

Updated August 6, 2010

ARCHAEOLOGICAL BURIAL MANAGEMENT POLICY

SUBJECT: Archaeological Burial Management

AUTHORITY:

The Heritage Property Act
S.S. 1979-80, c.H-2.2 s.64, 65, 66, 67

POLICY STATEMENT:

Saskatchewan Ministry of Tourism Parks Culture and Sport (TPCS) will provide for the efficient and respectful handling of exposed human skeletal material not found in a recognized cemetery or otherwise identified in accordance with s.65 - 67 of *The Heritage Property Act* and the protocols and procedures set out herein.

RESPONSIBILITY and CONTACT:

Director
Heritage Resources Branch
Saskatchewan Ministry of Tourism Parks Culture and Sport
9th Floor, 1919 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H2
(306) 787-2817

EFFECTIVE DATE: January 1, 2003

POLICY STATEMENT

TPCS will provide for the efficient and respectful handling of exposed human skeletal material not found in a recognized cemetery or otherwise identified in accordance with s.65 of *The Heritage Property Act* and the protocols and procedures set out below.

DEFINITIONS

“Act” means *The Heritage Property Act*, Saskatchewan's principal legislative instrument for managing archaeological burials. Under the Act: a) all human skeletal material not found in a recognized cemetery or otherwise identified is deemed to be the property of the Crown (s. 65-1); b) all excavated or exposed skeletal material predating A.D. 1700 is to be forwarded to the Minister for re-interment following scientific examination or other research or educational use (s. 65-2); c) all skeletal material post-dating A.D. 1700 is to be made available to the Indian Band nearest the discovery site, or to the Minister if shown to be of non-Indian origin, for disposition following scientific examination or other use (s. 65-3,4); d) all archaeological burial objects found in Saskatchewan since passage of the Act are the property of the Crown (s. 66-1); f) no person shall excavate, collect, remove, or otherwise disturb a burial place without a subsisting permit issued by the Minister and under any terms and conditions deemed appropriate (s. 64, 67); g) no person shall buy, sell or otherwise remove burial objects from Saskatchewan without Ministerial authorization (s. 66-3); and, any person whose operation or activity may disturb an archaeological burial shall be required to carry out an impact assessment study, and undertake any further salvage, protection measure, or other remedial action (s. 63).

“archaeological burial” means burials, burial places, burial mounds and skeletal materials (with or without burial objects) as referred to in Sections 64 and 65 of the Act, and defined in the Heritage Property Regulations. Archaeological burial remains are not located in cemeteries recognized under *The Cemeteries Act*, and generally fall outside the purview of agencies mandated to attend to criminal investigations, forensic science, vital statistics, and other matters of contemporary burial populations. Archaeological burials are usually unmarked and of unknown origin and cultural affiliation. Most will predate A.D. 1900, although exceptions may arise (e.g. unmarked, post-1900 homestead burials). Criteria for distinguishing archaeological burials may include, but are not limited to, the presence of skeletal material without soft tissue or preserved clothing, the presence of stone, bone, ceramic or metal artifacts, and/or association with non-contemporary features (e.g. large earthen mounds).

“archaeological burial management” means any and all approved regulatory, investigative, inventory, interpretive, curatorial, administrative and other procedures designed to ensure the most appropriate and respectful treatment and disposition of archaeological burial remains.

“Central Burial Site” means the 10-acre parcel of Crown land on the South Saskatchewan River, established as a cemetery in 1998 by the provincial Department of Municipal Affairs, Culture and Housing in collaboration with the Saskatchewan Indian Cultural Center, the Meewasin Valley Authority, and the Saskatchewan Heritage Foundation. Its primary purpose is the re-interment of ancient First Nations archaeological burials which are exposed and removed from time to time, and which, for various reasons, cannot be reburied at their original location.

“Heritage Resources Branch” of Saskatchewan Tourism, Parks, Culture and Sport is responsible for administering and delivering heritage resource management and regulatory programs pursuant to *The Heritage Property Act*.

“heritage property” means any property of interest for its archaeological, historical, architectural, cultural or scientific value.

“interest group” means any agency or individual with a special interest in certain archaeological burial remains, and may include (but need not be limited to) an Indian Band, Tribal Council, the Saskatchewan Indian Cultural Center, the Métis Nation of Saskatchewan, the Saskatchewan Multicultural Advisory Council, a church organization, direct descendents of the deceased or their representatives, etc.

“investigation permit” means a ministerial permit as referred to in Sections 61, 64, and 67 to 71 of the Act, and which constitutes authorization to investigate or alter archaeological burials, under any terms and conditions deemed appropriate.

“Minister” means the Provincial Crown Minister responsible for the administration of *The Heritage Property Act*.

“Officer” means an individual appointed by the Minister, pursuant to Section 62 of the Act, to investigate and assess archaeological burials.

BACKGROUND

The handling, treatment and disposition of unidentified human skeletal remains from unmarked graves that have been accidentally uncovered and exposed is a legislated responsibility in most Canadian jurisdictions. In Saskatchewan, *The Heritage Property Act, 1980* (the Act), explicitly provides for the management such remains and associated funerary objects (herein referred to as archaeological burials).

Several hundred confirmed or suspected archaeological burial locations have been recorded in Saskatchewan, while many more are presumed to be undiscovered. Most are of pre-contact Indian origin, reflecting 10,000 years of settlement and use of the land, while a smaller number will be of Métis or historic Euro-Canadian affiliation.

Although most archaeological burials are accidentally uncovered in the context of land development (e.g. intensive agriculture, land clearing, road building, pipeline installation, urban development, and so on), others are found naturally eroding on the surface or from hillsides and stream cutbanks. Between five and fifteen such burials are discovered annually, and variously reported to law enforcement agencies, provincial or local government agencies, universities, and museums.

Where archaeological burials are fortuitously encountered, decisions concerning their removal and relocation, versus their in situ preservation, must be made. In making these legal decisions, social, cultural, religious, economic, and other considerations must be weighed.

Properly recovered and studied, archaeological burials can generate scientific information on the biology and culture of past populations which is often unavailable from any other source. Knowledge gained from the study of ancient human remains has been extensive. It has served to dispel erroneous theories concerning past human populations, and has substantially improved our understanding of their physical characteristics, origins and bio-distance, demography (e.g. age/sex ratios, birth/death rates, population density, longevity), disease processes and morbidity, medical practices, socio-cultural dynamics, ideological systems, and many other aspects of bio-cultural adaptation and evolution. The study of human remains also makes practical contributions to contemporary medical science. The study of associated grave goods, on the other hand, often provides insight into the social structures and the artistic and technological adaptations of past peoples, thereby discrediting established stereotypes of the ancient past as being impoverished both culturally and technologically.

Yet, the scientific and educational importance of human skeletal remains must be balanced with respect for the dead and the special interests and concerns of stakeholders. For example, the legitimate religious and spiritual concerns of First Nations peoples for their ancestors, and the sacred places where they are buried, must be taken into consideration in burial management and decision making.

POLICY OBJECTIVES AND PROCEDURES

The archaeological burial management process has four stages: 1) discovery and notification, 2) assessment, 3) treatment (preservation or removal), and 4) final disposition. Specific policies and operating procedures are outlined below for each stage in this process.

1. DISCOVERY AND NOTIFICATION

In most cases, experts are able to readily ascertain that unidentified human remains are of historic origin and therefore of archaeological interest, as opposed to contemporary forensic or police interest. This determination is normally based on their direct association with ancient artifacts, the observed mode of burial, the age and condition of the bone, soil considerations, and other factors. However, where such evidence is lacking and the origin of the remains is uncertain, the burial will be treated initially as a possible crime scene under the Criminal Code of Canada. In these cases, a communications protocol between the Heritage Resources Branch and local law enforcement agencies is initiated to notify each other of the discovery of unidentified human remains, and then to determine under whose legal jurisdiction and authority the burial will ultimately reside.

Protocol and Procedure

- Unless in a clear archaeological context, the discovery of unidentified human skeletal remains of unknown origin will initially be treated as a police investigation.
- The discovery of such human remains shall be reported to the RCMP or other law enforcement agency in whose jurisdiction the discovery occurs. If the Heritage Resources Branch is notified first of the discovery, the appropriate police authority will be immediately informed. Where a law enforcement agency is notified first of a discovery which may be of archaeological interest, or if there is any uncertainty in that regard, the Heritage Resources Branch shall be immediately notified.
- The burial site, regardless of its condition at the time of discovery, shall be left intact and secured from vandalism or other disturbance until an assessment is performed.

2. ASSESSMENT

Whether the discovery of unidentified human remains is a police matter under the Criminal Code or an archaeological matter under Saskatchewan's *Heritage Property Act* must be determined at the outset. Pre-contact and early historic human burials can usually be identified without extensive investigation based on the mode of burial, artifact associations, and other factors. Other burials, however, particularly those dating to the recent historic period, or those lacking any age indication, may require more detailed assessment by a medical examiner, a physical anthropologist or other forensic scientist.

Protocol and Procedure

- Within 48 hours of notification, the Heritage Resources Branch will dispatch an Officer to assess any potential archaeological burial, or to assist a law enforcement agency in its initial investigation.
- Where there is reasonable doubt that the discovered skeletal remains are human, the investigating (law enforcement and/or government) officer may collect a specimen for subsequent identification by a specialist. In such cases, the precise location and orientation of the collected material will be recorded and mapped.
- If the burial's age or cultural affiliation cannot be at least generally identified, the Officer may, in consultation with local enforcement authorities and in accordance with standard archaeological recovery techniques, remove specimens for detailed identification and assessment by a specialist. The burial site shall continue to be secured from vandalism or other disturbance until the assessment is concluded and a preferred treatment is determined.
- If the burial is determined to be of historical and archaeological interest, further law enforcement involvement will be concluded.
- Once a burial's age or cultural affiliation has been determined, all appropriate interest groups will be immediately advised of the discovery of an archaeological burial and consulted regarding the options for (in situ) burial preservation or removal and relocation.

3. **PRESERVATION OR REMOVAL**

A number of factors must be considered when determining whether discovered archaeological burials should be removed and relocated or preserved in situ. They include: the circumstances of the discovery, degree of disturbance or damage to the burial, the probability of future disturbance, completeness of the remains, long term preservation options, scientific significance, and the sensitivities and concerns of direct descendants.

Protocol and Procedure

- If an archaeological burial is found partially or entirely intact, and under no immediate threat of disturbance from land development or other cause (including vandalism), the burial shall be fully recorded, restored or stabilized as necessary, and subject to other action as needed to ensure its in situ protection and preservation.
- If an archaeological burial is found partially or entirely intact in the context of a land development, site avoidance (through development relocation or redesign, or other means) and in situ preservation shall be considered the first priority.
- If an archaeological burial is found partially or entirely intact in the context of a land development, but its avoidance and in situ preservation is shown to be unfeasible, economically prohibitive, or otherwise undesirable, the Minister may (pursuant to s. 63 of the Act) order the development proponent to remove the burial (or otherwise arrange for its removal) according to standard archaeological practices and procedures. The recovered skeletal remains and associated funerary objects shall undergo routine documentation and scientific examination (including artifact description, skeletal inventory, age, gender, and race determination, discrete trait recording, pathological examination, etc.). Burial removal, examination and disposition shall be carried out in consultation with the appropriate interest group, and with respect for all appropriate cultural and ceremonial protocols.
- If an archaeological burial is found largely disturbed and under imminent threat of further destruction from land development, natural erosion, or other cause, the burial shall be removed according to standard archaeological practices and procedures. The recovered skeletal remains and associated funerary objects shall undergo routine documentation and scientific examination (including artifact description, skeletal inventory, age, gender, and race determination, discrete trait recording, pathological examination, etc.). Burial removal, examination and disposition shall be carried out in consultation with the appropriate interest group, and with respect for all appropriate cultural and ceremonial protocols.
- If an archaeological burial is highly significant or complex (e.g. an extremely ancient burial, a burial mound, a multiple interment, or associated with a variety of funerary objects or other ceremonial structures such as a medicine wheel or effigy) and is under

imminent threat of disturbance from land development, the Minister may issue the development proponent a temporary stop order pursuant to Section 4 of the Act. The Minister will subsequently consult with the appropriate interest group (or groups), the land developer, and other stakeholders to determine what action (including further burial assessment, in situ preservation, or removal) is appropriate.

- If an archaeological burial has demonstrable provincial significance, the Minister may arrange for its long term preservation and legal protection. A caveat may be registered against the property containing the archaeological burial to protect it from future land disturbance.
- An application to the Minister, from any person or agency, to remove an archaeological burial for purely scientific research purposes, or to undertake any destructive analyses of human skeletal remains from an archaeological burial, shall contain a clear written endorsement from an appropriate interest group. The Minister, in reviewing an application for scientific research, may consult with one or more interest groups and other stakeholders.
- Pursuant to Section 67 of the Act, all activities relating to the removal and examination of archaeological burials shall be carried out under an approved Heritage Resource Investigation Permit, or an amendment to an existing investigation permit if one has already been issued. The permit shall include a discussion of the kinds and methods of study, and a clear statement of the time period required before the remains and associated funerary objects are returned for final disposition (normally a period not longer than 2 months).

4. FINAL DISPOSITION

Normally, the final disposition of an archaeological burial that has been removed, documented and examined will entail reburial. In determining final disposition, current legal regulations, the interests and claims of appropriate interest groups, and the scientific importance of the burial will be considered.

Protocol and Procedure

- If an archaeological burial is shown to be of First Nation ancestry, the Saskatchewan Indian Cultural Centre will be consulted to determine final disposition - typically, reburial of the remains and burial objects.

Reburial at or near the original burial location shall be considered the first priority. Other reburial options include reburial at the Central Burial Site, at a local municipal cemetery, or, at the request of the appropriate interest group, on Indian Reserve lands.

All re-interments at the Central Burial site shall be carried out subject in accordance with the Memorandum of Understanding between the Saskatchewan Government, the Saskatchewan Indian Cultural Center, the Meewasin Valley Authority, and the Saskatchewan Heritage Foundation (dated June 10, 2000). In the event of reburials on Indian Reserve lands, the Minister, pursuant to section 3(1)(b.1) of Act, will transfer ownership of the skeletal remains and associated funerary objects from the provincial Crown to the appropriate Indian Band.

- If an archaeological burial is shown to be of Métis or non-aboriginal origin, the Métis Nation Saskatchewan, the Saskatchewan Multicultural Advisory Council, or other appropriate interest group will be consulted to determine final disposition (i.e. reburial of the remains and burial objects).

Reburial options include reburial at or near the original burial location, if possible, or in a recognized cemetery.

- If the ethnic or cultural affiliation of an archaeological burial cannot be established, or if the burial is not requested or otherwise claimed by an appropriate interest group, the Minister will determine the place of deposition (i.e. reburial).
- Where appropriate, a caveat may be placed on a property containing a re-interred archaeological burial to protect it from future land development.
- All reburials shall be carried out in consultation with the appropriate interest group, and with respect for all appropriate cultural, ceremonial, and religious protocols. A

report on the archaeological burial and its disposition will be prepared and submitted to the Minister and the appropriate interest group (or groups).

- If an archaeological burial is shown to be of compelling scientific importance, the Minister, in consultation with the appropriate interest group (or groups) and other stakeholders, may require that the skeletal remains and/or associated funerary objects be retained for a specified period of time in a designated repository for scientific or educational use.
- Pursuant to s.64(2) of the Act, any use of an archaeological burial that may result in its disturbance, requires a Ministerial permit. An application to the Minister, from any person or agency, to use an archaeological burial for ceremonial, educational, tourism, public interpretation or other purpose shall contain a clear written endorsement from an appropriate interest group. The Minister, in reviewing an application for burial site use, may consult with one or more interest groups and other stakeholders to determine what is considered appropriate use.