

Southampton Town's Historic Burial Ground Committee
Minutes for April 9, 2019

In Attendance:

Sundy Schermeyer, Julie Greene, Roger Tollefsen, Tom Rogers, Chris Robinson, Marlene Haresign & Sarah Mendenhall Luhmer.

Minutes:

The February 12, 2019 Minutes were discussed. Tom Rogers moved to accept them... all were in favor. The Minutes are available on our website Stewardship->The Southampton Town Historic Burying Ground Committee; you will find them at the bottom of this page. If you want to search for something we discussed in a previous meeting (such as "Girl Scouts") from the Home Page-> Search Records->Search Site Text->"Girl Scouts" ... the search will bring up a list of documents that contain that phrase. If you click on one of the documents you will be connected to the page where this term can be found. Scroll down to see it highlighted in orange. Click on the Minutes to see all that was discussed.

Carry-over items:

CEMETERY SIGNAGE - Pleasure Woods Cemetery and Fournier Cemetery.

Julie reported that the Fournier sign has been fixed, but hasn't yet been installed. The Old Noyac Burying Ground has been installed.

COMMITTEE MEMBERSHIP GUIDELINES

It is important that members participate in meetings and help our committee become more effective. However, some members have not been able to regularly attend. Before our June Meeting, Roger will contact all committee members and create a list of active members. Every member is valued and membership can be flexible, but we will need formal resignations from those who no longer wish to or can no longer serve. This will clear the way for us to actively seek out new individuals for our committee.

BURIAL DEEDS – DIGITIZING STATUS

Chris has digitized over 2000 burial permits and is presently up to 1966. Sundy asked Chris to continue entering the data so that it is current to-date. At a later time, we will decide how to best use the data.

HUMAN REMAINS PROTOCOL – STATUS

Roger prepared another draft of the "Policies for Discovery of Burial Sites, Human Remains or Relics - A review by the Southampton Town Historic Burial Ground Committee April 5, 2019". This document includes 45 sites that are considered historically significant as burial or relic sites. It is comprised of the burial grounds that are privately owned and a parcel of land adjacent to the Old Burial Ground. The Committee voted to accept the draft. Roger will

prepare a cover letter to the Supervisor of our Town. Julie and Sundry will review the package before it is submitted.

WESTHAMPTON CEMETERY SURVEY WITH GIRL SCOUTS

We are continuing to make preparations to have the Girl Scouts survey, photograph and clean gravestones at the Westhampton Cemetery.

The plan involves the following steps:

- 1) Develop a site map – completed using an earlier map provided by Tom Rogers
- 2) Convert historical references to inscriptions into a digital format; almost completed by the Town Clerk's office from a 1902 L.D. Ackerley newspaper account. This provided the inscriptions and gravestone locations.
- 3) Load inscription and location information into computer tablets
- 4) Girl Scouts will log into a specific gravesite and, after confirming the inscription, photograph the stone and identify the image ("before shot")
- 5) Once all photos have been taken, they will clean all stones with D2
- 6) After waiting for about three weeks, Girl Scouts will re-photograph ("after shot")
- 7) Images and inscriptions will be uploaded to our website

Although this Westhampton Cemetery is privately held, we feel it is vitally important to document the stones now and assist Cemetery owners in developing a responsive restoration program. It is our hope that the procedures we develop for the Westhampton Cemetery survey will become a model for the future involvement of the other 39 private burial grounds and cemeteries in our Town.

STEWARDSHIP

Because there has been some confusion concerning the role of a Steward, Roger prepared a simple definition for our Committee to use: "A Steward is an observer who looks over a Cemetery or Burial Ground and reports items of concern to the Southampton Town Historic Burial Ground Committee. Each of the Town's ten historic burial grounds has its own Steward. If significant issues are discovered the Steward is asked to bring them to the attention of the Committee. Once per year in April, Stewards are asked to fill out an annual Cemetery Condition Form. This information will be used to help plan restorative efforts." Copies of these reports will be posted on our website.

Our Committee warmly welcomes two new Stewards:

John Griffin is the new Steward of the North Sea Burying Ground

Sarah Mendenhall Luhmer is the Steward of East Quogue Methodist Cemetery

Sally Van Allen (North End Burial Ground steward) and Tom Edmonds (Old Southampton Burying Ground steward) did an excellent job with their "Annual Cemetery Condition Report". The pictures and explanations clearly identified areas of concern – Thank you. One concern at the North End Burial Ground involved the unkempt appearance due to trash and plant debris; a

major contributor appears to be Shop & Stop. Julie will contact them to resolve this issue. There was a discussion about using volunteers for cleanup but this topic was left open. Plant debris and fence condition will be discussed with the Parks Department.

Our primary Stewardship project for this year will be at the Pleasure Woods Cemetery. The site was in disrepair but the Park's Department did a great job cleaning up the site and removed some trees. Julie and Chris found there are at least three additional stones that are buried... they love probing! Dennis Delaney has agreed to volunteer his efforts to help restore the stones at this site. Because of the concern for ticks, Julie will coordinate with Parks and Nardy Pest Control to have the areas sprayed just prior to Dennis' work. As Dennis makes progress, we will plan a workshop at Pleasure Woods Cemetery perhaps in late July. This site and the volunteer efforts of Dennis provide us a great opportunity to continue our outreach efforts.

OLD SOUTHAMPTON BURYING GROUND PRESENTATION

At 7pm on June 13th at the Lyzon Hat Shop in Hampton Bays Roger and Julie will be giving another talk of "What Happened at Southampton's Old Burial Ground". SeaTV has been scheduled to film this presentation.

NEW BUSINESS

Sarah reported that there is a large dead tree at the East Quogue Cemetery that needs to be taken down. Because of the tree's size and proximity to headstones, the Parks Department may not be able to remove it. Julie will follow up on this issue.

Our next meeting will be on June 10, 2019 @ 10:00 AM.

The meeting was adjourned.

Policies for Discovery of burial sites, human remains or relics
A review by the Southampton Town Historic Burial Ground Committee
April 5, 2019

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Executive Summary:

There have been multiple attempts in New York State to legislate the procedures that should be taken when burial sites, human remains or relics are found. The New York State Legislature addressed this issue in 2005 but the draft did not pass the Assembly or Senate. In 2008, Southampton Town Zoning Law was amended to create the Cultural Resources Subcommittee. A purpose was to identify possible historic or archaeologically sensitive lands and make recommendations regarding the need for professional archaeological services but no specific procedures or laws were developed to protect these sites. In 2018, the Southampton Town Board enacted a resolution to form a Joint Cultural Protection and Stewardship Committee. A purpose of this resolution was to prevent the desecration of nine Native American historically sensitive sites but this resolution did not address early settlers.

Specific policies are needed to protect historically significant sites that contain the burials or artifacts of both Native Americans and Southampton Town's Founders. The Historic Burial Ground Committee has identified dozens of sites on private lands within the Town of Southampton that either have known gravesites or are likely to contain historically significant artifacts. These sites are unprotected. Laws are needed to prevent the desecration of these sites and clear processes must be established that allow for the preservation and protection of them.

In 2011, several Vermont House and Senate Committees collaborated to produce a comprehensive Treatment Plan for that state's Unmarked Burial Sites. Almost all of the issues raised by the Southampton Town Historic Burial Ground Committee are addressed in this Plan.

It is our recommendation that Southampton Town use the Vermont Plan in combination with procedures set forth in the Southampton Town's Joint Cultural Protection and Stewardship Committee to serve as a guideline. Taken together, the policies needed to address the challenges relating to the protection of all burial sites, human remains or relics can be developed.

Research:

We looked for legislation concerning the procedures that might be taken if burial sites, human remains or relics were found in Southampton Town. The New York State Assembly and Senate had drafted a proposal in 2005. It was called the "Unmarked Burial Site Protection Act". This draft was similar to legislation already in place in over 38 states but New York did not approve it.

In November 2009, Southampton considered the “Native American and Colonial Burial Site Protection Law”. It would have established a three-person committee to review discoveries of burial sites, human remains and funeral artifacts. The committee was to include a representative of the Shinnecock Indian Nation, the Landmark Board Advisory Committee and a resident of Southampton Town with a background in archeology. It would have required an archeological investigation at sites believed to be likely burial grounds but slated for development. If remains were found, they might be left at the site or removed and reburied on a different property. Property owners of these sites would be required to notify the committee or face fines of up to \$5,000 and jail time. Construction would have to stop. However, this effort did not move forward.

Last year, the Town Board enacted the “Establishment of the Southampton Town and Shinnecock Indian Nation Joint Cultural Heritage Protection and Stewardship Committee”. One of the purposes of this law was to “prevent desecration of Native American burial sites (nine specific sites cited) and preserve and protect other archeological sensitive properties”. The burial sites of Early Settlers were not addressed.

Although there appears to be no laws specifically enacted for the protection of historic burial sites, remains or relics found within the Town of Southampton, the Local Law - Chapter 330 Zoning - Article XXVIII Landmarks and Historic Districts and Heritage Resource Areas best describes the Town’s current policy.

Section § 330-331A <https://ecode360.com/8704808>:

Hamlet Heritage Resource Areas.

A. Heritage resources are man-made objects at least 50 years old that are connected to human activity. These resources could be any buildings used to house human or animal activities, i.e., homes, sheds, garages, mills, barns, agricultural buildings, offices, schools, churches, commercial and public-use buildings. It could be structures such as bridges, canals, roads, docks, fences, monuments and sculptures. It could also be burying grounds, trails, and archaeological and commemorative or historic sites. These resources, when grouped together, help convey the special heritage of an area.

Section § 330-323D(2) <https://ecode360.com/8704775>:

(Concerning applications for certificate of appropriateness, the Town Landmarks and Historic Districts Board may...) Prior to new construction, where warranted, the investigation for cultural remains on site. Access to any resulting information may be limited to protect archaeological sites.

Section § 330-320H(1) <https://ecode360.com/12099342>:

The Town Landmarks and Historic Districts Board Cultural Resources Subcommittee shall be empowered to:

- (a) Research and identify possible historic or archaeologically sensitive lands in the Town of Southampton.
- (b) Recommend a structured archaeological process for the Town.

- (c) Make recommendations to the Town Board regarding professional consultants necessary to carry out archaeological services.
- (d) Review and comment on archaeological reports of sensitive lands in the Town.
- (e) Work closely with the Landmarks and Historic Districts Board, the Planning Board, and the Town Board to make recommendations regarding archaeologically sensitive lands in the Town, including but not limited to potential burial grounds, sacred sites, and places that may hold subsurface cultural resources.

The codes of the Landmarks and Historic Districts and Heritage Resources Areas provide general powers but additional legislation is needed to prevent the desecration of burial sites and to allow for their preservation.

Southampton Town is not alone in attempting to develop a protocol for burial sites. In 2011, the Vermont legislature developed a “Report on the Unmarked Burial Site Treatment Plan”. This document developed procedures for responding to reports of a discovery of an unmarked gravesite and addressed issues associated with a discovery on private property.

The act further addressed:

- (A) Methods for determining the presence of an unmarked burial site, including archeological surveys and assessments and other nonintrusive techniques.
- (B) Methods for handling development and excavation on property on which there is a known burial site or there is likely to be one.
- (C) Options for owners of property on which human remains are discovered or known to be located.
- (D) Procedures for protecting, preserving, or moving the burial site and the human remains.
- (E) Time frames for implementation of the treatment plan.
- (F) Procedures for resolving disputes among stakeholders.

RCT – 04/05/19

Sources:

Sarah Kautz, Preservation Director- Preservation Long Island

Erin M. Tobin, Vice President for Policy and Preservation – Preservation League of New York State

Allison McGovern, PhD, RPA – Senior Archaeologist VHB, Hauppauge, NY

Report on the Unmarked Burial Site Treatment Plan Committee
Pursuant to Act 151 of the 2010 Legislature Vermont
January 15, 2011

List of Historically Significant Burial or relic sites on private property in Southampton, NY

			Section/Block/Lot
Bridgehampton	BR1	Edgewood Cemetery	900-71-2-23
	BR2	Hayground Cemetery	900-84-1-3.1
	BR3	Bridgehampton Cemetery	900-86-2-27.1
	BR4	Jobs Lane Cemetery	900-134-1-54
Eastport	EA1	Tuttle Family Graveyard	900-349-2-15.2
	EA2	Eastport Cemetery	900-349-2-18
	EA3	Eastport Gospel Church Cemetery	900-349-2-17
	EA4	Hawkins Family Burial Plot	900-352-1-2
	EA5	Tuttle Gravesite	900-352-1-2_
East Quogue Flanders	EQ1	Oakwood Cemetery	900-288-1-62.1 & 288-1-155
	FL2	Flanders Cemetery	900-170-1-12
	FL4	Goodale Family Plot	
	FL5	Havens Family Plot	
	FL6	Fanning Family Plot	
Hampton Bays	HB2	Good Ground Cemetery	
	HB4	Cuffee Burial Ground	900-229-1-30.1
	HB5	Old Danes Cemetery	
North Haven	NH1	Ferry Road Cemetery	901-4-2-82
	NH2	Havens Gravesite	901-005-1-50.6
	NH3	Payne Avenue Cemetery	901-005-1-3.3
	NH4	Stock Farm Cemetery	901-002-3-1.3
	NH5	William Davall Gravesite	901-006-3-50
	NH6	Maycroft Burial Site	901-006-4-1
	NH7	Nickerson Burial Site	
	NH8	Hamilton Burial Ground	
Noyac	NO1	Rogers Burial Ground	900-14-1-66.2
	NO3	St. Andrews Cemetery	900-24-3-58.1
	NO4	Jessup Burial Ground	900-002 & 900-003-2-1
North Sea Quogue	NS2	Old Rose House Cemetery	
	QU2	Quogue Cemetery	902-8-1-20
	QU3	Davies Gravesite	900-7-1-25
Remsenburg	RS1	Historic Remsenburg Cemetery	900-380-1-95
	RS2	Remsenburg Cemetery	900-375-2-72
	RS3	Tuthill-Phillips Gravesite	900-380-2-46.1
Sag Harbor	SA1	Poxabogue/Evergreen Cemetery	900-074-1.1
	SA2	Sagg Cemetery	900-107-1-4
Southampton	SH1	Old Burying Ground	903-003-4-27
	SH2	Oakland Cemetery	903-006-2-13.1
Reservation	SK1	Shinnecock Reservation Cemetery	
Tuckahoe	TU1	Southampton Cemetery (Sebonac)	900-159-1-18
	TU2	Sacred Heart Cemetery	900-131-2-12
Westhampton	WE1	Westhampton Cemetery	900-355-2-4.1
	WE2	Jagger-Wells Cemetery	900-369-3-4
Water Mill	WM1	Water Mill Cemetery	900-114-3-2
SH Village		27-29 Post Lane	

Burial Ground Steward

A Steward is an observer who looks over a Cemetery of Burial Ground and reports items of concern to the Southampton Town Historic Burial Ground Committee. Each of the Town's ten historic burial grounds has its own Steward.

If significant issues are discovered the Steward is asked to bring them to the attention of the Committee. Once per year in April, Stewards are asked to fill out an annual "Cemetery Condition Form". This information will be used to help plan restorative efforts.

Burial Ground Stewards' Cemetery Condition Form

Every town-owned burial ground benefits by having a Steward

Cemetery _____ Steward _____ Date _____

Condition of Fence & Signage

Is Tree work required?

What is the General appearance of the Burial Ground?

Are there erosion issues?

Have Gravestones conditions deteriorated?

Using a gravestone condition baseline for comparison

U of Penna gravestone condition map or website

Stewards should note changes Are any stones missing?

What gravestones do you feel are in the most need of attention?

- 1) Stewards should become familiar with the use of the website
- 2) Visit their cemetery before an annual meeting
- 3) Provide digital images of issues they discover – identify CemPlotIdNum
- 4) Present their recommendations at that meeting
- 5) The Committee will prioritize issues and schedule actions or workshops

Present Stewards of Town-owned Cemeteries/Burial Grounds

East Quogue Methodist Cemetery – Sarah Mendenhall Luhmer

Fournier Cemetery – Hampton Bays Historical Society (Brenda St. Claire)

Hubbard Cemetery – Hampton Bays Historical Society (Brenda St. Claire)

Old Noyac Burying Ground – Julie Greene

Old Southampton Burial Ground – Southampton Historical Museum (Tom Edmonds)

North Sea Burial Ground – Southampton Historical Museum (John Griffin)

North End Burial Ground – Southampton Historical Museum (Sally Van Allen)

Paul Cuffee Gravesite – Parks Department (John Irwin)

Pleasure Woods Cemetery – Ken Alfano

Westhampton Presbyterian Cemetery – Tom Rogers

North End Burial Ground 5 April 2019

Steward: Sally Van Allen

- East fence and gate are in need of repair/replacement.
- Both the north and south boundaries are loaded with trash and leaves.
- There also seems to be a number of stashes of what I decided must be Dennis' supplies.
- The monuments look amazing. Didn't notice any damage.
- Whole grounds need a major clean up.
- Historic marker needs to be straightened.



Old Southampton Burial Ground 5 April 2019

Steward: Tom Edmonds (with assist from Sally Van Allen)

- Might be a good time to do some digging. The Little Plains cemetery corridor ground is very soft and lumpy! The voles are really working hard to keep the ground aerated.
- The new fence looks nice, even though it is plastic. :(
- The gate does not actually close. The bolt head on the gate and securing column hit each other, keeping the gate from being able to be closed.
- There is a lot of trash and leaves in the hedges giving the cemetery an overall untidy look
- Monument #752 looks a bit vulnerable, as the bottom north edge is gone.
- One monument has a colony of lichen started.
- Overall the monuments look like they survived the winter in good shape.



**Report on the Unmarked Burial Site Treatment Plan Committee
Pursuant to Act 151 of the 2010 Legislature**

Report Prepared for

**House Committee on General, Housing and Military Affairs
and
Senate Committee on Economic Development, Housing and General Affairs**

January 15, 2011

Respectfully Submitted by:

Giovanna Peebles, Chair
SHPO/State Archeologist, VT Division for Historic Preservation

John Crock
Director, UVM Consulting Archeology Program

Chris D'Elia
President, Vermont Bankers Association

Amanda Ibey
Government Affairs Director, Home Builders & Remodelers
Association of Northern Vermont

John Kessler
Agency Counsel, Agency of Commerce & Community Development

Dave Lacy
Archeologist, U.S. Forest Service, Green Mountain National Forest

Chief April St. Francis Merrill
Abenaki Band at Missisquoi

Eric Osgood
Director, Vermont League of Cities and Towns

Dave Skinas
Archeologist, USDA Natural Resource Conservation Service

Guest:
Andrew Mikell
Vermont Attorneys Title Corporation

Report on the Unmarked Burial Site Treatment Plan Committee

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Legislative framework

The Vermont legislature passed Act No. 151 (H. 281), “*An act relating to the removal of bodily remains,*” at the end of the 2010 session (<http://www.leg.state.vt.us/docs/2010/Acts/ACT151.pdf>). The act created a nine member unmarked burial site treatment plan committee “*to develop procedures for addressing issues relating to known or discovered unmarked burial sites of human remains, including developing treatment plans to be used when an unmarked burial site is discovered on private property.*” The act required that the committee be comprised of the following nine members:

“(1) The commissioner of economic, housing and community development or the commissioner’s designee.

(2) The state archeologist or designee.

(3) A representative from the Vermont League of Cities and Towns.

(4) A representative from a Native American group based in Vermont who has experience in handling unmarked burial sites, appointed by the Commissioner of Economic, Housing and Community Development.

(5) A federal archeologist from the Natural Resources Conservation Service of the U.S. Department of Agriculture.

(6) The U.S. Forest Service, Green Mountain National Forest archeologist.

(7) The director of the University of Vermont consulting archeology program.

(8) A representative from the Vermont Bankers Association Inc.

(9) A representative from the Home Builders and Remodelers Association of Vermont.”

The committee was charged with three tasks. First, “develop procedures for responding to reports of a discovery of an unmarked burial site.” Second, “develop various treatment plans for addressing issues that attend the discovery of an unmarked burial site on private property.” Third, submit a written report on or before January 15, 2011, outlining the procedures and treatment plans to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs. The act defines a treatment plan as “an outline of the process for providing appropriate and respectful treatment of the burial site while considering the rights of the landowner.”

The act further requires that each treatment plan include the following, as appropriate:

(A) Methods for determining the presence of an unmarked burial site, including archeological surveys and assessments and other nonintrusive techniques.

(B) Methods for handling development and excavation on property on which there is a known burial site or there is likely to be one.

(C) Options for owners of property on which human remains are discovered or known to be located.

(D) Procedures for protecting, preserving, or moving the burial site and the human remains.

(E) Time frames for implementation of the treatment plan.

(F) Procedures for resolving disputes among stakeholders.

Background

Unmarked burials are discovered across Vermont from time to time in a variety of contexts. In some areas, such as Monument Road in the Towns of Swanton and Highgate, Burlington’s North End, and elsewhere as stated in this report, discovery of unmarked burials is fairly predictable. In other cases, unmarked burials are encountered at random with no previous expectation that such a burial exists in that location. In all cases, unmarked burials are an unwelcome surprise. In cases of unmarked Native American burials, Abenaki and other Native communities are enormously pained and physically sickened by such discoveries and resultant impacts to their ancestral remains.

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Thus, unmarked burials:

- a) require protection at the onset of discovery;
- b) pose a series of complex questions to and decisions by a variety of stakeholders;
- c) may result in potential financial burdens to property owners and/or others;
- d) need permanent recognition; and
- e) require procedures upon discovery and a plan to ensure appropriate and respectful treatment of the remains and a satisfactory outcome for stakeholders.

At various other times in the last three decades ad hoc groups of various stakeholders have come together to gather ideas and recommendations to protect and treat unmarked burials. Since 2007, intensive discussion by stakeholders coalesced into draft legislation intended to strengthen protections of unmarked burials and lay out procedures to be applied upon discovery and for performing subsequent treatment. Discussions during the 2009-2010 sessions in the House Committee on General, Housing and Military Affairs and Senate Committee on Economic Development, Housing and General Affairs resulted in legislative recognition that protection and treatment of unmarked burials are significant public issues that merit further discussion, analysis and legislation.

The result of these legislative discussions was the formation of the Unmarked Burial Site Treatment Plan Committee which met four times in the fall and early winter of 2010; a sub-committee met a fifth time. Detailed meeting notes were taken by the Chair and are on file at the VT Division for Historic Preservation.

Key Points of Discussion and Committee Consensus:

1) Our collective experience with unmarked burials indicates that:

- Unmarked burials need to be found ahead of time whenever and wherever possible.
- Landowners and communities are key stakeholders that need to be immediately involved.
- There is currently no legal process or procedure to protect or treat unmarked burials.
- Responses to unmarked burials are ad hoc and voluntary. Legislation and clear guidance is necessary.
- There is anecdotal evidence that unmarked burials are discovered from time to time and never reported due to fear of stopping a project.
- Pervasive lack of knowledge, misperception, and fear around the potential for unmarked burials make education a key component in the effort to provide greater protections to unmarked burials.
- The unmarked burial fund established in 18 V.S.A. § 5212b is vital to the protection and treatment of unmarked burials. See Attachment 1.

2) The following stakeholders are core to respectful and appropriate treatment of unmarked burials, upon discovery and after treatment:

- Property owners
- Town governing boards including Select Board, Town Clerk, Planning and Zoning departments, and cemetery commissions and associations
- Law enforcement
- Medical examiners
- Native American communities
- Archeologists
- Excavators
- Realtors

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- Title Insurance companies
- State Archeologist and VT Division for Historic Preservation
- Commissioner of Economic Development, Housing and Community Development
- VT Department of Health

3) Costs for treating unmarked burials:

- Costs are generally modest and predictable.
- Approximate costs for treating 1 or 2 burials consist of assessment (~ \$ 2,000), treatment plan implementation (~ \$ 6,000), and deed registering (~ \$ 1,000).
- The Unmarked Burial Fund is key to helping landowners.
- Once marked but now unmarked cemeteries (see below) present their own special issues and the Committee seeks legislative guidance on whether the Unmarked Burial Fund should pay for assessments and treatment plans in those contexts.
- The fund should not pay for treatment plans in these contexts: elective reburial of known remains; federal lands; undertakings that are subject to Section 106 review as a result of having federal dollars, licenses, or permits; and perhaps others upon further discussion with legislature.
- Need flexibility and a shared process through consultation.

4) Registering Unmarked Burials:

- A properly indexed Notice of an unmarked burial, map, and copy of the treatment plan (which includes the final disposition of the remains) must be filed in the land records.
- A property owner may choose to grant development rights to preserve an area, thereby creating a notification in the deed.
- A property owner may choose to work with the State Archeologist and designate a State Archeological Landmark under 22 VSA 14 Section 763. This would also be registered in the land records.
- The Committee seeks legislative guidance whether statutes relating to land records need to be revised to accommodate recording unmarked burials.

5) Impacts to private property owners:

- Most property owners do not purchase title insurance, thus, they cannot take advantage of that avenue if a complex instance of unmarked burials is found.
- Property owners with title insurance can contact their title insurance company in a case where an unmarked burial site appears to contain multiple burials and avoidance in place is chosen as the preferred treatment.
- The Committee seeks legislative guidance on whether current laws allow municipalities to consider reducing a tax bill if all or part of a property is encumbered with an unmarked burial site.

6) Many “Unmarked Burial Sites” were once “marked:

- Various instances of “unmarked” burials - - for example, the War of 1812 cemetery in the Burlington North End and Johnson cemetery - - were once marked.
- Fences and markers have been removed or are obliterated and are no longer visible.
- These special areas demand tailored treatment.
- We can predict that burials will be found somewhere in these areas.

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- Towns with these types of cemeteries should consider special zoning for these special areas identifying how these areas should be treated. Zoning requirements for disclosure in a deed are important. The zoning ordinance becomes the treatment plan.
- The Committee seeks legislative guidance on who should pay for treatment plan implementation in these special cases. Should the municipality - - or the property owner - - and the State (through the Unmarked Burial Fund) share the cost? Should the state pick up the whole cost to incentivize reporting and minimize the financial burden for a municipality? Or, none of the cost? However, if the state does not pick up some or all of the cost, there's no incentive to report the burial(s)

7) Procedures for resolving disputes among stakeholders:

- The Unmarked Burial Site Treatment Plan Committee will resolve disputes among stakeholders.
- The Committee may choose to retain a mediator if appropriate. The cost for a mediator will be borne by the state. (The Vermont Civil Rights Commission offers a Mediation Program at no cost if the issue falls within an area of interest to them.)

8) Education is key:

- Anecdotal information indicates that fear of delays and unpredictable/undue costs results in under-reporting and destruction of unmarked burials.
- People do not know how to deal with discoveries.
- People do not know who to contact about unmarked burials.
- People are afraid of unknown costs relating to unmarked burials.
- There need to be incentives to encourage reporting. For example, relieve excavators of the costs associated with treatment plans and make sure time frames are set and honored.
- Although Vermont state laws exist on marked cemeteries and unmarked burial sites, people remain unfamiliar with them. "Who's responsible?" and "Who pays?" are the basic questions. The updated "*Digging Deep. Unearthing the Mysteries of Burial and Cemetery Law*" publication by the Secretary of State's Office (2010) is an important source of information and is now available on the Internet.
- Much more education is necessary.
- Mapping on the Internet recorded cemeteries and, where appropriate, unmarked cemeteries is key. Native American communities shall decide whether or not a Native unmarked burial is publicly mapped.

Treatment Plans

The attached *Unmarked Burial Discovery General Treatment Plan* (Attachment 2) resulted from a consensus among the treatment plan subcommittee members that a single simplified treatment plan outlining the steps, timeline, and potential cost range is most useful to stakeholders involved in unmarked burial discoveries. Previous draft treatment plans in flow chart format attempted to show process differences between Native American and Euro-American/African-American burial discovery. However, the flow charts were too complicated for easy interpretation given the large number of stakeholder contact and evaluation steps necessary to show the full range of possible outcomes. In addition, upon review, the subcommittee identified few process differences based on ethnicity. They further noted that the age and affiliation of the human remains may not be known until archeological evaluation is initiated; in some cases, those determinations may not be possible.

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Two critical factors must be established in determining the extent of work and cost necessary to mitigate impact to unmarked burials:

- 1) Is more than one burial present?
- 2) Is avoidance in-place possible or not?

Given the above factors, the sub-committee adopted a generalized treatment plan as the best approach to outline unmarked burial procedures. The following provides a step-by-step narrative to more fully describe the potential range of actions indicated in the plan in Attachment 2.

Step 1: Potential Human Remains Encountered

This is the critical first step after human remains are identified. The site is secured so no further disturbance occurs. The Medical Examiner or law enforcement is notified.

Step 2: Medical Examiner/Law Enforcement Determination

The Medical Examiner or law enforcement determines if the human remains are contemporary or historic. If the remains are historic, the Medical Examiner or law enforcement notifies the State Archeologist. When indeterminate bone fragments are found, the State Archeologist may be contacted sooner to assist in identification.

Step 3: State Archeologist or Designee's Site Visit

Once the remains are determined to be historic, the State Archeologist, or his or her designee, conducts a site visit. At this stage, it is crucial to notify stakeholders and conduct any additional stabilization of the site. Landowner, any contractor/developer, and excavator should be contacted if not already informed of the remains. If Native American remains are confirmed or suspected, it is important to notify the Missisquoi Abenaki, other nearby Abenaki communities, and any appropriate federally recognized Native American Tribe. If possible, this notification should occur before sunset on the day of discovery. Other potential stakeholders include town officials (Select Board, Town Clerk, Planning and Zoning departments), local historic societies, and relevant cemetery commissions and associations. If the remains are exposed or could be affected by weather or construction activity, site stabilization should include covering with waterproof tarp and protective fencing put in place.

Step 4: State Archeologist or Designee's Assessment

In most cases, additional site assessment beyond the initial site visit will be required to resolve the issue. The primary goals of the assessment are to:

- 1) Determine whether or not the remains can be avoided in place or if they will need to be removed.
- 2) Develop a written treatment plan to address the specific situation.

The landowner decides whether to avoid the human remains or remove them. Avoidance of the remains is generally encouraged to limit the cost of the treatment plan and to maintain the original integrity of the burial location to the extent possible. Both removal and avoidance of the human remains may require baseline documentation including, but not limited to:

- background research
- monitoring of additional construction activity
- archeological investigations to establish site limits and content

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Some or all of these activities may take place during the site assessment to inform the development of the written treatment plan, or, may be components of the specific treatment plan. If the unmarked burial(s) can be avoided and no additional ground disturbing activity that has the potential to impact any additional remains is proposed, a written treatment plan may not be necessary beyond a stipulation defining an appropriate buffer zone around the burial. This information will be attached to the property deed and filed with the land records. In other cases, the written treatment plan will contain a scope-of-work which at a minimum identifies:

- methods for documenting the burial
- any removal procedures
- reburial location
- relevant time frame
- reporting requirements
- cost
- physically and permanently marking the location of the burial site, if appropriate
- registering the burial site in the land records
- procedures for resolving disputes among stakeholders.

Step 5: Stakeholder Agreement

All stakeholders must agree with the treatment plan prior to plan implementation. Any proposed Unmarked Burial Fund expenditures must be first approved by the Commissioner of Economic, Housing, and Community Development. If agreement on a specific treatment plan is not reached, the dispute must be brought to the Unmarked Burial Site Treatment Plan Committee for resolution. If no resolution is forthcoming, professional mediation or other appropriate dispute services will be undertaken with the Commissioner's approval. It should be noted that implementation of the treatment plan may result in new discoveries requiring the modification or addition of components to the original plan. In such an event, a re-evaluation of the plan, including a new agreement, would be necessary to complete the implementation.

Step 6: Deed Registry

If an unmarked burial(s) is avoided in place, a properly indexed Notice of the unmarked burial, a map, and a copy of the treatment plan (which includes the final disposition of the remains) will be filed in the land records. A property owner may choose to grant development rights to preserve an area, thereby creating a notification in the deed. A property owner may choose to work with the State Archeologist and designate a State Archeological Landmark under 22 VSA 14 Section 763. This would also be registered in the land records.

Next Steps

The Unmarked Burial Site Treatment Plan Committee looks forward to discussing this report with the House Committee on General, Housing and Military Affairs and Senate Committee on Economic Development, Housing and General Affairs. No legislation is being proposed at this time until after discussion with the committees.

Definitions set forth in Act 151

Treatment plan means "an outline of the process for providing appropriate and respectful treatment of the burial site while considering the rights of the landowner."

Unmarked burial site means "the location of any interment of human remains, evidence of human remains, including the presence of red ochre, associated funerary objects, or a documented concentration of burial sites, but does not include a cemetery, mausoleum, or columbarium or any other site that is clearly marked as a site containing human remains."

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Additional references

Best Practices Standards For Indexing Land Record Instruments. A Joint Publication of the Office of the Secretary of State and the Vermont Municipal Clerks and Treasurer's Association. May 2002.

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Digging Deep. Unearthing the Mysteries of Burial and Cemetery Law. VT Secretary of State's Office. 2010.

http://www.sec.state.vt.us/municipal/Digging_Deep.pdf

(NOTE: This publication updates the 2008 booklet and is current through January 2011).

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ATTACHMENT 1

18 VSA § 5212b. UNMARKED BURIAL SITES SPECIAL FUND

(a) The unmarked burial sites special fund is established in the state treasury for the purpose of protecting, preserving, moving or reintering human remains discovered in unmarked burial sites.

(b) The fund shall be comprised of any monies appropriated to the fund by the general assembly or received from any other source, private or public. Interest earned on the fund, and any balance remaining in the fund at the end of a fiscal year, shall be retained in the fund. This fund shall be maintained by the state treasurer, and shall be managed in accordance with subchapter 5 of chapter 7 of Title 32.

(c) The commissioner of economic, housing and community development may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites in accordance with a process approved by the commissioner. The commissioner may approve any process developed through consensus or agreement of the interested parties, including the municipality, a Native American group historically based in Vermont with a connection to the remains, owners of private property on which there are known or likely to be unmarked burial sites, and any other appropriate interested parties, provided the commissioner determines that the process is likely to be effective, and includes all the following:

(1) Methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques.

(2) Methods for handling development and excavation on property on which it is known that there is or is likely to be one or more unmarked burial sites.

(3) Options for owners of property on which human remains in unmarked burial sites are discovered or determined to be located.

(4) Procedures for protecting, preserving or moving unmarked burial sites and human remains, subject, where applicable, to the permit requirement and penalties of this chapter.

(5) Procedures for resolving disputes.

(d) If unmarked burial sites and human remains are removed, consistent with the process set forth in this section and any permit required by this chapter, there shall be no criminal liability under 13 V.S.A. § 3761.

(e) The funds shall be used for the following purposes relating to unmarked burial sites:

(1) To monitor excavations.

(2) To protect, preserve, move, or reinter unmarked burial sites and human remains.

(3) To perform archaeological assessments and archaeological site or field investigations, including radar scanning and any other nonintrusive technology or technique designed to determine the presence of human remains.

(4) To provide mediation and other appropriate dispute resolution services.

(5) To acquire property or development rights, provided the commissioner of economic, housing and community development determines that disbursements for this purpose will not unduly burden the fund, and further provided the commissioner shall expend funds for this purpose only with the concurrence of the secretary of commerce and community development and after consultation with the legislative bodies of any affected municipality or municipalities.

(6) Any other appropriate purpose determined by the commissioner to be consistent with the purposes of this fund.

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(f) When an unmarked burial site is first discovered, the discovery shall be reported immediately to a law enforcement agency. If, after completion of an investigation pursuant to section 5205 of this title, a law enforcement agency determines that the burial site does not constitute evidence of a crime, the law enforcement agency shall immediately notify the state archeologist who may authorize appropriate action regarding the unmarked burial site.

Unmarked Burials Discovery General Treatment Plan

ATTACHMENT 2

Process	Timeline	Cost
Step 1		
Human Remains or Potential Human Remains Encountered Secure site and notify Medical Examiner/Law Enforcement	Immediate	None
Step 2		
Medical Examiner/Law Enforcement 1. Determine if remains are contemporary or historic 2. If historic, notify State Archeologist	Immediate – 48 hours	None
Step 3		
State Archeologist or Designee 1. Conduct Site Visit 2. Notify Stakeholders	Immediate - 48 hours	None
Step 4		
State Archeologist or Designee/Stakeholders 1. Conduct Site Assessment 2. Determine Appropriate Treatment: Avoidance or Removal. 3. Develop Written Treatment Plan (as necessary)	1-14 days	0-\$2000
Step 5		
All Stakeholders 1. Stakeholder Agreement 2. Treatment Plan Implementation	1-30 days	0-\$6000 for avoidance/removal of 1-2 individuals. Costs for more than 2 burials determined on a case by case basis
Step 6		
Deed Registry (if applicable)	45-60 days	\$1000