

Unanticipated Discovery Protocol

Hoffman Falls Wind Project

Towns of Eaton, Fenner, Nelson, and Smithfield, Madison County,
New York

Prepared for:

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1.0 OVERVIEW OF PROCEDURES FOR UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES

Hoffman Falls Wind LLC (the Applicant), a wholly owned subsidiary of Liberty Renewables Inc., has prepared this Unanticipated Discovery Protocol (UDP, or the Protocol), which outlines the steps for dealing with previously unrecorded cultural resources, including human remains, discovered during the construction of the proposed Facility.

The UDP provides guidance and instruction to the Applicant the Construction Contractor personnel, contractors, and consultants as to the proper procedures to be followed in the event of an unanticipated cultural resource discovery. This Protocol applies to all areas of the Facility Site.

This Protocol outlines the steps to be taken in the event an unanticipated discovery of cultural resources is made during construction of the Facility. The following list notes the steps to be taken, and are described further herein:

1. Initial discovery and notification
2. Remote/virtual consultation by an archaeologist
3. Site visit by an archaeologist, if necessary, and memorandum
4. Agency and Nation consultation
5. Archaeological mitigation measures
 - a. Avoidance measures, in consultation with Agencies and Nations
 - b. Additional archaeological investigations, if determined necessary in consultation
6. Reporting and further consultation

Additional information is provided with this document as attachments, including details on whom to contact in the event of discoveries (Attachment A) and the protocols/guidelines for the discovery of human remains (Attachment B).

2.0 PROJECT BACKGROUND

Hoffman Falls Wind LLC is seeking a Siting Permit to construct the Hoffman Falls Wind Project (the Facility) in Towns of Eaton, Fenner, Nelson, and Smithfield in Madison County, New York. The proposed wind energy generation facility will have a generating capacity of up to 100 megawatts (MW) with up to 24 wind turbine locations and associated infrastructure.

In 2023, EDR completed Phase IB archaeological survey of the area of potential effect (APE) of the proposed Facility (EDR, 2023a; EDR, 2023b). The purpose of the Phase IB survey was to determine whether archaeological sites are located in the areas that may be affected by the proposed Facility. The Applicant has developed a layout that would allow for construction of the Facility while minimizing soil disturbance and the associated impacts to archaeological resources to the greatest extent practicable.

The Facility overlaps some areas of elevated sensitivity for previously unrecorded archaeological resources. The Applicant recognizes that despite previous archaeological investigations, it is possible that unanticipated buried or aboveground archaeological features and/or artifacts may be encountered during project construction or maintenance. EDR has prepared this Protocol to provide guidance for this possibility.

2.1 Training and Orientation

Prior to construction activity, the Archaeological Consultant will provide a summary presentation to its Construction Site Manager and Construction Contractor personnel of the relevant results/findings of the Phase IB archaeological surveys previously conducted near the construction site. The Archaeologist will provide information to Construction Contractor personnel on site as to the type and variety of cultural resources that may be encountered, and so that they can be more readily identified in the field.

The Construction Site Manager will ensure that Construction Contractor personnel are made aware of the procedures they must follow in the event of an unanticipated discovery anywhere within the Facility Site (Sections 4.0 and 5.0 below). All Construction Contractor personnel will be advised of the need to immediately stop work if they observe any indications of the presence of an unanticipated cultural resource discovery. Construction Contractor personnel will be instructed to immediately contact the Construction Site Manager upon the observation of a potential unanticipated discovery for implementation of this Protocol.

The Project Manager and Construction Site Manager will stress the necessity of compliance with this Protocol and special emphasis and attention will be given to potential circumstances involving human remains. The Project Manager and Construction Site Manager will stress the importance of treating any human remains, or potential human remains, encountered during construction of the Facility with the utmost dignity and respect.

3.0 KEY TERMS AND RESPONSIBILITIES

The following terms and responsibilities are used throughout this Protocol:

- **Agencies:** Refers to the state and federal agencies included in the consultation process for the Facility. Please see Appendix A for the full contact list:
 - New York State Historic Preservation Office (NYSHPO)
 - New York State Office of Renewable Energy Siting (ORES)
 - New York State Department of Public Service (DPS)

Depending on the nature and location of the discovery, additional state and or federal agencies may be involved in consultation.

- **Archaeological Consultant (the Archaeologist):** The Applicant's cultural resources consultant(s). Review of any potential unanticipated discoveries will be conducted under the supervision of a cultural resource professional who meets the U.S. Secretary of the Interior's Standards for Archaeology and Historic Preservation (36 CFR 61).
- **Archaeological Site:** Any concentration of Cultural Material that was previously recorded and noted in the NYSHPO database, a location that was delineated in the course of the Phase IB archaeological surveys, and/or any unanticipated discoveries of cultural resources that would constitute a site as defined by NYSHPO in the adopted New York Archaeological Council Standards (NYAC, 1994). *Note: discoveries of individual artifacts (or "isolates") are not considered archaeological sites.*
- **Area of Potential Effect (APE):** All areas of potential soil/rock disturbance associated with the construction and operation of the proposed Facility.
- **Construction Contractor (the Contractor):** The individual, firm, or corporation undertaking the execution of the construction work under the terms of the contract and acting directly or through his, her, their, or its agents or employees.
- **Construction Site Manager:** The Construction Site Manager in conjunction with the Project Manager or his/her designee is responsible for ensuring that construction work is stopped or slowed promptly upon request by the Archaeologist. They are responsible for the initial halting of construction activities in the vicinity of an unanticipated discovery, until reviewed by the Archaeologist.
- **Consulting Parties:** Refers to all the groups involved with the Facility construction, permitting and oversight. These include the Applicant, the Contractor, Agencies, and the Nations.
- **Cultural Material:** Any object or area made/modified by a person, including artifacts, features, monuments, or their remains. Cultural material considered to be significant for this project must be greater than 50 years old, in accordance with the National Register of Historic Places standards.
- **The Facility:** As previously noted, the proposed Hoffman Falls Wind Project is located in the Towns of Eaton, Fenner, Nelson, and Smithfield in Madison County, New York. The Facility collectively refers to all components of the proposed project.

- **Human Remains:** Any human bones, complete or fragmentary, articulated or disarticulated. Any bone or bone fragment identified during any excavation work will be considered potential human remains until the Archaeologist can examine it.
- **Nations:** Refers to indigenous, sovereign people with a contemporary and/or ancestral connection to the Facility Site, who are included in the consultation process:
 - Oneida Indian Nation
- **National Register of Historic Places (NRHP):** The nation's official lists of significant historic, architectural, archaeological, and cultural resources worthy of preservation, established as part of the National Historic Preservation Act of 1966.
- **Project Manager:** Serves as the single point of contact for coordination with the Project. The Project Manager has the authority for, in conjunction with the Construction Site Manager, stop-work orders when necessary. The Project Manager is responsible for the protection of previously unrecorded cultural material until such time as the Archaeologist reviews them.

4.0 PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES

This section describes the procedures that will be followed in the event of the discovery of cultural resources during construction activities. If, at any point during the process, it is determined that the discovery is comprised of human remains, the procedures described in Section 5.0 will be followed.

It is important that all of the contact information provided in Attachment A be updated prior to construction, so that the appropriate individuals may be contacted during the steps outlined herein.

All correspondence for the unanticipated discovery will be provided by email. In addition, memoranda and reports will be uploaded to the NYSHPO Cultural Resources Information System (CRIS) website.

4.1 Initial Discovery and Notification

If any Construction Contractor personnel believe that potential archaeological materials/artifacts or stone features have been encountered, they will stop work in the immediate vicinity of the find and notify the Construction Site Manager.

The Construction Site Manager or Project Manager will immediately notify the Archaeological Consultant by telephone and/or email. The Project Manager or their designee will provide photographs of the discovery, and if possible, a precise GPS location of the discovery to assist the Archaeologist in the determination of significance.

The potential archaeological features and/or artifacts will be left in place and not disturbed. No materials will be collected or removed until appropriate investigation and consultation has taken place.

All ground-disturbing activities within 100 feet of the discovery will be stopped until such time as it is determined that construction in this area may continue. Construction Contractor personnel will be responsible for taking appropriate steps to protect and secure the evidence of the discovery. Construction Contractor personnel will delineate the immediate area of the discovery with flagging tape and/or construction fencing.

The area will be regarded as off-limits but will not be identified as an archaeological site or stone feature in order to protect the confidentiality of the discovery. Vehicles and equipment may be permitted to traverse the area surrounding the delineated area if necessary; however, such movement will be minimized to the extent practical, and no vehicles or equipment will be permitted within the delineated area.

4.2 Remote/Virtual Consultation by an Archaeologist

It may be possible for the Archaeologist to confirm the nature of an unanticipated discovery remotely through a review of photographs taken by on-site and phone conversations with Construction Contractor personnel.

If it can be determined that the discovery is not significant, then construction would proceed as normal. The types of cultural resources that could be encountered, and determined not significant might include clearly modern (i.e., twentieth century) artifacts, modern refuse, and/or isolated animal bones outside any other cultural context.

If it is determined in the virtual review that the discovery warrants further evaluation, the Archaeologist will schedule a site visit for further inspection. If necessary, it is anticipated that this visit will take place within two business days of the initial discovery. Construction will remain suspended in the vicinity of the find until a site visit can be conducted.

4.3 Site Visit by an Archaeologist

The Archaeologist will conduct a site visit, if necessary, within approximately two business days. The Archaeologist will examine the discovery and determine if it is a potentially significant archaeological site. All ground-disturbing activities within the vicinity of the discovery will remain suspended, until such time as it is determined that construction in this area may continue.

If the Archaeologist determines no archaeological site is present, they will immediately advise the Project Manager and Construction Site Manager that the stop work order can be removed.

If the Archaeologist determines the discovery to be a potentially significant archaeological site, they will immediately notify all Consulting Parties. As noted previously, if it is immediately determined that the discovery is comprised of human remains, the procedures in Section 5.0 will be followed.

The Archaeologist will prepare and distribute an initial site inspection memorandum to all Consulting Parties. This will be considered a confidential document. It will include photographs and details of the discovery and will be provided within approximately two business days of the determination that an archaeological site has been discovered.

4.4 Agency and Nation Consultation

If the Archaeologist determines that an archaeological site has been discovered, they will request consultation with the Agencies and Nation, following the site visit and distribution of the memorandum.

The Archaeologist will detail the findings from the site visit and provide an estimation about the potential significance with respect to the S/NRHP.

The consultation process will determine what course of action to follow to resolve the unanticipated discovery, which may be avoidance or additional archaeological investigations, as described in Section 4.5. The Archaeologist will propose a written work plan for any subsequent investigations. The Applicant will request that the Agencies provide a written response to the chosen course of action within a reasonable timeframe.

4.5 Archaeological Site Avoidance or Additional Investigations

The courses of action chosen in the presence of an archaeological or cultural resource may take the form of avoidance and site protection, or additional archaeological investigations to determine significance (Phase II) and/or for archaeological data recovery (Phase III).

4.5.1 Avoidance Measures

If the Archaeologist determines that an archaeological site may be significant with respect to inclusion in the S/NRHP, the Applicant may choose to avoid the site entirely instead of conducting further archaeological investigations. At a minimum, avoidance measures for the archaeological resource would include delineating the resource as well as an additional buffer area around it with high visibility construction fencing and signage that reads Environmentally Sensitive Area. Detailed site protection measures will be determined in consultation with the Agencies and Nations.

Construction activities will continue to avoid archaeological resources while avoidance measures are formulated. No construction may take place within the resource itself or within 50 feet of the resource, and the resource should not be labeled as an archaeological resource on construction mapping to protect its confidentiality.

Proposed avoidance measures, with supporting mapping, will be detailed by the Archaeologist in an Archaeological Avoidance Plan memorandum, which will be submitted to the Agencies and Nation in a timely manner.

If agreed upon by the consulting parties, avoidance of the archaeological resource will obviate the need for additional archaeological field investigation.

4.5.2 Additional Archaeological Investigations

If the Archaeologist determines that an archaeological resource may be significant to the S/NRHP, and avoidance is not feasible, the Agencies may request a Phase II Site Investigation or Phase III Archaeological Data Recovery. The Archaeologist will prepare and submit an Archaeology Research Design memorandum, if requested. Depending on the nature of the find, the Agencies may recommend a Phase III data recovery after the initial discovery, forgoing the Phase II investigation. If a Phase II investigation is recommended, it may subsequently be followed by Phase III data recovery.

If the proposed avoidance or additional data collection measures can reasonably be conducted concurrently with ongoing Facility construction, the submission to NYSHPO and ORES will be accompanied by a request to resume construction in the area of the discovery. The Applicant will request that the Agencies provide a response to the request within a reasonable timeframe.

Implementation of proposed Phase II or Phase III measures will not proceed until directed by the Agencies. The Archaeologist will notify the Agencies and Nations at the completion of all measures. If construction has been halted during mitigation, the Applicant will also request authorization from NYSHPO and ORES to resume construction at the conclusion of Phase II or III measures.

During Phase II or Phase III studies, Nations' representatives may observe any proposed work at the site. A reasonable and good-faith effort will be made to accommodate requests from Nations' representatives to be present while implementing Phase II or Phase III measures.

4.6 Reporting and Further Consultation

The Archaeologist will submit a summary memorandum via CRIS of the Phase II and/or Phase III results within a reasonable timeframe from the completion of mitigation fieldwork.

The Phase II and/or Phase III report will be submitted via CRIS based on a schedule to be established through consultation with the Agencies and Nations.

5.0 PROCEDURE IN THE EVENT OF UNANTICIPATED DISCOVERY OF HUMAN REMAINS

The procedures herein will apply regardless of the ethnicity or date of interment of the human remains. It is crucial that all human remains (or potential human remains) be treated with the utmost respect.

If a discovery is determined to be human remains, the procedures in Sections 4.1 to 4.4 will be followed, and the following additional procedures described in this section are required. These procedures also apply if the discovery of human remains is made during Phase II or Phase III investigations.

All construction activity within 100 feet of the discovery of human remains will be avoided throughout all investigations. The area will be regarded as off-limits but will not be identified publicly as an archaeological site or the location of skeletal remains in order to protect confidentiality.

5.1 Initial Assessment of Human Remains by an Archaeologist

The Archaeologist will conduct an initial assessment to determine if the discovery is made up of human remains, either remotely or in person. If the bone is determined to be animal—within an archaeological context or not—the Archaeologist will notify all parties in writing as soon as practicable. If the discovery is determined to be animal bone in an archaeological context, the procedures outlined in Section 4.1 to 4.4 will be followed.

If the Archaeologist is not able to definitively identify the discovery as human remains, but feels that additional, specialized analysis may be needed, they will inform all parties in writing as soon as that determination is made. At this time, the Archaeologist, or the Applicant will notify law enforcement, the county coroner, and/or a forensic specialist immediately that the skeletal remains are, or may be, human remains.

5.2 Forensic Analysis

No additional work or examination will occur at the discovery site until law enforcement, the county coroner, and/or a forensic specialist have arrived on the scene and made an official ruling on the identification (i.e., human or animal) and the nature and context of the remains.

The Agencies and Nations will be kept informed of any updates from the outside investigation of the human remains. Throughout this process, the Applicant will continue to avoid disturbance to the site and fully cooperate with the investigation.

The results of the investigation from law enforcement, the county coroner, and/or a forensic specialist, and the next steps for the disposition and/or protection of the human remains will be determined in consultation with the Agencies and the Nations. Please note: Avoidance is the preferred mitigation by the Agencies and the Nations.

A Human Remains Treatment Plan will be developed in consultation, consistent with established protocols and guidance. These will include NYSHPO's (2021) Human Remains Discovery Protocol, the Advisory Council

on Historic Preservation's (2023) Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects, and the Haudenosaunee Policy on Human Remains (Grand Council of the Haudenosaunee, 2002). Copies of all three are included in Attachment B.

6.0 REFERENCES

Advisory Council on Historic Preservation (ACHP). 2023. Policy Statement on Burial Sites, Human Remains, and Funerary Objects. ACHP, Washington, DC.

Environmental Design and Research, Landscape Architecture, Engineering, and Environmental Services, D.P.C. (EDR). 2023a. Phase IB Archaeological Survey Report, Hoffman Falls Wind Project, Towns of Eaton, Fenner, Nelson, and Smithfield, Madison County, New York. Prepared for Hoffman Falls Wind LLC, Subsidiary of Liberty Renewables, Inc., by Environmental Design & Research Landscape Architecture, Engineering & Environmental Services, D.P.C., Syracuse, NY. December 2023.

EDR. 2023b. Phase IB Archaeological Survey Addendum Memorandum, Hoffman Falls Wind Project, Towns of Eaton, Fenner, Nelson, and Smithfield, Madison County, New York. Prepared for Hoffman Falls Wind LLC, Subsidiary of Liberty Renewables, Inc., by Environmental Design & Research Landscape Architecture, Engineering & Environmental Services, D.P.C., Syracuse, NY. December 2023.

Grand Council of the Haudenosaunee. 2002. Protocol for Handling and Discovery of Human Remains.

New York Archaeological Council (NYAC). 1994. Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State. NYAC, Macedon, NY.

New York State Historic Preservation Office (NYSHPO). 2021. New York State Historic Preservation Office (NYSHPO) Human Remains Discovery Protocol. New York State Office of Parks, Recreation, and Historic Preservation, Waterford, NY.

Attachment A

Contact Personnel for Unanticipated Discoveries

Hoffman Falls Wind Project - Unanticipated Cultural Resources Discovery Protocol
Attachment A – Contact Personnel for Unanticipated Discoveries

<p>Construction Site Manager (on-site)</p> <p>TO BE DETERMINED</p>	<p>Alternate</p> <p>TO BE DETERMINED</p>
<p>Project Manager</p> <p>Scott Biggar Hoffman Falls Wind LLC A wholly owned subsidiary of Liberty Renewables, Inc. sbiggar@liberty-renewables.com</p>	<p>Alternate</p> <p>TO BE DETERMINED</p>
<p>Archaeological Consultant</p> <p>Moira Magni Project Archaeologist/ Field Staff Coordinator Environmental Design and Research 203-312-3008 mmagni@edrdpc.com</p>	<p>Alternate</p> <p>Doug Pippin, Ph.D., RPA Archaeology Services Leader Environmental Design and Research 585-752-6147 dpippin@edrdpc.com</p>
<p>New York State Historic Preservation Office (NYSHPO)</p> <p>Bradley Russell New York State Historic Preservation Office Pebbles Island State Park PO Box 189 Waterford, NY 12188-0189 Phone: 518-268-2218 Email: Bradley.Russell@parks.ny.gov</p>	<p>Alternate</p> <p>TO BE DETERMINED</p>
<p>Native American Nation Representatives</p> <p>Oneida Indian Nation Jesse Bergevin Historic Resources Specialist Oneida Indian Nation 2037 Dream Catcher Plaza Oneida, NY 13421 315-829-8463 jbergevin@oneida-nation.org</p>	<p>Alternate</p> <p>Oneida Indian Nation Raymond Halbritter Nation Representative Oneida Indian Nation 5218 Patrick Road Verona, NY 13478</p>

Hoffman Falls Wind Project - Unanticipated Cultural Resources Discovery Protocol
Attachment A – Contact Personnel for Unanticipated Discoveries

<p>Madison County Sheriff</p> <p>Sheriff Todd Hood Madison County Sheriff 138 N. Court Street-Building 7 Wampsville, New York 13163 315-366-2318 (Phone) 315-366-2286 (Fax) todd.hood@madisoncounty.ny.gov</p>	<p>Madison County Coroner</p> <p>William Gabor 138 N. Court Street Wampsville, New York 13163 315-366-2236 william.gabor@madisoncounty.ny.gov</p>
<p>Office of Renewable Energy Siting (ORES) Agency Preservation Officer (APO)</p> <p>Kristy Primeau, Ph.D. Office of Renewable Energy Siting (ORES) 1200 Washington Avenue, Building 9 Albany, NY 12226 Office: (518) 473-4543 Cell: (518) 806-1833 Kristy.Primeau@ores.ny.gov</p>	<p>Alternate</p> <p>Jennifer Betsworth Renewable Energy Siting Specialist 2 1200 Washington Avenue, Building 9 Albany, NY 12226 Jennifer.Betsworth@ores.ny.gov</p>
<p>New York State Department of Public Service (NYS DPS)</p> <p>Matt Smith Utility Supervisor (Environmental) Phone: 518-486- 7847 Email: matthew.smith@dps.ny.gov</p>	<p>Alternate</p> <p>TO BE DETERMINED</p>

Attachment B

Human Remains Protocols and Guidance

**State Historic Preservation Office/
New York State Office of Parks, Recreation and Historic Preservation
Human Remains Discovery Protocol
(January 2021)**

If human remains are encountered during construction or archaeological investigations, the New York State Historic Preservation Office (SHPO) recommends that the following protocol is implemented.

- Human remains shall be treated with dignity and respect. Should human remains or suspected human remains be encountered, work in the general area of the discovery shall stop immediately and the location shall be secured and protected from damage and disturbance.
- If skeletal remains are identified and the archaeologist is not able to conclusively determine if they are human, the remains and any associated materials shall be left in place. A qualified forensic anthropologist, bioarchaeologist or physical anthropologist shall assess the remains in situ to help determine if they are human.
- If the remains are determined to be human, law enforcement, the SHPO, the appropriate Indian Nations, and the involved state and federal agencies shall be notified immediately. If law enforcement determines that the burial site is not a criminal matter, no skeletal remains or associated materials shall be removed until appropriate consultation takes place.
- If human remains are determined to be Native American, they shall be left in place and protected from further disturbance until a plan for their avoidance or removal is developed. Please note that avoidance is the preferred option of the SHPO and the Indian Nations. The involved agency shall consult SHPO and the appropriate Indian Nations to develop a plan of action. Photographs of Native American human remains and associated materials should not be taken without consulting with the involved Indian Nations.
- If human remains are determined to be non-Native American, the remains shall be left in place and protected from further disturbance until a plan for their avoidance or removal is developed. Please note that avoidance is the preferred option of the SHPO. The involved agency shall consult SHPO and other appropriate parties to develop a plan of action.
- The SHPO recommends that burial information is not released to the public to protect burial sites from possible looting.



ADVISORY COUNCIL ON HISTORIC PRESERVATION POLICY STATEMENT ON BURIAL SITES, HUMAN REMAINS, AND FUNERARY OBJECTS

March 1, 2023

Preamble. The Advisory Council on Historic Preservation (ACHP) developed this policy statement to establish a set of principles and rules that the ACHP will encourage federal agencies to adopt as they carry out their day-to-day responsibilities under Section 106 of the National Historic Preservation Act (NHPA). This statement also establishes a set of standards and guidelines that federal and state agencies, local entities, Indian Tribes, industry applicants, and other relevant entities should, at a minimum, seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve.

This policy statement is not bound by geography, ethnicity, political or socioeconomic status, or a system of belief and recognizes that the respectful consideration for burial sites, human remains, and funerary objects is a human rights concern shared by all. However, the burial sites, human remains, and funerary objects of certain groups of people, including but not limited to Indian Tribes, Native Hawaiians, enslaved Africans and their descendants, and other Indigenous Peoples, have a higher probability of being unmarked and undocumented and thus more likely to be affected by development projects. As such, this policy statement emphasizes the need for consultation and coordination with those communities, including seeking consensus in decision making and providing deference to their practices, protocols, and preferences, where feasible.

Section 106 requires agencies to consult and seek agreement with consulting parties on measures to avoid, minimize, or mitigate adverse effects to historic properties. Accordingly, and consistent with Section 106, this policy does not recommend a specific outcome from the consultation process. Rather, it focuses on issues and perspectives that federal agencies should consider while carrying out their consultation and decision-making responsibilities. The ACHP will incorporate these principles in its work and encourages federal agencies and other entities to apply the principles in this policy any time there is potential to encounter burial sites, human remains, or funerary objects.

In many cases, burial sites, human remains, and funerary objects are subject to other applicable federal, Tribal, state, or local laws or protocols that may prescribe a specific outcome, such as the Native American Graves Protection and Repatriation Act (NAGPRA). In those scenarios, the federal agency should identify and follow all applicable laws or protocols and implement any prescribed outcomes. NHPA and NAGPRA are separate and distinct laws, with separate and distinct implementing regulations and categories of parties that must be consulted.¹ Compliance with one of these laws does not equate to or fulfill the compliance requirements of the other. Implementation of this policy and its principles does not, in any way, change, modify, or detract from NAGPRA or other applicable laws.

Authority: The authority for this policy stems from the ACHP's statutory responsibility to advise on matters relating to historic preservation (which includes the role of Indian Tribes, Tribal Historic

¹ The ACHP's publication [Consultation with Indian Tribes in the Section 106 Process: The Handbook](#) (2021) and the National Association of Tribal Historic Preservation Officers' publication [Tribal Consultation: Best Practices in Historic Preservation](#) (2005) provide additional guidance.

Preservation Officers [THPOs], and Native Hawaiian organizations [NHOs] in that process), to advise the President and Congress regarding historic preservation matters, and to recommend methods to federal agencies to improve the effectiveness, coordination, and consistency of their historic preservation policies. While the ACHP recognizes that not all burial sites, human remains, and funerary objects may constitute or be associated with historic properties eligible for or listed in the National Register of Historic Places, the consideration and treatment of such places fall within the concerns of the historic preservation community.²

This policy statement recognizes the unique legal and political relationship between the federal government and federally recognized Indian Tribes as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and acknowledges that the federal Indian trust responsibility is a legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes.³ Part of the ACHP’s trust responsibility is to ensure that the regulations implementing Section 106 incorporate the procedural requirement that federal agencies consult with Indian Tribes and NHOs that attach religious and cultural significance to historic properties that may be affected by undertakings the federal agency proposes to carry out, license, permit, or assist.⁴ In general, the trust responsibility establishes fiduciary obligations on the part of federal agencies to Tribes, including a duty to protect Tribal lands and cultural and natural resources for the benefit of Tribes and individual Tribal members.

The ACHP views its trust responsibility as encompassing all aspects of historic resources including intangible values.⁵ As part of that trust responsibility, the ACHP offers this policy statement to inform how the Section 106 consultation process should consider burial sites, human remains, and funerary objects.

Principles. The care for and consideration of burial sites, human remains, and funerary objects is of significant social and moral consequence in the United States and U.S. territories. When burial sites, human remains, or funerary objects are or have the potential to be encountered during the planning or implementation of a proposed federal undertaking, the following principles should be adhered to:

Principle 1: Burial sites, human remains, and funerary objects should be treated with dignity and respect in all circumstances regardless of National Register eligibility or the circumstances of the action. This includes, but is not limited to, all times prior to and during consultation, during field surveys, when handling must occur, in documenting and/or reporting, if treatment actions occur, and in all other forms of interaction.

Principle 2: Disturbing or disinterring burial sites, human remains, or funerary objects, when not requested by descendants, associated Indian Tribes or NHOs, or required by applicable law or regulation, should not be pursued unless there are no other alternatives available and only after consultation with descendants or associated communities and fully considered avoidance of impact and preservation in place.

Principle 3: Only through consultation, which includes the early and meaningful exchange of information and a concerted effort to reach consensus, can informed decisions be made about the identification, documentation, National Register eligibility, and treatment of burial sites, human remains, and funerary objects.

² 54 U.S.C. §§ 304102 and 304108

³ *Seminole Nation v. United States*, 316 U.S. 286 (1942)

⁴ [“The Advisory Council on Historic Preservation’s Statement on Its Trust Responsibility”](#) (Advisory Council on Historic Preservation, 2004)

⁵ [“Policy Statement Regarding the Council’s Relationship with Indian Tribes”](#) (Advisory Council on Historic Preservation, 2000)

Principle 4: To the maximum extent possible, decision making should give deference to the treatment requests of descendants or associated communities. Where known, and in accordance with applicable law, cultural practices of the descendants or associated communities should be followed if burial sites, human remains, or funerary objects may be encountered, are inadvertently identified, impacted, or must be disinterred.

Principle 5: The Indigenous Knowledge held by an Indian Tribe, NHO, or other Indigenous Peoples is a valid and self-supporting source of information. To the fullest extent possible, deference should be provided to the Indigenous Knowledge and expertise of Indian Tribes, NHOs, and Indigenous Peoples in the identification, documentation, evaluation, assessment, and treatment of their burial sites, human remains, and funerary objects.

Principle 6: Burial sites, human remains, and funerary objects are important in and of their own right. They may also constitute or be part of a sacred site and may include or incorporate several possible elements of historic significance including religious and cultural significance. The integrity of burial sites, human remains, and funerary objects is best informed by those who ascribe significance to them.

Principle 7: Burial sites, human remains, and funerary objects are frequently associated with cultural practices, sacred sites, Indigenous Knowledge, and other forms of culturally sensitive actions and/or information unique to a people. Maximum effort should be taken to limit the disclosure of confidential or sensitive information through all available mechanisms including, but not limited to, the proper handling and labeling of records, limiting documentation to necessary information, and through the application of existing law.

Principle 8: The federal Indian boarding school system directly targeted American Indian, Alaska Native, and Native Hawaiian children in the pursuit of a policy of cultural assimilation that coincided with territorial dispossession. In partnership with the historic preservation community, federal agencies should seek to implement the recommendations identified in the Department of the Interior's *Federal Indian Boarding School Investigative Report* by supporting community-driven identification, documentation, interpretation, protection, preservation, reclamation, and co-management of burial sites, human remains, and funerary objects across that system, including marked and unmarked burial areas, and supporting repatriation where appropriate.

Principle 9: The legacies of colonization, including cultural assimilation, forced relocation, and slavery, have led to an uneven awareness of where and why practitioners are likely to encounter burial sites, human remains, and funerary objects across the United States and its territories. The historic preservation community has a key role in expanding public education to support greater awareness of and consideration for the histories and lifeways of Indian Tribes, Native Hawaiians, enslaved Africans and their descendants, and Indigenous Peoples including recognizing and respecting the historical trauma that these groups and individuals may experience.

Principle 10: Access to and/or repatriation of burial sites, human remains, and funerary objects should be enabled through fair, transparent, and effective mechanisms developed in conjunction with descendant communities to the fullest extent of the law.

Principle 11: Human remains and funerary objects may be relocated or removed from a location by or at the request of descendant communities for a variety of reasons. The continued presence of human remains or funerary objects may not be essential to the ongoing significance and integrity of a site or its relevance to a broad theme in history. The historic significance and integrity of such sites are best determined in consultation with lineal descendants and/or associated communities.

Principle 12: Climate change can impact the burial sites, sacred sites, cemeteries, and associated cultural practices significant to Indian Tribes, NHOs, and other groups of people. Climate plans should be developed in consultation and should include mechanisms to support the advanced identification and protection or treatment of these locations.

Principle 13: Respectful consideration of burial sites, human remains or funerary objects may require additional assistance from consulting parties to properly identify, document, evaluate for National Register eligibility, and/or conduct treatment actions. If a federal agency requests or relies on an Indian Tribe, NHO, or other party to carry out activities that are the federal agency's responsibility under the NHPA, the Indian Tribe, NHO, or other consulting party should be reimbursed or compensated.⁶

Implementation of the Policy. Implementation of this policy statement is the responsibility of the ACHP's leadership and staff; however, the ACHP recognizes that appropriate expertise and experience to ensure effective implementation may also reside in other parties. Accordingly, the ACHP commits to advancing consideration of burial sites, human remains, and funerary objects in the Section 106 process with its preservation partners through the following:

- A. Train ACHP staff regarding the implementation of this policy statement.
- B. Development of informational resources that address the NHPA, Section 106, and the following:
 - i. The Federal Indian Boarding School Initiative
 - ii. The intersection of NAGPRA
 - iii. Acquiring and managing sensitive information
 - iv. Climate change and burial sites, human remains, and funerary objects
 - v. Best practices in the treatment of marked and unmarked burial sites, human remains, and funerary objects.
- C. ACHP staff will seek opportunities to implement the policy principles into Section 106 agreement documents and program alternatives to advance consideration of burial sites, human remains, and funerary objects.
- D. The ACHP will advise federal agencies, Indian Tribes, Tribal and State Historic Preservation Officers, and NHOs in their development of historic preservation protocols for appropriate consideration of burial sites, human remains, and funerary objects.
- E. Encourage federal agencies and other relevant parties to give full and meaningful consideration to burial sites, human remains, and funerary objects consistent with this policy statement.

Policy Review Period. The ACHP commits to reviewing this policy statement approximately every five years from the date of its adoption to ensure its continued applicability. The ACHP executive director will seek input regarding the need to update this policy statement through appropriate ACHP committees, including Federal Agency Programs and Native American Affairs. Amendments shall be pursued when the executive director or ACHP members determine that such action is required and/or would significantly improve the policy statement. This policy statement shall be in effect until rescinded by ACHP members.

Definitions. The definitions provided below are meant to inform the application of this policy statement. However, terms such as burial site, intact, disturbance, and human remains, among others, often require the input of associated parties to more fully understand how to interpret or apply each term. The

⁶ Consistent with ACHP's [Guidance on Assistance to Consulting Parties in the Section 106 Review Process](#), when the federal agency (or in some cases the applicant) seeks the views and advice of any consulting party in fulfilling its legal obligation to consult with them, the agency or applicant is not required to pay that party for providing its views.

definitions provided below are intended to be inclusive and to advance the preservation and protection of burial sites, human remains, and funerary items, as appropriate.

- **Burial Site:** Any location, whether originally below, on, or above the surface of the earth, where human remains are or have been located.
- **Confidential:** Information that is protected by law, regulation, or federal policy. Preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information
- **Consultation:** The process of seeking, discussing, and considering the views of other participants and, where feasible, seeking agreement with them. A foundational activity in the Section 106 review process.
- **Consulting parties:** Persons or groups the federal agency consults with during the Section 106 process. They may include the State Historic Preservation Officer; Tribal Historic Preservation Officer; Indian Tribes and Native Hawaiian organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; and/or any additional consulting parties.⁷ Additional consulting parties may include individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.⁸
- **Culturally sensitive:** Tangible and intangible property and knowledge which pertains to the distinct values, beliefs, and ways of living for a culture. It often includes property and knowledge that is not intended to be shared outside the community of origin or outside of specific groups within a community.⁹
- **Disturbance:** Disturbance of burial sites that are listed in or eligible for listing in the National Register of Historic Places likely would constitute an adverse effect under Section 106. An adverse effect occurs when "an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling, or association".¹⁰ Determination of what constitutes a "disturbance" should be defined in consultation with proper deference provided to the views and opinions of descendant individuals and/or communities.
- **Funerary objects:** Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to be associated with human remains.
- **Historic property:** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. It includes artifacts, records, and remains that are related to and located within such properties, and it includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register of Historic Places criteria.¹¹
- **Human remains:** The physical remains of a human body including cremains, fragmented human remains, hair, and fluid, among other components. When human remains are believed to be comingled with other material (such as soil or faunal), the entire admixture should be treated as human remains.
- **Indian Tribe:** An Indian Tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act¹², which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.¹³
- **Indigenous Knowledge (IK):** Information provided by an Indian Tribe, Tribal member, Native Hawaiian, or other Indigenous person uniquely reflective of their knowledge, experience, understanding, or observation relating to cultural resources, practices, or actions. Indigenous Knowledge often constitutes sensitive information.

⁷ Based on 36 CFR § 800.2(c)

⁸ 36 CFR § 800.2(c)(6)

⁹ "[Native American Archival Materials](#)," (First Archivist Circle, 2007)

¹⁰ 36 CFR § 800.5(a)(1)

¹¹ 36 CFR § 800.16(1)

¹² 43 U.S.C. § 1602

¹³ 36 CFR § 800.16(m)

- **Native Hawaiian:** Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the state of Hawaii.¹⁴
- **Native Hawaiian organization (NHO):** Any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.¹⁵
- **Preservation in place:** Taking active steps to avoid disturbing a burial site, human remains, or funerary objects including, to the maximum extent practical, any access, viewsheds, setting, and/or ongoing cultural activity that may be associated with the location.
- **Section 106:** That part of the NHPA which establishes a federal responsibility to take into account the effects of undertakings on historic properties and to provide the ACHP a reasonable opportunity to comment with regard to such action.
- **Sensitive:** Information that may be protected by law, regulation, or federal policy; information that may be identified as sensitive by the sponsoring entity/original source.
- **State Historic Preservation Officer (SHPO):** The official appointed to administer a state's historic preservation program.¹⁶
- **Tribal Historic Preservation Officer (THPO):** The official appointed or designated to administer the Tribe's historic preservation program.¹⁷
- **Treatment:** Measures developed and implemented to avoid, minimize, or mitigate adverse effects to historic properties.

¹⁴ 36 CFR § 800.16(s)(2)

¹⁵ 36 CFR § 800.16(s)(1)

¹⁶ 54 U.S.C. § 302301

¹⁷ 54 U.S.C. § 302702

4.7 Protocol for Handling Discovery of Human Remains

	<u>Known Burials</u>	<u>Unidentified Burials</u>
When to contact?	Intentional excavation At the earliest time in decision-making process.	Inadvertent Discovery Upon discovery.
Which Nation to contact?	<p>If find is within existing Nation boundary, contact that Nation's Cultural Resource representatives.</p> <p>If the find is within the traditional land use area (fifty mile radius from the current nation territory, contact the closest Nation's Cultural Resource Representative.</p> <p>If the find is within the aboriginal territory of each nation, as shown on the attached map, contact the Nation within that territory. For finds located within fifty miles on either side of the boundary lines shown on the map, contact the Cultural Resource Representatives of both Nations.</p>	
Who to contact?	Haudenosaunee Cultural Resource Representatives HSCBRR.	Haudenosaunee Cultural Resource Representatives HSCBRR.
How to contact?	Contact list is provided.	
Information Required	<p>Brief description of the find or potential find; site map and any information on the known cultural history of the area and summary of nearby archaeological findings.</p> <p>Nation will send a representative to review the site.</p>	
Next steps	<p><i>Non-disturbance of burials is preferred.</i></p> <p>If after proper consultation, the remains must be removed, we prefer to have them reburied close to their original location as possible, provided the future sanctity of the grave can be assured. <i>No remains should be removed without proper cultural protocols.</i></p> <p>If no safe local burial ground can be offered, the Haudenosaunee will reclaim the remains for reburial at an undisclosed location. The local government /state agency/developer must pay all of the costs for such reburial.</p> <p>All objects associated with the original burial must be reburied as well. All of the soil in the immediate area of the burial should also be placed in the new grave.</p>	
Time Frame	30 to 45 days	As soon as possible