



# United States Department of the Interior

NATIONAL PARK SERVICE  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

DECEMBER 18, 1984

A5627(436)

STAFF DIRECTIVE 84-5

ANNUAL REVIEW

To: Directorate, Field Directorate, WASO Division Chiefs and Park Superintendents

From: Deputy Director

Subject: Establishment of Servicewide Procedures for Responding to Notifications Under Public Law 93-291 that Unanticipated Scientific, Prehistorical, Historical or Archeological Data have been Discovered during Construction of a Federal Undertaking and are being Irrevocably Lost or Destroyed

This directive is being issued to clarify the Service's responsibilities and establish Servicewide procedures for responding to notifications to the Secretary of the Interior under section 4(a) of the Archeological and Historic Preservation Act (Public Law 93-291) that unanticipated scientific, prehistorical, historical or archeological data have been discovered during construction of a Federal undertaking and are being irrevocably lost or destroyed. These procedures are to be used in those situations where a Federal agency has complied with section 106 of the National Historic Preservation Act (Public Law 89-665) and has commenced construction. They are not to be used in those situations where a Federal agency is notifying the Secretary that it intends to commence an undertaking and is requesting the Secretary's assistance in recovering significant data that may be damaged or destroyed.

1. Authority and Responsibility. Section 4(a) of PL 93-291 states that "the Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be recovered and preserved in the public interest."

The Departmental Consulting Archeologist (DCA), National Park Service, carries out these responsibilities for the Secretary in that he or his representative evaluates the significance of discovered properties in terms of the National Register of Historic

Places criteria and makes recommendations to the pertinent Federal agency on measures to recover significant scientific, prehistorical, historical or archeological data. If the DCA determines that the significance of the property, the effect of the project, and any proposed mitigation actions warrant consideration by the Advisory Council on Historic Preservation (ACHP), the project may be referred to the ACHP, (ref. section 800.7 of the ACHP's regulations, 36 CFR Part 800).

2. Investigation Procedure.

- a. WASO. Upon receipt of a notification from a Federal or State agency or appropriate authority that scientific, prehistorical, historical or archeological data are being irrevocably lost or destroyed by a Federal undertaking where construction has begun, the DCA shall for record keeping purposes assign a number to the notification. Numbers shall be assigned by fiscal year, Federal agency abbreviation, and number, beginning with 001 (e.g., the fifth notification received during FY86, concerning a National Park Service undertaking, would be assigned number 86-NPS-005.)

The DCA shall initiate investigation of the situation within 2 working days, unless otherwise mutually agreed to in writing by the DCA and the pertinent Federal agency. The DCA shall consult with appropriate Federal and State agency personnel and other authorities, determine if the situation warrants investigation and, if so, whether a field inspection is necessary. If a field inspection is necessary, he shall determine whether the inspection should be conducted by the DCA or by WASO or Regional Office personnel in the National Park Service or by personnel in the pertinent Interior bureau or Federal agency on his behalf. If it is determined that it is necessary to halt construction activities or move them temporarily outside of the immediate area of impact, the DCA shall consult via telephone with the agency's Historic Preservation Officer and request that construction activities be halted or moved temporarily.

Criteria to be used by the DCA in making his decisions shall include the nature and integrity of the archeological or historic property, the scope and nature of impacts of the project on the property, the status of compliance with section 106 of PL 89-665 (including any special monitoring or discovery stipulations contained in Memoranda of Agreement or No Adverse Effect Determinations), recommendations (if any) by the State and pertinent Federal agency, and the staff expertise available in the Service's WASO and Regional Offices or in the pertinent Interior bureau or Federal agency. For example, if the State and the Federal agency agree on the significance of a property and a data recovery program, it may not be necessary for the DCA to hold a field inspection.

If the DCA determines that WASO personnel should assist him in investigating the notification, he shall consult with the Chief of the Archeological Assistance Division and recommend specific staff having the appropriate expertise to assist him. The Chief of the Archeological Assistance Division shall direct an appropriate staff member to assist the DCA in conducting the investigation. The WASO staff member shall follow the procedures outlined for Regional Office staff in section 2(b) of this Staff Directive for assisting the DCA in carrying out the investigation.

If the DCA determines that Regional Office personnel should assist him in investigating the notification, he shall consult via telephone with the appropriate Regional Director and recommend specific staff having the appropriate expertise from the Regional Office, archeological center or other office or park to assist him.

If the DCA determines that personnel in another Interior bureau or Federal agency should assist him in investigating the notification, he shall consult via telephone with the agency's Historic Preservation Officer and recommend specific staff from the bureau or agency having the appropriate expertise to assist him.

- b. Regional Office. Following consultation with the DCA, the Regional Director shall direct an appropriate staff member to assist the DCA in conducting the investigation. As the DCA's representative, the staff member shall consult with and request the presence of staff from the State Historic Preservation Office and the pertinent Federal agency at any on-site inspection, and request their views on the significance of the discovered property and on steps to recover important data that will be destroyed by the undertaking. Following the on-site inspection and discussions with other participating parties, the DCA's representative shall prepare recommendations for the DCA on the significance of the discovered property and on steps to recover important data that will be destroyed by the undertaking.

Recommendations on significance and on steps to recover important data should be made in accordance with the Secretary of the Interior's Standards and Guidelines on Archeology and Historic Preservation (48 FR 44715-44742). The DCA's representative shall provide these recommendations and the views (if any) of the State and the Federal agency to the DCA for his concurrence via telephone, followed by written documentation. When necessary, documents shall be provided to the DCA via telefax or other electronic or overnight mail service.

Recommendations generally should fall into one of the following five categories:

1. The property is not significant and no data recovery is recommended.
2. The property is significant and the project impact is eliminated by redesign of the undertaking.
3. The property is significant and data recovery is recommended.
4. The property is significant but data recovery is not warranted because of other considerations and the loss of the data is acceptable.
5. Additional testing is recommended because there is insufficient information to determine the significance of the property.

The DCA shall make the final decisions regarding significance and data recovery efforts, and advise his/her representative of these decisions. Unless advised to the contrary, the DCA's representative shall act as the liaison and transmit the DCA's decisions to the Federal agency and the State. If the DCA determines that the significance of the property, the effect of the project or the nature of the mitigation actions warrant consideration by the ACHP, the project shall be referred to the ACHP.

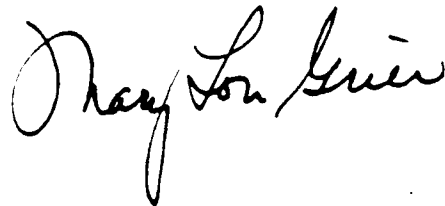
3. Additional Guidance.

- a. Funding. Travel and other administrative and personnel costs incurred by WASO or Regional Offices assisting the DCA in conducting any investigation are to be borne by the office assisting in the investigation. The pertinent Federal agency is to be advised that it or its grantee, permittee or licensee is expected to bear costs for needed survey and/or data recovery (including analysis, report preparation and curation) and compensation for any project delays.
- b. Evaluation of Significance. The criteria for listing properties on the National Register of Historic Places are to be used when evaluating the significance of archeological and historical properties. When a property is evaluated as meeting the criteria, it is treated as if it were determined eligible for listing by the Keeper of the National Register. The property is not, however, formally determined eligible unless the Federal agency follows up with a request to the Keeper of the National Register for a determination of eligibility or nomination.
- c. Use of Consultants. Federal and nonfederal archeological and historical authorities having appropriate expertise may be consulted for advice concerning the significance of a property and recommendations for mitigation of impacts to the property. If costs would be incurred, the Regional Contracting Officer must be contacted so that appropriate steps may be taken in accordance with 365 DM. Decisions concerning significance and data recovery, however, lie with the DCA.
- d. Contacts with the Press. When information on a project is requested by members of the press, Service personnel shall provide a factual statement on the nature of the property and the project. When there are policy issues involved, the press should be referred to the DCA.
- e. Reports. Service personnel assisting the DCA in investigating notifications shall provide copies of correspondence, meeting notes and other documents to the DCA and the appropriate Regional Office. At the completion of an investigation, the DCA's representative shall prepare a written report for the DCA on the investigation by completing a "Report on Emergency Discovery Notifications to the Secretary of the Interior under P.L. 93-291." (A copy of the Report is attached to this Staff Directive). All correspondence and documents relating to an investigation shall bear the assigned notification number.

4. Definitions.

- a. Authority (Archeological or Historical). An archeological or historical authority is a professionally qualified archeologist, historian, architect, architectural historian or other professional in a related discipline who has demonstrated knowledge and experience in regard to the type of property discovered.
- b. Data Recovery. Data recovery is the systematic removal of the scientific, prehistoric, historic and/or archeological data that provide an archeological or historic property with its research or data value. Data recovery may include surveying and subsurface testing, developing and conducting mitigation programs, recording and relocating buildings and other structures, excavating and analyzing data recovered, preparing and disseminating reports on the data recovered, and curating those data and associated materials and documents.
- c. Discovery Situations during Construction. Discovery situations during construction include only those situations where land modifying activities associated with a Federal project or federally assisted, licensed or permitted activity or program have begun, and a previously unknown archeological or historic property is uncovered.

Any questions on the above procedures should be directed to the Departmental Consulting Archeologist, at FTS 343-4101 or (202) 343-4101. Documents may be faxed to FTS 523-1547 or (202) 523-1547.



Attachment: "Report on Emergency Discovery Notifications to the Secretary of the Interior under P.L. 93-291"

**REPORT ON EMERGENCY DISCOVERY NOTIFICATIONS  
TO THE SECRETARY OF THE INTERIOR UNDER PL 93-291**

**Purpose:** This report has been designed to record and document actions taken by the Department of the Interior in response to emergency discovery notifications received by the Department under section 4(a) of PL 93-291. Emergency discovery situations (EDS) are defined to include only those situations where construction has begun on a Federal undertaking and a previously unknown archeological property is uncovered. This report should not be completed for routine notifications under section 4(a) that an agency intends to commence an undertaking and is formally requesting the Secretary's assistance in recovering important data that may be damaged or destroyed.

**Instructions:** Complete one report for each emergency discovery situation that you have assisted the Departmental Consulting Archeologist (DCA) in investigating. Copies of completed reports should be sent to the DCA and the appropriate NPS Regional Office.

EDS Notification #: \_\_\_\_\_

Name of DCA's Representative: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_

Name of State's Representative: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_

Name of Federal Agency's Representative: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location by Town/County/State: \_\_\_\_\_

Month/Day/Year of Notification: \_\_\_\_\_

Agency(s) involved (indicate lead agency if more than one): \_\_\_\_\_

Type of Project (check one):

\_\_\_\_\_ Federal Construction  
\_\_\_\_\_ Grant  
\_\_\_\_\_ Loan

\_\_\_\_\_ Permit/License (identify type)  
\_\_\_\_\_ Mortgage Guarantee  
\_\_\_\_\_ Other (identify)

Land Ownership (check one):

Federal  
 Indian  
 Private

State  
 Municipal  
 Combination (identify)

Who Notified DOI (check one):

State agency official  
 Federal agency official  
 Other (identify)

Project applicant  
 Professional Archeologist,  
Historian, Architect, etc.

Status of section 106 compliance at the time of the notification (check one):

Completed with no site(s) located  
 Completed with No Effect  
 Completed with No Adverse Effect  
 Completed with MOA  
 Completed with PMOA  
 Not completed  
 Not required (specify)

Status of archeological investigations (completed or in progress) within the project area at the time of the notification (check all that apply):

No survey  
 Reconnaissance (sample) survey without subsurface testing  
 Reconnaissance (sample) survey with subsurface testing  
 Intensive (100%) survey without subsurface testing  
 Intensive (100%) survey with subsurface testing  
 Data recovery  
 Monitoring  
 Other (specify)

If there was a monitoring program, describe to the best of your knowledge the procedure stipulated under that program to be followed by the agency et al. if resources were discovered.

Briefly describe your evaluation of the cause(s) of the discovery situation:

Results of actions taken in response to the emergency discovery notification included which of the following (check all that apply):

- Site(s) determined not significant
- Site(s) determined significant
- Testing conducted
- Data recovery conducted
- State and Federal agencies agreed on significance
- State and Federal agencies disagreed on significance
- State and Federal agencies agreed on additional investigations
- State and Federal agencies disagreed on additional investigations
- State and Federal agencies agreed with Interior's recommendations
- State and Federal agencies disagreed with Interior's recommendations
- Interior referred the case to the ACHP
- Other (specify)

Briefly describe the significance of the site(s):

Briefly describe the additional investigations to mitigate damage to the site(s):

Briefly describe the views (if any) of the State and the Federal agency concerning the significance of the site(s) and the additional investigations to mitigate damage:



If known, specify costs associated with additional archeological work and any down time.

\$ \_\_\_\_\_ Additional testing  
\$ \_\_\_\_\_ Additional data recovery  
\$ \_\_\_\_\_ Compensation for damages

Who paid such costs (check one):

_____ Federal agency (identify)	_____ State agency (identify)
_____ Permit/license applicant	_____ Indian tribe
_____ Grantee	_____ Combination (identify)
_____ Other (identify)	

Any additional comments: