



Mashpee Wampanoag Tribe

TRIBAL ORDINANCE

2016-ORD-006

ACCIDENTAL DISCOVERY OF ANCESTRAL BURIALS AND ACCESS TO SACRED AND TRADITIONAL SITES

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The Mashpee Wampanoag Tribal Council does ordain as follows:

Section 1. FINDINGS

(a) The Mashpee Wampanoag Tribe (the "Tribe") is a federally-recognized Indian Tribe with a duly-enacted Constitution and the governing body of the Tribe is the Mashpee Wampanoag Tribal Council (the "Tribal Council") pursuant thereto.

(b) Article VI, § 2.A of the Constitution provides that the Tribal Council is empowered to promote and protect the health, peace, morals, education, political integrity, economic security and general welfare of the Tribe and its members.



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(c) Article VI, § 2.L. of the Constitution provides that the Tribal Council is empowered to establish and enforce all ordinances governing Tribal members.

(d) The Tribal Council finds that this Accidental Discovery of Ancestral Burials Ordinance is enacted in response to the responsibility and obligation to protect and preserve that which was left to us by our ancestors. This includes protection of past burial sites, present day burial sites, and unknown burial sites. In regards to the accidental discovery of burials, the Tribe acts consistently with Federal law both on and off-reservation and State law where applicable on off-reservation lands due to the past unearthing of Wampanoag graves throughout the centuries since European arrival and the continued accidental discovery of ancestral burial sites within our territory.

(e) The Tribal Council is aware that the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001-3013, was passed into federal law on November 16, 1990. NAGPRA requires all museums that have received federal funds and federal agencies to conduct inventories of Native American collections and generate summaries of specific categories of material while in consultation with Federally-recognized tribes. The NAGPRA categories, all of which are subject to return to Indian tribes for repatriation, are the following: (1) Native American human remains and associated funerary objects; (2) unassociated funerary objects; (3) sacred objects; and (4) objects of cultural patrimony.

(f) The Tribal Council recognizes that the Wampanoag Nation historically has never had a tradition of unearthing ancestral human remains for any purpose and due to the social, legal, and political chronicles surrounding the passage of NAGPRA; the Tribe is compelled to develop fundamental Tribal laws to guide the Tribal Council and Tribal departments in the decision-making process involving NAGPRA and all Tribal repatriation activities.

Section 2. AUTHORITY AND PURPOSE

(a) **Authority.** The authority for this Ordinance is found in Article VI, §§ 2.A and 2.L of the Constitution.

(b) **Purpose.** The purpose of this Ordinance is to set forth Tribal law that will apply to the Tribal Council and Tribal departments, instrumentalities, agencies and offices in regards to the following:

- (1) Accidental discoveries of potential and actual ancestral remains and repatriation activities; and
- (2) Access to sacred and traditional sites.



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Section 3. DEFINITIONS

(a) “Adverse effect” means a reasonable likelihood of more than moderate adverse consequences for cultural resources in any given site or areas, the determination of which is based on (i) the context of a proposed action or development; (ii) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence; (iii) the relationship between a proposed action and other similar actions which are individually insignificant but which may have a cumulatively significant impacts; and (iv) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.

(b) “Ancestral burial site” or “Burial Site” means any natural or prepared location, whether originally below, on, or above the surface of the earth, into which there was intentionally deposited, as part of the death rites or ceremonies of a culture, the remains of a deceased individual or individuals. All ancestral burial sites shall also be considered sacred sites and be defined as a “Protected site.”

(c) “Ancestral Human remains” or “Human Remains” means the physical remains, articulated or unarticulated bones and bone fragments, artifacts, and the surrounding soil matrix where decomposition has occurred of any deceased human individual of historic or prehistoric origin that is known, or has been identified, through available evidence, as Native American.

(d) “Consultation” unless otherwise used in the document, means the formal direct face-to-face contact with the Tribe by any governmental agency or private entity. Such contact of “consultation” is for the specific purpose of seeking Tribal participation as required by Federal law and State law where applicable on off-reservation lands.

(e) “Cumulative Effects” means the combined effects of two or more activities. The effects may be related to the number of individual activities, or the number of repeated activities on the same piece of ground. Cumulative effects can be result from individually minor but collectively significant actions taking place over a period of time.

(f) “Funerary objects” means any artifact or material: (i) which was intentionally placed with a deceased individual, either at the time of burial or at some subsequent time thereafter, as part of the death rite or ceremonies of a culture, and (ii) which has been identified, through available evidence, as having been removed from a burial site.

(g) “Ground Disturbing Activity” means any activity that disturbs the surface of the ground, such as construction, digging, logging, farm practices on uncultivated soil, dredging, drilling, filling and mining.



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- (h) "Human remains" means the physical remains of any deceased human individual.
- (i) "Indian" means, unless otherwise specified, a member of the Tribe, or any other person of Indian blood who is a member of a federally recognized tribe or any other person on the reservation who is recognized by the community as an Indian, including a Canadian First Nations' person, an Alaskan Native, Native Hawaiian, i.e. indigenous to North or South America.
- (j) "In-situ" means any undisturbed intact human remains or portions thereof, including burials sites, in their original depositional setting at the time of burial. In situ shall also mean the undisturbed intact artifacts which form part of an archaeological site.
- (k) "Mitigation" means the use of any or all of the following actions: (i) Avoiding the impact altogether; (ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementations; (iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected cultural resources and or environment; or (iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (l) "Museum collections" means any private, local, state, or federal agency, including institutions of higher education which have control or possession of Tribal cultural resources.
- (m) "Objects of Cultural Patrimony" means an object having ongoing historical, traditional importance central to the Tribal people who currently comprise the Mashpee Wampanoag culture, rather than property owned by an individual Tribal member, and which therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Tribe or any other tribe.
- (n) "Post-depositional disturbance" means any disturbance by natural or man-made process that alters or degrades the integrity of a known or potential site.
- (o) "Reburial" means the physical replacement of disinterred human remains and or funerary objects into the ground at its original location, or at another specified location deemed appropriate by the Mashpee Wampanoag Tribal Historic Preservation Officer.
- (p) "Re-interment" means the ritual aspect of reburial that is conducted under strict cultural rules of practice by a traditional spiritual leader.
- (q) "Repatriation" means the physical return of any cultural item or artifact, including human remains, to its place of origin.



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- (r) "Reservation" means all lands taken into trust by the Federal government for the benefit of the Tribe.
- (s) "Sacred Objects" means specific ceremonial objects which are needed by Tribal members for the practice of traditional Indian religions by present day adherents.
- (t) "Tribal Council" shall mean the Mashpee Wampanoag Tribal Council.
- (u) "Tribe" shall mean the Mashpee Wampanoag Tribe.
- (v) "Undertaking" means any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resource(s) is located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements (See 36 CFR 800.2(o)).

Section 4. PROCEDURES REGARDING THE DISCOVERY OF HUMAN REMAINS

- (a) All suspected in-situ human remains and or burials that have been exposed as a result of adverse impact or disturbance, must be reported immediately to the Tribal Historic Preservation Department/THPO, Tribal Council, SHPO where applicable¹, and appropriate Medical Examiner's office.
- (b) In the event that suspected remains are endangered due to adverse impacts, environmental conditions, or other occurrences, then interim protective measures must be developed and implemented.
- (c) The Tribal Council must be notified by the Tribal Historic Preservation Officer regarding opportunities to inspect any burial site and ancestral human remains.
- (d) Coordinated efforts to inspect burial sites and or ancestral human remains, should include members of Tribal Council, members of the Tribal Natural Resources Department, appropriate law enforcement personnel, land managers, archeologists, anthropologists, and Tribal cultural resource staff. The THPO must ensure that all law enforcement agencies with jurisdiction and the appropriate Medical Examiner are informed of any planned inspection of a burial site.

¹ If State law is applicable, the SHPO will initial the Massachusetts Unmarked Burial Law and contact the Massachusetts Commission on Indian Affairs and County Coroner.



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- (e) Burial inspections must determine if the skeletal remains are human, if the remains are modern, historic, or ancient. Burial inspection procedures must be limited to non-destructive observational analysis by a qualified physical anthropologist or trained Tribal member. The inspection procedure will terminate if the remains are determined to be of modern origin, and possibly under the jurisdiction of a law enforcement agency. The inspection team must also determine evidence of desecration or violations of applicable statutes such as NAGPRA, or the Archeological Resources Protection Act (ARPA), 6 U.S.C. §§ 470aa-mm. If there is evidence of NAGPRA or ARPA violations, the team must thoroughly document the violation using the best available investigative techniques.
- (f) If the discovery is determined not to be within the jurisdiction of law enforcement, then the inspection team shall determine, using the best available evidence, if the human remains are Native American or non-Native American in origin. The inspection procedure will terminate if the inspection team determines that the remains are non-Native American. If the inspection team determines that the remains are of Native American origin, the inspection team shall initiate interim measures to secure the site until a formal plan is developed by the Tribal Historic Preservation Officer.
- (g) No parts of human remains, including associated (or unassociated) funerary objects or artifacts, shall be handled, removed, collected or photographed without direct supervision and approval of the Tribal Historic Preservation Officer or as authorized in writing by the THPO.
- (h) If human remains and or burials are discovered in-situ during the course of any ground disturbing activity, the activity is to be immediately halted until an on-site inspection is completed.
- (i) If planned construction and or ground disturbing activities are such that destruction of the exposed remains are imminent, emergency removal and exhumation procedures must immediately be developed and implemented.
- (j) If ancestral human remains and or burials are discovered in-situ during the course of an archaeological survey/excavation, excavation activities must immediately cease and the THPO shall be notified. Once the inspection team has concluded its inspection, and if conditions favor preservation in-situ, the Tribal Historic Preservation Department must develop a plan for re-interment. If conditions do not favor preservation in-situ, then the remains may be exhumed pursuant to a plan developed by the Tribal Historic Department.



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Section 5. PRIOR ORDINANCES AND RESOLUTIONS.

(a) January 11, 1996, The Mashpee Wampanoag Indian Tribal Council Inc. passed a resolution to join the Wampanoag Confederacy (aka Wampanoag Repatriation Confederacy, Wampanoag Confederation). (See Appendix I). The Wampanoag Confederation member tribes also include the Wampanoag Tribe of Gay Head (Aquinnah) and the Assonet Band of Wampanoag. The Tribe has received museum NAGPRA inventories of Wampanoag material through its membership in the Wampanoag Repatriation Confederation. The Wampanoag Confederation was later incorporated as a non-profit organization on November 30, 1998, with the same member tribes to provide a legal entity to hold preservation restrictions on interment sites located on private property within the Commonwealth of Massachusetts. This Ordinance does not incorporate the 1996 Resolution Mashpee Wampanoag Indian Tribal Council Inc. by reference. It is only mentioned herein and attached as Appendix 1 to provide a history of the Tribe's repatriation efforts.

(b) On March 23, 2009, the Mashpee Wampanoag Tribal Council (MWTC) passed 2009-ORD-002, Natural Resources Department, as may be amended from time-to-time, which established the Tribal Natural Resources Department and included some repatriation provisions in Chapter 2 Section 2.6.

(c) On September 29, 2010, the MWTC passed Resolution 2010-RES-056 as may be amended from time-to-time regarding the Appointment of a Tribal Repatriation Officer. The Tribal Repatriation Officer is the Tribe's official signatory on documents pertaining to the repatriation of all NAGPRA items that are culturally affiliated to the Tribe as well as to the Wampanoag Repatriation Confederation. The Tribe also created through this resolution, the NAGPRA Department to coordinate repatriation claims.

Section 6. TRIBAL PROTECTION OF INDIAN GRAVES GENERALLY

(a) The Tribe will act consistently with Federal law where it provides means toward protecting Native American burial sites, provides access to sacred sites, and creates protectable re-interment sites.

(b) The Tribe will act consistently with Massachusetts law where applicable on off-reservation lands where it provides means toward protecting Native American burial sites, provides access to sacred sites, and creates protectable re-interment sites.

(c) The Massachusetts Unmarked Burial Law was passed in 1989 with amendments to existing laws governing cemeteries in the Massachusetts General Laws, to protect the unmarked graves of



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Native Americans and others. The passage of the Unmarked Burial Law has resulted in a successful, cooperative program among state officials and law enforcement agencies to care for and protect skeletal remains of Native Americans and others which are found on public or private property in Massachusetts. The Massachusetts Commission on Indian affairs provides a first responder at the site of an accidental discovery. The Commission on Indian Affairs has regional representatives from tribal entities in the State of Massachusetts who assist in the proper re-interment and protection of Native American human remains.

(d) The Tribe shall support enforcement of the Massachusetts Unmarked Burial law, M.G.L. chap. 7, § 38A, where applicable on off-reservation lands only.

Section 7. TRIBAL PROTECTION OF INDIAN GRAVES ON PRIVATE LANDS. In the case of accidental discovery of a Wampanoag gravesite or burial grounds for those lands off the Mashpee Wampanoag Tribal Reservation and within and under the jurisdiction of the State of Massachusetts, the Tribe will dispatch a representative² when notified by the Massachusetts Commissioner on Indian Affairs Office or Massachusetts Archaeologist Office that a gravesite has been disturbed or threatened within our homelands and will proceed to act consistently with the following:

(a) **MASSACHUSETTS GENERAL LAWS, AMENDED SECTIONS 1990,**

(1) **CHAPTER 9, Section 27C: Reports to State Archaeologist (Cessation of Activities at Unmarked Burial Grounds).**

Any person, corporation, agency or authority of the commonwealth or any of its political subdivisions who shall discover unmarked human burial or skeletal remains suspected of being one hundred years or more pursuant to section six C of chapter thirty-eight, shall immediately cease any activity, including but not limited to, construction and agricultural activity, which would deface, alter, destroy or otherwise impair the integrity of the site until such time as the state archaeologist has completed a site evaluation pursuant to paragraph six of section twenty-six A of chapter nine of the General Laws and until disposition of the remains has been agreed upon pursuant to either section thirty-eight A of chapter seven or pursuant to paragraph seven of section twenty-six A, of chapter nine.

(2) **CHAPTER 38, Section 6B: Discovery of Unmarked Human Skeletal Remains.**

(a) It shall be the duty of a person who discovers unmarked human remains, or who knowingly causes human remains to be disturbed through construction or agricultural activity, to immediately notify the office of the chief medical examiner.

² This representative may be a Tribal Cultural Resource Manager (CRM) assigned to the site by the Tribal Historic Preservation Officer (THPO).



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(b) The medical examiner shall make reasonable attempts to promptly identify unmarked human remains including, but not limited to, obtaining: (i) photographs of the human remains prior to an autopsy; (ii) dental or skeletal X-rays; (iii) photographs of items found with the human remains; (iv) fingerprints from the remains, if possible; and (v) a sample of bone, hair or tissue for DNA testing.

(c) The office shall conduct an inquiry to determine whether the remains are suspected of being 100 years old or more and, if so determined, shall immediately notify the state archaeologist. The state archaeologist shall determine if the skeletal remains are Native American. If the remains are deemed likely to be Native American, the state archaeologist shall immediately notify the commission on Indian affairs which shall cause a site evaluation to be made to determine if the place where the remains were found is a Native American burial site.

(3) **CHAPTER 114, Section 17: Preservation of Ancient Burial Places.**

A town shall not alienate or appropriate to any other use than that of a burial ground, any tract of land which has been for more than one hundred years used as a burial place; and no portion of such burial ground shall be taken for public use without special authority from the general court. "Burial place", as referred to in this section, shall include unmarked burial grounds known or suspected to contain the remains of one or more American Indian.

(4) **CHAPTER 114, Section 18: Care of Neglected Burial Places.**

Any town having within its limits an abandoned or neglected burying ground may take charge of the same and keep it in good order, and may appropriate money therefor, but no property rights shall be violated and no body shall be disinterred. No fence, tomb, monument or other structure shall be removed or destroyed, but the same may be repaired or restored.

(5) **CHAPTER 272, Section 71: Violation of Sepulcher.**

Whoever, not being lawfully authorized by the proper authorities, willfully digs up, disinters, removes or conveys away a human body, or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years or by a fine of not more than two thousand dollars.

(6) **CHAPTER 272, Section 73: Injuring or Removing Tombs, Graves, Memorials, etc..**

Whoever willfully destroys, mutilates, defaces, injures or removes a tomb, monument, gravestone, veteran's grave marker or metal plaque, veteran's flag holder that commemorates a particular war, conflict or period of service or flag, or other structure or



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thing which is placed or designed for a memorial of the dead, or a fence railing, curb or other thing which is intended for the protection or ornament of a structure or thing before mentioned or of an enclosure for the burial of the dead, or willfully removes, destroys, mutilates, cuts, breaks or injures a tree, shrub or plant placed or being within such enclosure, or wantonly or maliciously disturbs the contents of a tomb or a grave, shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in the jail or house of correction for not more than two and one-half years and by a fine of not more than five thousand dollars.

Section 8. TRIBAL PROTECTION OF INDIAN GRAVES ON TRIBAL AND FEDERAL LANDS.

(a) Since November 16, 1990, whenever a project carried out, approved, or funded by a Federal agency is to occur on Federal land or tribal land, what is commonly referred to as "Section 106" of the National Historic Preservation Act (NHPA, 54 U.S.C. § 306108) and Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. 3002) are implicated. Under NHPA Section 106, if the project has the potential to affect historic properties on tribal land, or historic properties of significance to one or more Indian tribes or Native Hawaiian organizations on Federal land, then prior to beginning the project, the Federal agency must consult with officials of the appropriate Native Hawaiian organization(s) or federally recognized Indian tribe(s) on measures to avoid or reduce harm to the historic properties in the area of potential effect. Successful completion of Section 106 review, though, is no guarantee that the project may proceed uninterrupted. Section 3 of NAGPRA will temporarily halt the project if Native American human remains or other cultural items are discovered and no plan is in place that addresses their excavation or removal, and disposition. Instead of putting such a project at risk of being suspended for lack of a plan to address its NAGPRA responsibilities, one course of action for the Federal agency would be to conduct consultation with (or, in the case of tribal lands, obtain the consent of) the appropriate Indian tribe or Native Hawaiian organization on a contingency plan ("Plan of Action") to address the excavation or removal, and disposition of any NAGPRA cultural items discovered during the project.

(b) The Tribe shall act consistently with and support the implementation of the NHPA and NAGPRA where applicable. The Tribe shall follow the provisions of Section 11 of this Ordinance in the implementation of the NAGPRA.

Section 9. AMERICAN INDIAN RELIGIOUS FREEDOM ACT

(a) On August 11, 1978, the Congress of the United States enacted Public Law 95-41 (92 Stat. 469), known as the "American Indian Religious Freedom Act", which provides "on or after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions



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of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sacred sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.”

(b) The Tribe shall act consistently with and support the implementation of the American Indian Religious Freedom Act where applicable.

Section 10. ACCESS TO SACRED AND TRADITIONAL SITES. The Tribal Council shall take such actions as it deems necessary to ensure that Tribal members are granted access to sacred sites. The Tribe is committed to also ensure periodic use for specific areas (non-tribal lands) traditionally used for seasonal ceremonial gatherings.

Section 11. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

(a) The Native American Graves Protection and Repatriation Act (NAGPRA) was passed by the United States Congress on November 16, 1990 and signed into law as P.L. 101-601. NAGPRA requires all federal agencies, museum, and universities (that receive federal funding) conduct inventories and summaries for the purpose of identifying items in their collections that fall into the categories of; Native American human remains, associated and un-associated funerary objects, objects of cultural patrimony, and sacred objects. Those items are then culturally affiliated to the appropriate tribal entity according to; relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Inventories are sent to the culturally affiliated tribes that they may engage in the consultation process and make repatriation claims.

(b) The Tribe has issued repatriation claims since 1996 and has taken the responsibilities of re-interring the ancestral human remains of other Wampanoag tribes that were extinguished over time.

(c) The Tribe shall support the enforcement, implementation, and administration of projects, practices, and utilize the legal standing as a Federally-recognized tribe regarding NAGPRA.

(d) Tribal law regarding implantation of the NAGPRA are as follows:

(1) The Mashpee Wampanoag Tribal Historic Preservation Department (MWTHPD) shall administer the provisions of NAGPRA and the regulations developed by the National Park Service to enforce those provisions.

(2) The MWTHPD shall coordinate all repatriation activities.



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- (3) The MWTHPD shall develop administrative strategies regarding Tribal consultation with federal agencies and others, regarding the handling and disposition of ancestral human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony.
- (4) The THPO shall in consultation with the Tribal Council and Tribal attorney, initiate administrative and or legal action to enforce the provisions of NAGPRA.
- (5) The THPO and the Tribal Repatriation Officer shall identify non-Tribal lands suitable for re-interments. Any preservation restrictions on lands so acquired or obtained shall be administered by the Tribal Historic Preservation Department.
- (6) The Mashpee Wampanoag Tribal Historic Preservation Department is authorized and encouraged to negotiate memoranda of agreement with other tribes regarding protocol on repatriation activities. The MWTHPD is also authorized to negotiate memoranda of agreement with private landowners, local, state, and federal agencies regarding the availability and suitability of setting-aside lands for re-interment activities. The final authority to sign any such agreement rests with the Mashpee Wampanoag Tribal Council.
- (7) The Tribe shall repatriate and re-inter all ancestral human remains, associated and unassociated funerary objects which have been identified to have originated from ancestral burial sites within the Wampanoag Nation Homelands. Simultaneous repatriation shall be coordinated for same site contents when discovered to have been separated in different federal agencies, museums, universities and colleges, and any other entity, public or private collections.
- (8) The Tribe shall require all federal agencies, museums, universities and colleges, and any other entity, public or private, to comply with the provisions of NAGPRA. All human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony must be documented in a summary or in an inventory in conjunction with the repatriation of any such human remains or objects. The Tribe will not accept any human remains or objects for repatriation without documentation.

Section 12. PROCEDURES FOR THE DISCOVERY AND HANDLING OF ANCESTRAL HUMAN REMAINS

(a) **Applicability.** These procedures describe the necessary steps to be followed in the discovery and subsequent handling of ancestral human remains found within Tribal Lands or within the possessory and usage areas of the Wampanoag Nation Homelands. The intent of these



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procedures is to ensure that such remains are treated with dignity at all times and, when applicable, are accorded appropriate handling as specified by a Tribal representative.

(b) **Guiding Principles.** The Tribe recognizes and reaffirms the belief that Native American ancestral human remains hold paramount religious significance and can have a spiritual consequence on the Tribe when handled incorrectly. To better protect and enhance our traditional values, the Mashpee Wampanoag Tribal Council sets forth the following:

- (1) All encountered human remains are to be treated as Native American until available evidence determines otherwise.
- (2) Preference shall be given to the preservation of ancestral human remains “in-situ” when feasible.
- (3) The re-interment of ancestral human remains will occur as expeditiously as possible and in the same location whence the remains came, if practicable.
- (4) In the event of an inadvertent discovery of ancestral human remains during the course of construction of a project developed by and on behalf of the MWT, its governmental departments, Tribal corporations and Tribal enterprises, projects constructed on Tribal lands, and by Tribal members within the boundaries of the Mashpee Wampanoag Tribal Reservation, shall immediately cease any activity, including but not limited to, construction and agricultural activity, which would deface, alter, destroy or otherwise impair the integrity of the site until such time as the THPO has completed a site evaluation and analyzed the possibility of preservation.
- (5) Preservation is not always feasible; therefore, alternative protective measures must be implemented and carried out in a manner consistent with the recommendations of the Mashpee Wampanoag Tribal Historic Preservation Officer. Given the complexity of each potential discovery, ample opportunity must be given to the THPO to participate in or oversee any identification or removal procedure immediately thereafter from the time of discovery.

(c) **Procedures for the Analysis of Human Remains found within Tribal Lands or within the possessory and usage areas of the Wampanoag Nation Homelands:**

- (1) Once any human remains are determined to be Native American, in all cases, the Tribe reserves the right to reburial without scientific study, however, when deemed appropriate, the Tribe will allow human remains to undergo limited non-destructive observational analysis by a qualified physical anthropologist or trained Tribal staff.



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- (2) In all cases, the Tribe reserves the right to the re-burial of associated funerary objects without scientific study.
 - (3) In all cases, prior written permission for scientific study must be obtained from the THPO or the Tribal Council.
 - (4) No methods of study may be employed that diminishes the integrity of the remains or associated funerary objects.
 - (5) A reasonable effort must be made to retain all organic materials contained in, or on the surface of any human bone or associated funerary object for the purposes of reburial.
- (d) **Procedures for the Re-interment of Human Remains found within Tribal Lands or within the possessory and usage areas of the Wampanoag Nation Homelands:**
- (1) The Tribe reserves the right to reburial of any ancestral remains and or funerary objects without prior notification.
 - (2) The Tribal Historic Preservation Officer and Tribal Repatriation Officer must, upon notification that ancestral human have been discovered, develop the appropriate plan to re-inter the remains.
 - (3) The Tribal Historic Preservation Officer must determine if there are any known relatives to the ancestral human remains. If there are relatives, the THPO must promulgate a summary of the discovery, seeking participation of the Tribal Council. The Tribal Historic Preservation Officer will post the summary at the Mashpee Wampanoag Tribal Community and Government Center, which will include a brief description of the discovery.
 - (4) Whenever possible, re-interment shall occur at the original location of discovery. All information regarding the existence of known burials should be safeguarded and not announced publicly.

Section 13. NO WAIVER OF SOVEREIGN IMMUNITY. Nothing in this Ordinance shall be construed to waive, alter, or amend the Tribe's sovereign immunity or the sovereign immunity of any of the Tribe's enterprises, agencies, officers, agents, or employees.

Section 14. NO CHANGE IN APPLICABLE LAW. Nothing in this Ordinance shall make any law applicable to Tribal members or the Tribe and any of its departments, instrumentalities, agencies and offices where it would not otherwise be applicable.



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Section 15. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are repealed.

Section 16. SEVERABILITY. If any section, subsection, paragraph, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 17. EFFECTIVE DATE. This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.




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CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe hereby certify that the Tribal Council is composed of 13 members, of whom 9 constituting a quorum, were present at a regular meeting thereof, duly and regularly called, noticed, convened and held on the 8th day of June 2015, and that the foregoing Ordinance, 2016-ORD-006, was duly adopted by the affirmative vote 8 of members, with 0 opposing, and with 0 not voting.

DATED THIS 8th Day of June, 2016.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council


ATTEST:

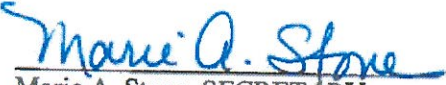

Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribe
Notary Public, Commission Expires 04-16-2023

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2015-ORD-006, Accidental Discovery of Ancestral Graves Ordinance, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions.

DATED this 8th June, 2016.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council


Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribal Council
Notary Public, Commission Expires 04-16-2023



Mashpee Wampanoag Tribe

APPENDIX 1