

UNANTICIPATED DISCOVERY PLAN

FOR

DEVELOPMENT OF A PARCEL OF LAND AT
35 SCUDDER AVENUE IN
HYANNIS, MASSACHUSETTS

PREPARED FOR

LENNAR MULTIFAMILY COMMUNITIES
99 SUMMER STREET, SUITE 701
BOSTON, MASSACHUSETTS 02110

JULY 2022

Introduction

This Unanticipated Discoveries Plan (“Plan”) outlines specific measures to be implemented during the development of a parcel of land at 35 Scudder Avenue in Hyannis, Massachusetts (“Project”) to assist the Project proponent (Lennar Multifamily Communities [LMC]) with the avoidance, minimization, or mitigation of potential adverse effects to significant archaeological resources and/or human burials. The parcel will be site of construction of 13 multifamily housing units, a clubhouse, pool, parking areas, and access road leading to the facilities from Scudder Avenue, as well as associated buried infrastructure (e.g., sewer and electrical lines).

Unanticipated Discoveries Plan for Archaeological Resources

LMC understands the unanticipated discovery of archaeological deposits and/or human remains is possible during construction, especially as a result of ground disturbing activities, within the Project parcel in Hyannis, Massachusetts. As LMC is committed to the avoidance and protection of cultural resources, it will follow all federal and state regulations and guidelines regarding the treatment of unanticipated archaeological deposits and/or human remains discovered during Project construction. Applicable federal and state guidelines and regulations include:

- Secretary of the Interior’s Standards for Archeology and Historic Preservation (48 CFR 44716-42) (see https://www.nps.gov/history/local-law/arch_stnds_0.htm);
- Advisory Council on Historic Preservation (ACHP): *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (see <https://www.achp.gov/digital-library-section-106-landing/achp-policy-statement-regarding-treatment-burial-sites-human>);
- *Know How #4: Information and Assistance from the Massachusetts Historical Commission; What to do when Human Burials are Uncovered* (see <https://www.sec.state.ma.us/mhc/mhcpdf/knowhow4.pdf>);
- Massachusetts General Laws, Chapter 38, Sections 6B & 6C; Chapter 9, Sections 26-27C (950 CMR 70-71); Chapter 7, Section 38A; Chapter 114, Section 17; all as amended by Chapter 659 of the Acts of 1983 and Chapter 386 of the Acts of 1989; and
- The MHC’s *Policy and Guidelines for the Disposition of Human Remains Which Are One Hundred Years Old or Older*.

Unanticipated Discovery Plan for Archaeological Resources

LMC understands that the following procedures will be implemented in the event of an unanticipated discovery of archaeological deposits (non-burial locations).

Procedures for Notification of Unanticipated Discoveries

Swift and accurate notification by Project personnel is the key to success in determining the appropriate treatment of an unanticipated discovery of an archaeological site made during construction. Thus, LMC personnel and their contractors will adhere to the following procedures should a unanticipated discovery of archaeological deposits be made during construction of the Project. Upon identification of archaeological deposits:

- 1) The Contractor performing the construction work will immediately notify the appropriate LMC Construction Representative and will cease all work at the location of the find, directing that all materials are to be left in place;
- 2) The Contractor will immediately secure the area containing the unanticipated discovery with an appropriate field barrier, preferably protective fencing, to secure the area from damage or looting.
- 3) Once the Contractor notifies LMC Construction Representative of the unanticipated discovery, the LMC Construction Representative will contact a qualified archaeological consultant and make him/her aware of the find, it's general type, and location;
- 4) Once notified, the qualified archaeological consultant will visit the location to confirm its nature and make a preliminary assessment of its potential significance of the find applying the National Register of Historic Places (NHRP) criteria for evaluation (36 CFR 60.4 [a-d]).
- 5) Should the qualified archaeological consultant deem the unanticipated discovery as not that of an archaeological deposit, the LMC Construction Representative and the Contractor will be notified that construction work may resume;
- 6) If the qualified archaeologists identifies the unanticipated discovery as a potentially significant archaeological resource applying the NHRP criteria for evaluation (36 CFR 60.4 [a-d]), the LMC Construction Representative will be notified immediately and will, in turn, contact the Massachusetts Historical Commission (MHC) and any other regulatory agencies that may be associated with permitting the project to relay the details of the unanticipated discovery within 24 hours of contact from the qualified archaeological consultant. If the find is associated with Native American occupation or use of the area, the LMC Construction Representative also will relay this information to the MHC, who in turn will contact Tribal Historic Preservation Office (THPO) representatives of those Federally-recognized tribes located in the Hyannis area (see below).
- 7) The LMC Construction Representative will work in consultation with the MHC, as well as any other involved permitting agencies (and/or THPOs), to develop suitable measures to avoid or minimize effects to the archaeological resources, including development and implementation of a site avoidance and protection plan during construction. If avoidance or minimization of impacts cannot be achieved, the LMC Construction Representative will work with the MHC, as well as any other involved permitting agencies (and/or THPOs), to develop a mitigation plan for the resource(s).
- 8) If the above-referenced agencies determine that the unanticipated discovery comprises a significant archaeological resource and that it cannot be avoid during construction, the LMC Construction Representative (or a qualified archaeological consultant acting as his/her designee), will develop a mitigation plan for the unanticipated discovery in consultation with the MHC, as well as any other involved permitting agencies (and/or THPOs).
- 9) After review and approval by the MHC, as well as any other involved permitting agencies (and/or THPOs), the qualified archaeological consultant will implement the mitigation plan after securing

an excavation permit from the MHC, and any other permits needed by any of the above-referenced agencies and/or parties.

- 10) Once the field mitigation has been completed, the qualified archaeological consultant will be required to coordinate a meeting with the LMC Construction Representative personnel and MHC, as well as any other involved permitting agencies (and/or THPOs), to review the effort and ensure that it meets the specification of the approved mitigation plan prior to the re-commencement of construction.
- 11) Finally, the qualified archaeological consultant will be required to present a professionally completed technical report of the mitigation to the LMC Construction Representative and the MHC, as well as any other involved permitting agencies (and/or THPOs).

Unanticipated Discovery Plan for Human Remains

This Plan also sets forth measures to be implemented in the event of an unanticipated discovery of human remains and will remain in effect for the duration of Project construction. It incorporates elements of and is consistent with 36 CFR § 800.13, the Advisory Council on Historic Preservation's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects*, all provisions of Massachusetts' unmarked burial laws (Massachusetts General Laws, Chapter 38, Section 6; Chapter 9, Sections 26A and 27C; and Chapter 7, Section 38A, all as amended), as well as the MHC's *Policy and Guidelines for the Disposition of Human Remains Which Are One Hundred Years Old or Older*.

In preparation for the event that an unanticipated discovery of human remains might be made during construction of the Project, the LMC Construction Representative will have reviewed the Advisory Council on Historic Preservation's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* prior to the commencement of construction (see enclosure). This document assumes that the LMC Construction Representative understands that when burials, human remains, or funerary objects are encountered in the course of any construction, they should be treated with dignity and respect. Furthermore, in the absence of a federal permitting agency involvement, the LMC Construction Representative further understands that the MHC will be responsible for making decisions regarding avoidance of impacts to these resources and that only through consultation, can the federal agency or the MHC make an informed decision concerning the treatment of burial sites, human remains, and funerary objects. Accordingly, federal permitting agencies (if any) and/or the MHC should be informed by and utilize the special expertise of Native American tribes in the documentation and treatment of their ancestors, if the unanticipated discovery is that of a precontact or historical period Native person(s).

Procedures for Notification of Unanticipated Discoveries of Human Remains

In recognition of the above-referenced principles and in keeping with the Advisory Council on Historic Preservation *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects*, as well as the relevant Massachusetts state laws and guidelines (Massachusetts General Laws, Chapter 38, Sections 6B & 6C; Chapter 9, Sections 26-27C (950 CMR 70-71); Chapter 7, Section 38A; Chapter 114, Section 17; all as amended by Chapter 659 of the Acts of 1983 and Chapter 386 of the Acts of 1989) and the MHC *Policy and Guidelines for the Disposition of Human Remains Which Are One Hundred Years Old or Older* (see enclosure), the LMC Construction Representative and its contractors will employ the following procedures in the event that an unanticipated discovery of human remains is made during construction of the Project:

- 1) The Contractor who identifies human remains during construction will immediately notify the LMC Construction Representative of the unanticipated discovery;
- 2) The LMC Construction Representative will instruct the Contractor to cease work in the area and to mark or fence off the unanticipated discovery location so that it is protected from impacts, to cover the remains, and to take measures to ensure that the location is secure from outsider entrance. The Contractor also will be instructed by the LMC Construction Representative that no additional work can be completed in the area until the unanticipated discovery has been treated appropriately;
- 3) All human remains will be treated with dignity and respect at all times by Project personnel. Furthermore, all associated artifacts will be left undisturbed and in place. Under no circumstances will any skeletal remains or associated materials be handled or removed from the location by the LMC Construction Representative or Contractor personnel until appropriate consultation has taken place and a treatment plan has been developed.
- 4) The LMC Construction Representative, or a qualified the LMC Construction Representative working on their behalf, will immediately notify the MHC, the federal permitting agency (if any), the local police, the appropriate county/city Medical Examiner's Office of the unanticipated discovery of human remains. The State Archaeologist at the MHC will consult with the Massachusetts Commission on Indian Affairs (MCIA) if the identified burial is determined the State Archaeologist to be Native American.
- 5) Under the Plan, the LMC Construction Representative will permit local law enforcement and a representative of the Medical Examiner's Office to access the location of the human remains and inspect the remains to determine if they are part of a crime.
- 6) If the human remains are determined to represent a crime scene, local law enforcement will assume jurisdiction over the location and will be permitted whatever time/access is necessary to investigate and process the location before it will be released for further construction.
- 7) If the human remains are deemed unrelated to a crime and instead represent a/an historical or Native American individual(s), the LMC Construction Representative will pursue a re-design of the Project to avoid the remains and an leave them in-situ. If avoidance cannot be achieved through a project re-design, the LMC Construction Representative will work to devise a disinterment/re-interment plan that is acceptable to the MHC and the federal permitting agency (if any). Under this action, two alternatives must be considered:
 - a) If the remains are older than 100 years old, then the State Archaeologist will be contacted by the Office of the Chief Medical Examiner. If the remains are determined by the State Archaeologist to be Native American, the State Archaeologist will consult with the MCIA, the LMC Construction Representative, and other interested persons, including the any federal permitting agencies and THPOs, to determine whether prudent and feasible alternatives exist to avoid,

minimize, or mitigate harm to the burial site. The final plan or agreement shall be in writing, and may include provisions for preservation in place and/or the conducting of additional scientific research and investigation pursuant to MHC approval; and with consent of the site's owner, the execution of a preservation restriction (M.G.L. c. 184, ss 31-33).

- b) Any non-Native American human remains shall be treated in accordance with the MHC "Policy and Guidelines for Non-Native Human Remains Which Over 100 Years Old or Older."
- c) All burials shall be treated in a manner consistent with the ACHP Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (February 23, 2007, <http://www.achp.gov/docs/hrpolicy0207.pdf>)

Points of Contact

The following points of contact are offered in the event of an unanticipated discovery of archaeological or human remains is made during the construction of the Project in Hyannis, Massachusetts:

Massachusetts SHPO & State Archaeologist

Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, Massachusetts 02125
Brona Simon, State Archaeologist and SHPO; (617) 727-8470

Massachusetts Office of the Chief Medical Examiner

720 Albany Street
Boston, Massachusetts 02118
Mindy Hull
Chief Medical Examiner
(617) 267-6767

Massachusetts Commission on Indian Affairs

100 Cambridge Street, Suite 300
Boston, Massachusetts 02114
John A. Peters, Jr., Executive Director
(617) 573-1292
john.peters@mass.gov

Wampanoag Tribe of Gay Head (Aquinnah)

Ms. Bettina Washington
Tribal Historic Preservation Officer
20 Black Brook Road
Aquinnah, Massachusetts 02535-1546
(508) 645-9265, ext. 175
bettina@wampanoagtribe.net

Mashpee Wampanoag Tribe

Mr. David Weeden

Interim Tribal Historic Preservation Officer
483 Great Neck Rd. South
Mashpee, Massachusetts 02649
(508) 447-0208, ext. 102
dweeden@mwtribe.com

Hyannis Police Department
1200 Phinneys Lane
Hyannis, Massachusetts 02601
(508) 775-0387



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

**POLICY AND GUIDELINES FOR
THE DISPOSITION OF
NON-NATIVE HUMAN REMAINS
WHICH ARE ONE HUNDRED YEARS OLD OR OLDER**

INTRODUCTION

The unmarked burial law requires individuals and entities who discover an unmarked human burial or skeletal remains to cease any activity upon the site which would deface, alter, destroy or otherwise impair the integrity of the site until the State Archaeologist has conducted a site evaluation. G.L. c. 9, ss. 27C (1988 ed.). If the State Archaeologist determines that the remains are American Indian, the final disposition of the remains, after any skeletal analysis, may be reinterred at the discretion of the Commission on Indian Affairs. G.L. c.7, ss. 38(A) (1988 ed.). However, if the remains are non-native and are suspected of being one hundred years old or more, the previous section of the law required that such remains be deposited within a curatorial facility. G.L. c. 26A., ss. (7) (1988 ed.). This section of the law has been amended to provide reinterment as an option for non-native human remains. Specifically, Chapter 386 of the Acts of 1989 altered clause seven (7) of the first paragraph of section 26A of chapter 9 of the General laws by striking the sentence which mandates depositing such remains within a curatorial facility and inserting the following:

The state archaeologist shall determine whether a skeletal analysis of the remains shall be conducted. If he determines that such analysis shall be made after the completion of the said analysis, the state archaeologist shall determine whether the remains shall be deposited in a curatorial facility or reinterred in accordance with the provisions of section forty-three M of chapter one hundred and fourteen. It shall be the responsibility of the person, whose proposed action necessitates the removal of skeletal remains, to conduct and bear the financial costs of said skeletal analysis and reinterment.

Application of this section necessitates the State Archaeologist to make the decision whether such remains will be deposited in a curatorial facility or reinterred. In order to properly take into account all factors for purposes of making such a decision, the Massachusetts Historical Commission hereby implements the following policy:

POLICY

Definitions

With respect to this policy, the following terms are defined:

Remains shall mean the skeletal remains of human non-natives.

Non-Native means those who are not of American Indian descent.

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(617) 727-8470 • Fax: (617) 727-5128
www.sec.state.ma.us/mhc

Reinterment means the reentry of remains into the ground, a tomb or other enclosure for purposes of reburial.

Interested Parties shall include, but not be limited to, those of direct kinship to the deceased, those possessing a cultural, tribal, or religious affiliation, those whose interest stems from a cultural, tribal, or religious affiliation, those whose interest stems from a scientific, environmental, or educational purpose, the owner of the land upon which the burial site is located, and local or state governmental agencies.

Statement of Policy

1. Remains shall be deposited in a curatorial facility unless an interested party files a statement with the State Archaeologist, pursuant to the outlined procedure, requesting that such remains be reinterred.
2. When a request for reinterment is received, the State Archaeologist shall consider all interested parties' views for purposes of issuing a decision as to whether the remains should be curated or reinterred.
3. Where the scientific research value of non-native human remains outweighs any objections that descendants may have to their study such remains will be retained in perpetuity for study in a curatorial facility and will not be reinterred.
4. If it is decided that the remains will be reinterred, the reinterment process should approximate the wishes of the deceased. For purposes of determining the intent of the deceased with respect to the type of reburial, archaeological and historical factors should be evaluated, as well as the methods employed in the original burial.
5. With respect to the reinterment process, the State Archaeologist shall maintain complete records of the archaeological investigation and analysis, the original burial site, and the final burial site.
6. The site chosen for reinterment should be protected from any disturbance to the land as a permanent burial ground or cemetery or by a deed restriction or easement which runs in perpetuity.
7. If it is decided that the remains should be reinterred, the proponent of the project whose action necessitated the removal of such remains shall bear the expense of reinterment.

Procedure

1. *Request for Reinterment:* Interested parties may file a request for reinterment of remains with the State Archaeologist. Such request should be addressed to:

State Archaeologist
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

Such request should include:

- A. Statement explaining how you qualify as an interested party with respect to the disposition of such remains.
- B. Reasoning as to why such remains should be reinterred.
- C. Specification with respect to the preferred reinterment site and reburial procedures.

2. *Statements Favoring Curation Over Reinterment:* Once a request for reinterment is filed, the State Archaeologist will consider any statements from interested parties which favor curation of such remains, as opposed to reinterment. Such statements should contain:

- A. Statement explaining how you qualify as an interested party with respect to the disposition of such remains.
- B. Reasoning as to why such remains should be curated.
- C. Specification as to which curatorial facility the remains should be deposited.

3. *State Archaeologist's Decision to Reinter or Curate:* In response to a request for interment, the State Archaeologist shall consider the following factors in rendering a decision with respect to either curation or reinterment of the remains:

- A. Scientific and research value of such remains.
- B. The completeness and adequacy of the analysis of the remains.
- C. The public interest.
- D. If reinterment, the appropriateness of the proposed burial site and procedures.

The State Archaeologist shall issue a written finding to all participating interested parties within sixty (60) days of receipt of a request for reinterment.

4. *Appeal Process:* Any interested party make appeal the decision of the State Archaeologist to the full Massachusetts Historical Commission by filing an appeal within thirty (30) days of the State Archaeologist's finding. Appeals should be addressed to:

Executive Director
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

Such appeal will be discussed at the next meeting of the Massachusetts Historical Commission (Commission). The petitioner will be notified of the time and place of such meeting so that he or she has the opportunity to present arguments.

Once an appeal is filed, no action will be taken by the State Archaeologist with respect to the disposition of the remains until the Commission has rendered a decision on the appeal.

The Commission shall make its decision on the appeal within ninety (90) days of the Commission meeting.

2/14/90