remains and objects related to the burial are removed from a burial site under sub. (4) (c) 3. a. or (5) (c) 3., the remains or objects are determined by a qualified archaeologist approved by the director to be of tribal descent, and the division has not determined under sub. (5) (c) 2m. the person to whom such remains and objects should be transferred for reinterment or other appropriate disposition, the director shall request that the Wisconsin Inter-Tribal Repatriations Committee or its designee determine the appropriate disposition of any tribal human remains or objects related to the burial. The director shall transfer the remains and objects for appropriate reinterment or other appropriate disposition as directed by the Wisconsin Inter-Tribal Repatriations Committee or its designee, unless the Wisconsin Inter-Tribal Repatriations Committee or its designee declines the director's request, in which case the director shall proceed with disposition of the remains and objects as otherwise provided in par. (a). The Wisconsin Inter-Tribal Repatriations Committee or its designee shall submit to the director a written report of any disposition action taken under this paragraph.

- (c)** The director shall record in the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a), (b), or (bm).

- (d)** The director shall submit to the board a written report of any disposition action taken under this subsection.

- (e)** The board may review and modify any disposition action taken by the director under this subsection.

**(6m)** BURIAL SITES ON PUBLIC LANDS.

- (a)** In this subsection, "municipality" has the meaning given under s. 66.0621 (1) (a) and includes the state.

- (b) Notwithstanding any other provision of this section, a municipality:
2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturbance by any person and unless the transfer is approved by the board.
  3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.
  - (7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.
  - (8) REMEDIES. Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2. or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site or the cataloged land contiguous to a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or the cataloged land contiguous to a cataloged burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).
  - (9) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties of any person under this section.
  - (9m) ELECTRONIC SUBMISSION OF DOCUMENTS. The historical society and the board shall accept transmittal by any electronic means approved by the director of any application or other document required to be submitted under this subchapter.
  - (10) PENALTIES.
    - (a) Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site as required under sub. (3) shall forfeit not less than \$100 nor more than \$1,000.
    - (b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2. or (d) shall forfeit not less than \$500 nor more than \$2,000 if the burial site is not dedicated or shall forfeit not less than \$1,000 nor more than \$10,000 if the burial site is dedicated.
    - (c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2. or (d) shall forfeit not less than \$1,000 nor more than \$10,000.
    - (d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than \$1,000 nor more than \$10,000.
    - (e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

**History:** 1985 a. 316; 1987 a. 27; 1989 a. 3, 31, 359; 1991 a. 39; 1993 a. 386; 1995 a. 357; 1999 a. 83; 1999 a. 150 s. 672; 2001 a. 16; 2017 a. 222; 2017 a. 365 s. 111.

**Cross-reference:** See also ch. HS 1, Wis. adm. code.

**Note:** [1985 Wis. Act 316](#), which created this section, contains extensive notes. Section [1](#) of [1985 Act 316](#) is entitled  
“Legislative findings and purpose.”




## Appendix III

Wisconsin Historical Society

'Request to Disturb a Human Burial Site Form'

Fillable PDF version is available on-line at:

<https://www.wisconsinhistory.org/pdfs/cms/HPR-Request-to-Disturb-Sep-2020.pdf>

|   |   |   |
|---|---|---|
|    | <b>WISCONSIN<br/>HISTORICAL<br/>SOCIETY</b> | <b>Request to Disturb a Human Burial Site</b> |
| Name of Owner/Agent/Company Requesting to Disturb _____   |   |   |
| Contact Address _____   |   |   |
| Contact E-Mail _____ Contact Phone Number _____   |   |   |
| Landowner Name (if different) _____   |   |   |
| <b>Describe your project, including reason for and nature of ground disturbance:</b>  |   |   |
| Utility installation <input type="checkbox"/> Private home construction <input type="checkbox"/> WDNR Permit Review <input type="checkbox"/> Other project <input type="checkbox"/>   |   |   |
| Complete description/additional details: _____  |   |   |
| _____   |   |   |
| _____   |   |   |
| _____   |   |   |
| County _____ Civil Town/Municipality _____  |   |   |
| Town _____ Range _____ E/W (circle one) Section _____ Quarter Sections _____  |   |   |
| Address of property (if applicable) _____   |   |   |
| State Site Number _____ Burial Site Number _____ WHS Case # _____   |   |   |
| <b>Cataloging Status (if known)</b>   |   |   |
| <input type="checkbox"/> Proposed disturbance is to an <b>uncatalogued</b> human burial site or to the uncatalogued portion of a human burial site that contains catalogued human burials.  |   |   |
| <input type="checkbox"/> Proposed disturbance is to a <b>catalogued</b> human burial site.  |   |   |
| <b>Attachments (REQUIRED)</b>   |   |   |
| <input type="checkbox"/> Scaled and dated project plans and maps showing the relationship of the proposed ground disturbance to the human burial site. Include labeled boundaries of uncatalogued and catalogued burial areas.  |   |   |
| <input type="checkbox"/> Photographs and/or aerial photos (as available) of the project area.   |   |   |
| <b>Signed</b> _____ <b>Date</b> _____   |   |   |
| <b>Print Name</b> _____   |   |   |
| <b>Landowner Signature (if different)</b> _____ <b>Date</b> _____   |   |   |
| <small>Submit completed form via email to <a href="mailto:compliance@wisconsinhistory.org">compliance@wisconsinhistory.org</a>. Please allow 30 days for your permit request to be approved and to receive your authorization via email. You may not proceed with your project until you receive authorization from the Wisconsin Historical Society.</small> |   |   |
| For more information, please visit <a href="http://wihist.org/Request-to-Disturb">wihist.org/Request-to-Disturb</a>   |   |   |
| Revised September 2020  |   |   |