

**MEMORANDUM OF AGREEMENT  
AMONG THE NATIONAL CEMETERY ADMINISTRATION OF THE U.S. DEPARTMENT OF  
VETERANS AFFAIRS, THE TONAWANDA SENECA NATION, THE NEW YORK STATE  
HISTORIC PRESERVATION OFFICE, AND THE ESTATE OF LEROY VEENENDAAL,  
REGARDING ESTABLISHMENT OF A NEW NATIONAL CEMETERY AT AN  
APPROXIMATELY 132-ACRE SITE LOCATED AT 1232 INDIAN FALLS ROAD, GENESEE  
COUNTY, NY (SHPO Project Review No.12PR2608)**

WHEREAS, in accordance with the Service Members Civil Relief Act, also known as the Veteran's Benefit Act of 2010, Public Law 111-275, Sec. 503, *Reports on Selection of New National Cemeteries* (Title 38, United States Code 2400), the National Cemetery Administration of the Department of Veterans Affairs (NCA) was directed to establish five new National Cemeteries, including a cemetery in western New York; and

WHEREAS, the proposed undertaking is described to be the acquisition, development and operation of a National Cemetery; and

WHEREAS, pursuant to authority granted by Title 38, United States Code, Section 2406, NCA proposes to purchase an approximately 132-acre parcel of land ("property") (Attachment 1) from the Estate of Leroy Veenendaal ("Landowner") for the purpose of establishing the new National Cemetery; and

WHEREAS, NCA has determined the area of potential effect (APE) to be the 132-acre parcel, the same as the purchase area; and

WHEREAS, NCA has determined there are archeological sites within the APE that may be eligible for the National Register of Historic Places under Criterion E (historic properties), and the likely presence of cultural artifacts may qualify the site as a Traditional Cultural Property; and

WHEREAS, NCA is in the process of implementing the Data Recovery Plan (DRP) (Attachment 2), as accepted by the New York State Preservation Office (SHPO) on October 30, 2013, resulting in recovered artifacts and records; and

WHEREAS, NCA has acknowledged the proposed undertaking will result in an adverse effect to the historic properties within the APE; and

WHEREAS, NCA has consulted with the SHPO and The Seneca Nation of Indians of New York (SNI) and the Tonawanda Seneca Nation (TSN) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 (NHPA), and its implementing regulations, 36 CFR Part 800.6(b)(1)), as well as Executive Order 13175; and

WHEREAS, pursuant to 36 CFR 800.6(a)(1), NCA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding, and the Council declined to participate in consultation; and

WHEREAS, pursuant to 36 CFR 800.6(c)(3), NCA has invited TSN to sign this Memorandum of Agreement (MOA) and SNI to concur; and

WHEREAS, all parties recognize that time is of the essence, and in order to allow for execution of the MOA prior to March 1, 2014, all parties will work in good faith to complete responsibilities under this agreement, where possible, in a timely manner and expedite reviews as is feasible;

NOW, THEREFORE, all parties agree that upon NCA's decision to proceed with the Undertaking, NCA shall ensure that the following stipulations are implemented in order to mitigate the adverse effects of the Undertaking on historic properties, and that these stipulations shall govern the Undertaking and all of its parts until this MOA is terminated. This MOA applies to the initial development of the property identified as Early Turnover and Phase 1.

**1) Definitions.**

- a) "Items of cultural value to the Nation" is defined as here as all aspects of the human environment that have historical, architectural, archaeological, or cultural significance, including, but not limited to, historic properties, archaeological resources and data, Native American ancestral remains and cultural items, religious places and practices, historical objects and artifacts, historical documents, and community identity.

**2) Stipulations.**

**a) Stipulations of NCA.**

- i. All of the following stipulations within Section 1, Part a, are contingent upon acquisition of the property, which remains at the sole and absolute discretion of NCA.
- ii. NCA shall ensure that funds in the amount of \$5,000.00 will be available to TSN for two years following closing on the property in order to fund community education activities associated with the artifacts removed from the site.
- iii. NCA shall ensure delivery of the recovered artifacts and associated records to the TSN within two years following closing on the property.
- iv. Nothing in this agreement shall be construed to diminish NCA's responsibilities to TSN under Federal law.
- v. NCA shall comply with Attachment 5 in the event human remains or artifacts that are or may be Haudenosaunee Medicine Masks, or Sacred Objects, or items of cultural value to the Nation are discovered during design, construction, or operation.
- vi. NCA agrees to accept an onsite cultural monitor designated by TSN as necessary to ensure that proper protocols are followed during the construction phase of the undertaking during specific times when excavation or earthwork ground disturbance construction activities of a depth in excess of 36" are occurring. The 36" depth is based on cryoturbation and areas that have been mechanically excavated during Phase III Archeological Evaluations, and agricultural use.

- vii. NCA agrees to pay such a monitor, subject to the availability of appropriated funds, at the prevailing rates applicable to similar monitoring activities under the NHPA. The cost to NCA shall not exceed \$26,000.00. NCA agrees to follow reasonable recommendations of the cultural monitor with regard the steps necessary to protect the integrity and condition of Indian artifacts that may be discovered during the construction of the undertaking.
- viii. All other construction activities (including shallow excavation or earthwork ground disturbance construction activities of depth less than 36"), would not require a cultural monitor except if an inadvertent discovery of cultural resources were to occur. In the event of an inadvertent discovery of human remains or artifacts that are or may be Haudenosaunee Medicine Masks, Sacred Objects, or Items of cultural value to the Nation during such construction, NCA shall comply with Attachment 5. NCA will immediately stop work in the area of the discovery and, within 36 hours, contact TSN to determine appropriate next steps. NCA could continue work in other areas of the property so long as there is no direct interference with the site identified. If TSN so requests in writing, NCA will cease all activities on the property, in order to facilitate the performance of any ceremonies regarding the discovery.
- ix. If TSN incurs travel costs to facilitate the participation of Haudenosaunee leaders in ceremonies to remediate any disturbance to such human remains or artifacts, NCA shall be responsible for such reasonable travel costs, not to exceed \$2,000.00.
- x. NCA will develop an excavation or earthwork ground disturbance construction monitoring schedule that will be updated approximately every 6 weeks and provided to TSN to identify availability. If TSN has expressly agreed that for a particular phase of the undertaking, a cultural monitor is not necessary or not available, NCA may proceed without a monitor.
- xi. Following completion of the construction, during normal operations of the cemetery there is minimal undisturbed ground being excavated due to the pre-placement of crypts during initial construction. In the event of an inadvertent discovery of human remains or artifacts that are or may be Haudenosaunee Medicine Masks, or Sacred Objects during operation of the cemetery, NCA shall comply with Attachment 5. In the event of an inadvertent discovery of a cultural resource that is not subject to Attachment 5 during normal cemetery operations, NCA will contact TSN, the Seneca Nation of Indians, and the New York State Historic Preservation to determine appropriate next steps

**b) Stipulations of SHPO.**

- i. SHPO agrees to work in good faith to provide expedited review, and concurrence or comments, on NCA submissions.

- ii. SHPO agrees to respect the procedures and policies set forth in Attachment 5 and the Haudenosaunee Policies and Practices on Human Remains and Cultural Properties.

**c) Stipulations of TSN.**

- i. TSN agrees to enter into a curation agreement (Attachment 3), under which it will agree to hold all right, title, ownership, claim, and responsibility for the curated artifacts.
- ii. TSN agrees to serve as a repository of the artifact collection and associated documentation resulting from the archaeological study (OPRHP No. 12PR2608) at no cost to NCA.
- iii. TSN agrees that, upon written request and subject to TSN staff and facility availability, the collection will be made available to qualified professional researchers on a temporary basis for non-destructive forms of analysis, as determined by TSN in its sole discretion.
- iv. TSN will provide for the professional care and management of the artifacts and associated documentation deposited under this agreement in accordance with its laws and customs. The conveyance of the artifact collection and documentation is a donation by the landowner. In the event TSN determines it no longer wishes to hold and maintain the collection, TSN will allow the Seneca Nation of Indians of New York or another Haudenosaunee Nation the right of first refusal. In the event that neither the Seneca Nation of Indians of New York nor another Haudenosaunee Nation agrees to maintain the collection, TSN will work with SHPO to identify a suitable entity to maintain the collection.
- v. TSN agrees that the artifact collection will not be loaned to any person without a written agreement specifying the conditions of the loan
- vi. TSN agrees to make available a monitor based on the construction monitoring plan. If an onsite monitor is not available TSN will make available a monitor via an on-call scenario via email or phone.
- vii. TSN agrees that if an onsite or on call monitor is not available, or if NCA receives no response regarding an inadvertent discovery within 72 hours of completion of the notice protocol by NCA per the terms of Attachment 5, NCA will be allowed to continue work. NCA will take all necessary actions to ensure that the area is protected and that no cultural resources are negatively affected.
- viii. 8. Insurance. TSN shall obtain at their own cost and expense, and keep in full force and effect, during the term of their access upon the Property, a comprehensive general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, death and property damage arising out of any one occurrence. The policy or policies required hereunder shall be issued by insurance companies qualified to do business in the state and such policy or policies shall provide at least twenty (20) days' notice to NCA before cancellation or

material modification. TSN shall provide NCA certificates of such insurance evidencing the coverage in force as of the commencement date of the on-site monitoring, as well as any replacement certificates issued during the Term of this MOA.

**d) Stipulations of Landowner.**

- i. Landowner shall allow for site work to continue per the terms of the Site Access Agreement (Attachment 4) between Landowner and VA, until site work is complete or title transfers to VA (whichever occurs sooner);
- ii. Landowner will execute the attached curation agreement, and thereby relinquishes all right, ownership, future ownership or claim to all artifacts discovered on or under the site.

**3) Dispute Resolution.**

- a) Should any party to this agreement object in writing to NCA regarding any action carried out or proposed with respect to the Undertaking or implementation of this agreement, NCA shall consult with the objecting party to resolve the objection. If after initiating such consultation NCA and the objecting party together determine that the objection cannot be resolved through consultation, NCA shall forward all documentation relevant to the objection to the ACHP, including NCA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
  - i) Advise NCA that ACHP concurs in NCA's proposed response to the objection, whereupon NCA will respond to the objection accordingly;
  - ii) Provide NCA with recommendations, which NCA shall take into account in reaching a final decision regarding its response to the objection; or
  - iii) Notify NCA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. NCA shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of NHPA.
- b) Should ACHP not respond within 60 days after receipt of all pertinent documentation, VA may assume ACHP concurrence in its proposed response to the objection.
- c) NCA shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; NCA's responsibility to carry out all actions under this agreement that are not the subjects of the objection shall remain unchanged.
- d) At any time during implementation of the measures stipulated in this agreement, should an objection pertaining to this agreement or the effect of the undertaking on historic properties be raised by a member of the public, NCA shall notify the parties to this

agreement and take the objection into account, consulting with the objector and, where appropriate, with any of the parties to this agreement to resolve the objection.

- e) In the event of a conflict between the Data Recovery Plan and this MOA, the terms and conditions of this MOA shall govern.

#### **4) Execution, Modification and Termination.**

a) If NCA determines it is not in the Federal Government's best interest to acquire the property, or if the terms of this agreement have not been implemented by December 31, 2015, this agreement shall be considered null and void. In either such event NCA shall immediately notify in writing the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

b) This MOA constitutes the entire agreement between the parties hereto and may not be modified or amended except by instrument in writing signed by the parties hereto, and no provisions or conditions may be waived other than by a writing signed by the party waiving such provision or condition.

c) This MOA may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This agreement shall become binding when all counterparts taken together shall have been executed and delivered by all of the parties. The parties hereto agree that facsimile transmission, or e-mail transmission of a scanned original signature shall constitute and be accepted as an original signatures.

d) Any party to this MOA may propose to NCA that the MOA be amended, whereupon NCA shall consult with the other parties to this agreement to consider such an amendment. 36 CFR 800.6(c)(1) shall govern the execution of any such amendment.

e) If NCA determines that it cannot implement the terms of this MOA, or if another party to this MOA determines that it cannot implement the terms of this MOA or that the MOA is not being properly implemented, such party may propose to the other parties to this MOA that it be terminated.

f) The party proposing to terminate this MOA shall so notify all parties to this MOA, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.

g) Should such consultation fail, NCA or any other signatory to this MOA may terminate the MOA by so notifying in writing all parties.

h) Should this MOA be terminated, NCA shall either:

- i. Consult in accordance with 36 CFR 800.6 to develop a new agreement;  
or
- ii. Request the comments of the Council pursuant to 36 CFR 800.7.

6) Scope and Related Agreements.

- i. Nothing within this MOA alters the rights or responsibilities of the parties to the Offer to Sell contract, entered into by U.S. Department of Veterans Affairs and landowner on September 11, 2012, and as amended on June 26, 2013, or the attached curation agreement, between TSN and the landowner.
- ii. Nothing within this MOA shall be construed to provide NCA with any right, ownership, future ownership, claim, or responsibility for the artifacts or documentation related thereto.
1. Nothing in this MOA shall be construed to diminish TSN's sovereignty. Nothing herein shall be construed to waive TSN's sovereign immunity under Federal law, nor shall it be construed to waive any sovereign immunity extended by Federal law to TSN's Council of Chiefs, Clan Mothers, or employees.

Execution of this MOA and implementation of its terms evidence that NCA has afforded the Council an opportunity to comment on the proposed undertaking; and that NCA has taken into account the adverse effects of the acquisition, development and operation of a National Cemetery in Western New York on historic properties.

Signatories

National Cemetery Administration  
U.S. Department of Veterans Affairs

By: Steven A. Murphy Date: 5-29-14

The Tonawanda Seneca Nation

By: Chief Johnnie Date: 4/24/14

State Historic Preservation Office  
State of New York

By: Russell R. Ruppert Date: 5/8/14

Estate of Leroy Voornburgh  
1232 Indian Falls, Genesee County, New York

By: Ann Voornburgh Date: 5/8/14

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**Concurring Parties**

Seneca Nation of Indians of New York

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Attachments**

Attachment 1: Depiction of site

Attachment 2: Phase III Data Recovery Plan

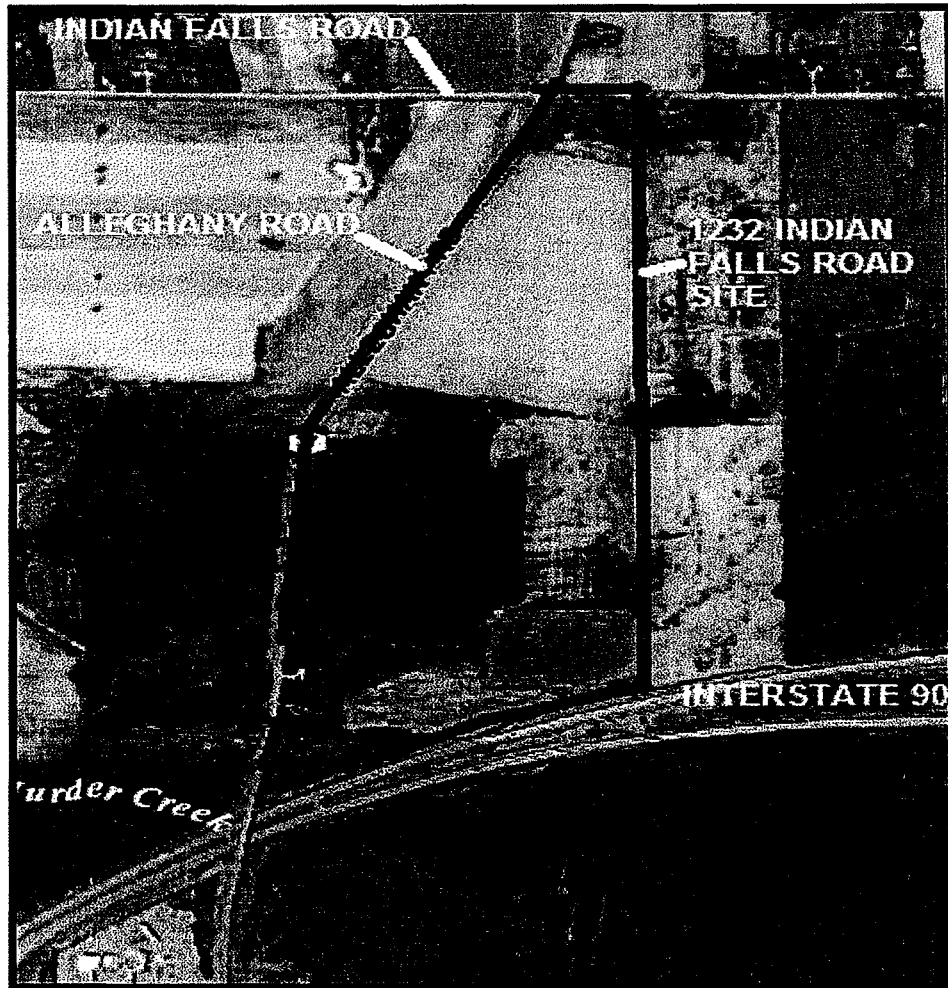
Attachment 3: Curation Agreement

Attachment 4: Access Agreement

Attachment 5: Human Remains and Sacred Objects Discovery Protocol



Attachment A:  
Site Depiction of Proposed  
Western New York National Cemetery



1232 Indian Falls RD  
Pembroke, NY

**Phase 3 Data Recovery Plan for the Indian Falls V.A. Precontact Site (A03712.000035)  
at the Proposed Western New York U.S. Department of Veterans Affairs Cemetery Location  
in East Pembroke, New York**

**Including Initial Findings of Phase 2 Investigations and Proposed Phase 3 Methodology**

**Prepared by Michael L. Kagelmacher, M.A.  
Principal Investigator**

**July 26, 2013**

**Commonwealth Cultural Resources Group, Inc.  
2530 Spring Arbor Road  
Jackson, Michigan 49203**



## **1. Introduction**

The U.S. Department of Veterans Affairs (VA) is considering the establishment of a cemetery on Allegheny Road in East Pembroke, Pembroke Township, Genesee County, New York. To assist in completing its obligations under Section 106 of the National Historic Preservation Act to identify historic properties, the VA contracted with Commonwealth Cultural Resources Group, Inc. (CCRG). A Phase 1 cultural resource survey revealed the presence of archaeological materials in the tract (Peltier 2012), and the State Historic Preservation Office (SHPO) concurred with CCRG's recommendation that a Phase 2 investigation be undertaken. CCRG's Phase 2 field investigations of the prehistoric cultural deposits at the proposed VA cemetery began on April 15, 2013 and were concluded on June 24, 2013. Michael L. Kagelmacher served as Principal Investigator and Field Director. Field technicians included Martin Boratin, Kyle Brock, Tony Bonn, Paul Jensen, Sigmund Anteck, Joe Kline, Vivian Honsinger, Jackie Damon, Dan Whalen and James Wasiura. The project was monitored by Justin Abrams of the Tonawanda Band of Seneca Indians. This report presents the initial findings from the Phase 2 investigations and documents the proposed Phase 3 methodology and Data Recovery Plan (DRP).

The Area of Potential Effect (APE) consists of 130+/- acres east of Allegheny Rd., between the I-90 and Indian Falls Rd. It had previously (Phase 1 investigations, Fall of 2012) been found to contain several prehistoric lithic scatters of varying spatial extent, most of which were concentrated in Area F, a large agricultural field that had been planted with soybeans and, more recently, winter wheat (Figure 1). One of the largest clusters of artifacts, covering approximately 2 acres and located in the northeast corner of Area F, was found during Phase 1 investigations to include projectile points of Genesee (Late Archaic period) and Meadowood (Early Woodland period) types (Ritchie 1971). A total of 593 prehistoric artifacts were recovered during Phase 1 investigations, including projectile points, bifaces/fragments, and chert debitage.

Several other large clusters (approximately 1-5 acres in extent) of artifacts were apparent in Area F from the results of Phase 1 investigations, the largest being in the southeast corner of the field. Other large clusters were noted in the southwest and central portions of the field, as were numerous scattered finds of a more isolated nature within the field.

Eighteen additional prehistoric find spots were located elsewhere within the APE (i.e. outside Area F, the wheat field), in Areas A, B, D, E and G, and consisted mostly of 1-3 chert flakes each. Based on the Phase 1 results, CCRG recommended that Phase 2 investigations be undertaken. The SHPO concurred with that recommendation.

## **2. Initial Findings of Phase 2 Investigations**

CCRG's Phase 2 field investigations consisted largely of close-interval (20ft) and radial shovel testing around previous Phase 1 prehistoric find spots, in order to determine the spatial extent, distribution, and relative artifact density of prehistoric sites within the APE. The majority of Phase 2 field time was spent shovel testing in close-interval grids around Phase 1 find spots in Area F. Radial shovel tests were also placed around 15 find spots south of Area F (in areas A, B, D and E) and 3 find spots north of Area F (in Area G and in the vicinity of the former farmhouse). Aside from Area F, all previous prehistoric finds in

Areas A, B, D, E and G appear to be small single-use lithic scatters of short temporal duration and minimal spatial extent, generally featuring relatively lesser-quality and earlier stage reduction flakes.

At the beginning of Phase 2 investigations, 5 foot metal u-posts were placed at 300 foot intervals across Area F, to define investigation Blocks A-P. Using 300-foot tape measures, a 20 foot close-interval grid could thus quickly be established anywhere in the field. In blocks A, D, E, and P, all or nearly all possible shovel tests were excavated, to define the boundaries of the largest clusters. Partial grids were placed over several other blocks in a similar fashion, with boundaries generally defined by the presence of double negative shovel tests around the outskirts of a cluster of positive shovel tests.

Several of the stray lithic finds in the northern portion of Area F were initially subjected to radial testing to determine the presence or absence of additional cultural material. When many of these tests were found positive, it was decided that radial testing elsewhere would be abandoned in favor of placing close-interval grids around all of the stray finds in Area F. In general, as positive Phase 1 shovel tests were relocated among the growing wheat, each was initially encompassed by a 5x5 grid of 20ft close-interval shovel tests. As with the larger clusters, these smaller grids were generally terminated as double negative shovel tests were achieved. In several cases, this resulted in the discovery of additional artifact clusters up to 100 feet across (Figures 2 and 3).

When Phase 2 investigations began, the wheat crop was approximately 1-2 inches in height. After the seeding of the field and subsequent winter melt, numerous artifacts were apparent on the surface at the beginning of Phase 2 field investigations, particularly in the vicinity of the largest clusters of positive Phase 1 shovel tests. Of the approximately 6,000 total artifacts recovered during Phase 2 investigations, approximately 25 percent were surface finds, which were recorded separately in relation to the nearest shovel tests. The Phase 2 surface finds included numerous bifaces and biface fragments, a formal count of which will be available at the conclusion of the debitage and tool analysis. As the wheat crop grew, surface visibility gradually diminished, especially as close-interval grids were being placed around the more isolated finds in Area F.

Though a formal analysis of the chert tools and debitage has not yet been undertaken, rough counts indicate approximately 6,000 artifacts were recovered during Phase 2 investigations. These include numerous bifaces and biface fragments, as well as several projectile points or point fragments. Most notably, a Meadowood Point and a Genesee-like point fragment, similar to those found during Phase 1 in what would become Block A, were recovered on the surface in Blocks E and D, respectively. A drill fragment was also recovered in Block E, and what appears to be an unfinished Late Woodland triangular point was recovered from Block J.

Based on the initial results of the Phase 2 investigations, NYSHPO has recommended a Phase 3 Data Recovery at the Indian Falls V.A. Precontact Site (A03712.000035).

### **3. Phase 3 Data Recovery Research Questions**

A Phase 3 Data Recovery at the Indian Falls V.A. Precontact Site (A03712.000035), including a surface inspection and subsequent mechanical stripping of a portion of the topsoil in Area F to explore for

subsurface features, would be intended to address specific research questions pertaining to site function as well as timing of occupation, and would allow the site to be placed within the broader contextual framework of the Late Archaic and Early- to Late-Woodland settlement patterns of the surrounding area. These questions include the following:

1. What are the boundaries and spatial dimensions of the site(s) or artifact clusters in Area F? (This question has been partly addressed during Phase 2 close-interval shovel testing.)
2. What is the functional relationship (if any) between the various artifact clusters in Area F?
3. What is the temporal relationship between the various artifact clusters in Area F?
4. What environmental factors attracted prehistoric inhabitants to the site over the course of multiple cultural periods and over several thousand years?
5. How do the site and its various artifact clusters fit into the broader cultural/temporal context of known prehistoric sites and settlement patterns in the surrounding area?

The data provided by a Phase 3 surface inspection has the potential to add to our understanding of site boundaries in Area F, which to this point is based largely on the results of Phase 2 close-interval shovel testing. Lithic data produced by a surface inspection may also provide further insight into the function of the various artifact clusters and help to determine whether they represent separate temporal occupations or concurrent and temporally-related activity stations of varying function.

A formal surface inspection, which is typically conducted at the beginning of Phase 2 investigations, also offers a high potential for the recovery of additional temporally diagnostic artifacts, such as projectile points. This may allow a cultural age to be assigned to clusters within which no diagnostic artifacts have yet been found, and it may also allow for the identification of further cultural manifestations (e.g. additional diagnostic projectile point or tool types) not yet identified at the site.

Phase 3 mechanical stripping would provide an opportunity to explore for subsurface features and thus has the potential to further our understanding of the environmental factors that attracted prehistoric inhabitants to the area. These might include proximity to water-based resources, the presence of lithic raw materials, or the presence of seasonal food resources (game, nuts, etc.). As well, subsurface features (such as hearths) may provide datable carbon samples, which could potentially shed light on the temporal relationship between the various clusters and also allow the site to be better understood in a temporal context relating to other known prehistoric sites in the area.

#### **4. Proposed Phase 3 Field Methodology and Schedule**

Due to the number and distribution of prehistoric artifacts recovered in Area F during Phase 1 investigations, Phase 2 close-interval testing in this field (which began in April) would normally have been preceded by plowing, disking, and a surface inspection of the field, and followed by the placement of up to 30-40 excavation units (1 x 1 meter each). In order to avoid damage to the already-planted wheat

crop in Area F, and to avoid a delay to the project, the VA, CCRG, and the SHPO agreed to postpone a surface inspection until after the close-interval testing and mid-July harvest. Such a surface inspection would further our understanding of the distribution of sites or activity areas within the APE, and would have the potential to produce additional temporally-diagnostic artifacts, such as those found in the northeast corner of the field during Phase 1, in association with other clusters of artifacts.

Many of the more isolated Phase 1 prehistoric finds in the wheat field (Area F) were initially thought to be the result of plow-dragged specimens from the larger clusters. By early June of 2013, close-interval and radial shovel testing in the wheat field had revealed a larger than expected number of separate small clusters of artifacts around several of these more isolated finds.

After consultation with New York State SHPO and the VA, and in order to more adequately define site boundaries within the APE, it was determined in early June that the best course of action would be to forgo placing the planned 1m x 1m excavation units in favor of additional shovel test grids around the more isolated finds in Area F. Excavation units would have provided an opportunity to explore for subsurface features, with the potential for additional diagnostic artifacts as well as the potential for radio-carbon dates, but it was determined that this research potential could be addressed in a less labor-intensive way through mechanical stripping, which along with the postponed surface inspection would then be considered a Phase 3 investigation.

It is recognized that the project has not followed the classic trajectory of discovery, evaluation, and data recovery. Schedule concerns and avoidance of crop damage have forced the VA, CCRG, and the SHPO to modify the normal sequencing of tasks. The Section 106 compliance process is meant to be flexible, to respond to the demands of specific undertakings, and the present project displays that flexibility. The SHPO, VA, and CCRG have agreed that with the completion and reporting of the proposed Phase 3 investigations, the research potential of the site will have been achieved, and that further investigations (barring late discoveries) will not be necessary.

In interpreting lithic-dominated sites partially or completely in plowzone contexts, it is important to collect several key data sets. Certain of these data sources have been addressed during the Phase 2 investigation, and the proposed Phase 3 study will be focused on two tasks: 1) controlled surface collection of Area F, to provide a more comprehensive sample of the plowzone artifacts; and 2) machine-assisted removal of the plowzone from a sample of Area F to determine if cultural features are present, and to excavate such features.

Immediately after the harvest of the wheat crop, and prior to mechanical stripping, CCRG proposes to plow and disk the entire wheat field (Area F, approximately 40 +/- acres). After a weathering period of about 2 weeks, during which the site would be monitored by a field technician to deter looters and artifact collectors, Area F would then be subjected to a surface inspection lasting 5 days. This would afford the potential opportunity to recover additional diagnostic artifacts or tools, and may add to our understanding of the distribution of artifacts and/or sites across the field.

At the conclusion of a Phase 3 surface inspection, an End-of-Field letter (EOF) will be prepared and forwarded to the SHPO and the Nations (the Tonawanda Seneca Nation and the Seneca Nation of

Indians). This EOF will include a map showing the proposed mechanical stripping locations, and will provide an opportunity for additional consultation before a portion of the site is permanently removed through mechanical stripping.

In order to better address questions concerning site function and timing of prehistoric occupations within the APE, CCRG then proposes to mechanically strip the topsoil from an area approximately 1 acre in extent within Area F over a period of 10 days. This is equivalent to approximately half of one of the 300ft x 300ft grid blocks. Stripping would be accomplished by placing 9 "windows", of approximately 50ft x 100ft each, in and around the various concentrations identified during Phase 2 close-interval shovel testing, in order to explore for subsurface features. Two or 3 of these windows may be split into two 50ft x 50ft windows and used to investigate areas in the vicinity of the smaller clusters. Specific locations of the areas to be stripped will be determined based on artifact density (including high and low density areas), location of tools (projectile points, bifaces, etc.), and apparent site boundaries.

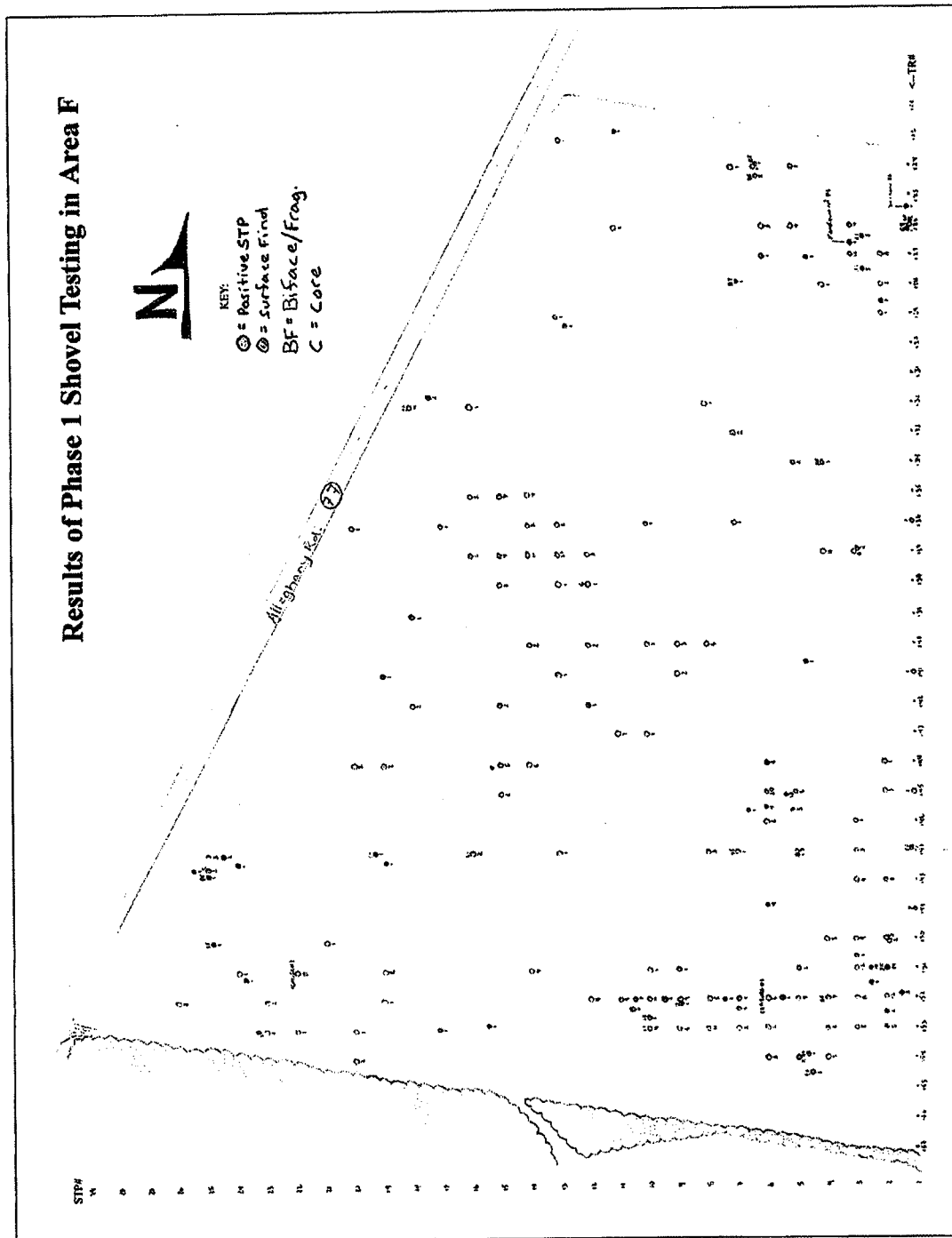
A total of 15 days over three weeks (pending weather) would be spent in the field for Phase 3 investigations once the harvest is concluded and the field plowed/disked/weathered. Five days would be spent on surface inspection of Area F (the wheat field), and following the completion and approval of the EOF, nine days would be spent on mechanical stripping of nine windows in Area F (approximately 50ft x 100ft each) to explore for subsurface features, and one day would be left for cleanup and to address any remaining features. A tribal monitor from the Tonawanda Senecas will be on site during plowing, surface inspection, and mechanical stripping.

A Phase 3 Management Summary will be issued within two weeks of completion of the field work. Upon SHPO review and acceptance of the Management Summary, the tract will be cleared for construction activities, with the understanding that a complete Phase 3 report will be issued within one calendar year of completion of the field work.

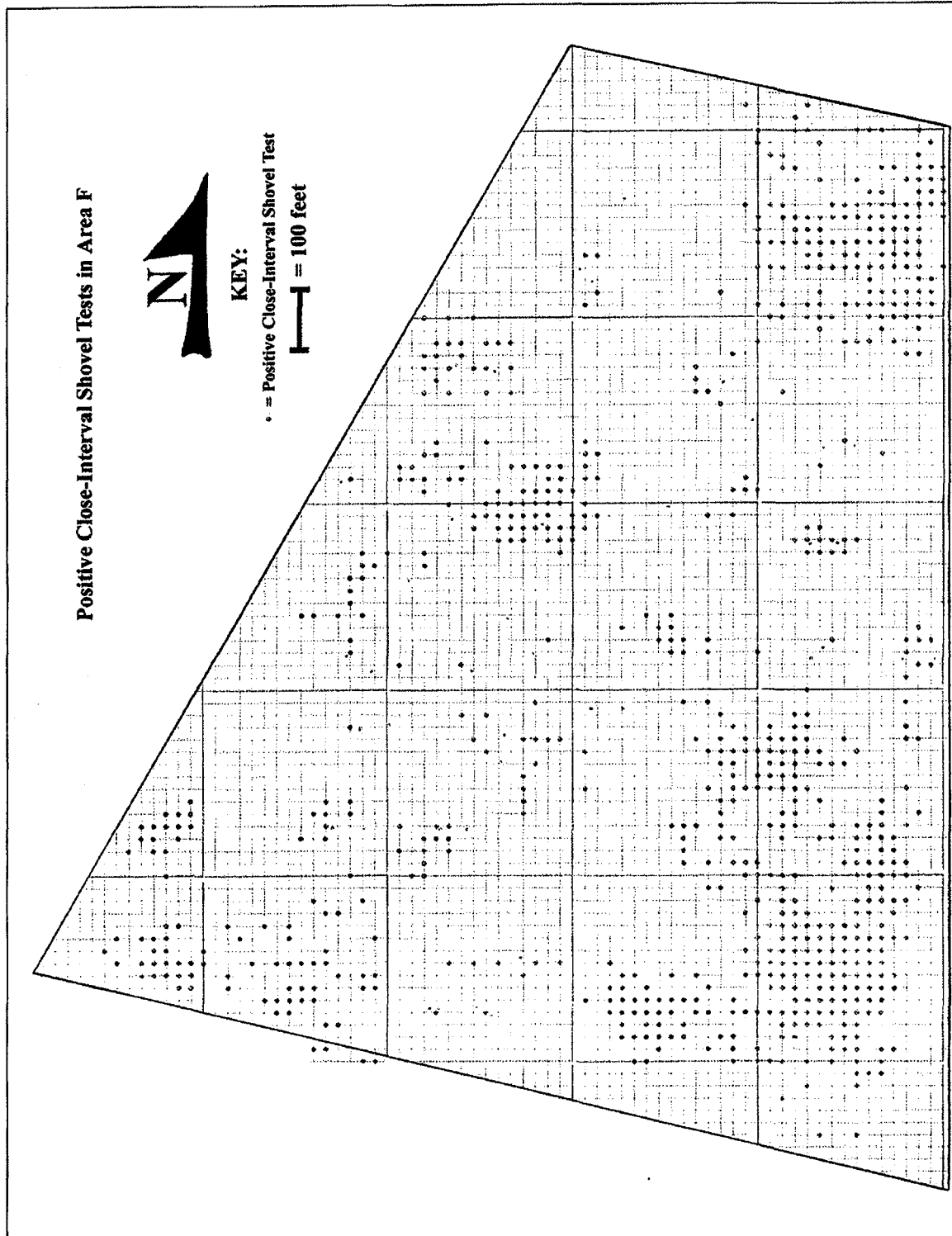
The Phase 3 study would include laboratory processing and analysis of all artifacts recovered during Phase 2 and 3. If features are encountered, the analysis will include zooarchaeological and ethnobotanical analyses. Up to three samples will be submitted for radiocarbon assay. The reporting and curation preparation will follow the guidelines established by Section 14.09 of the New York State Historic Preservation Act of 1980 and Section 106 of the National Historic Preservation Act of 1966. At the conclusion of reporting, any recovered artifacts will be curated by the Tonawanda Senecas at a permanent artifact repository that is currently in the planning stages.

NYSHPO recommends that the Indian Falls V.A. Precontact Site (A03712.000035) is National Register eligible under Criterion D (information potential) and has concurred with the Phase 3 archaeological testing methodology proposed above.

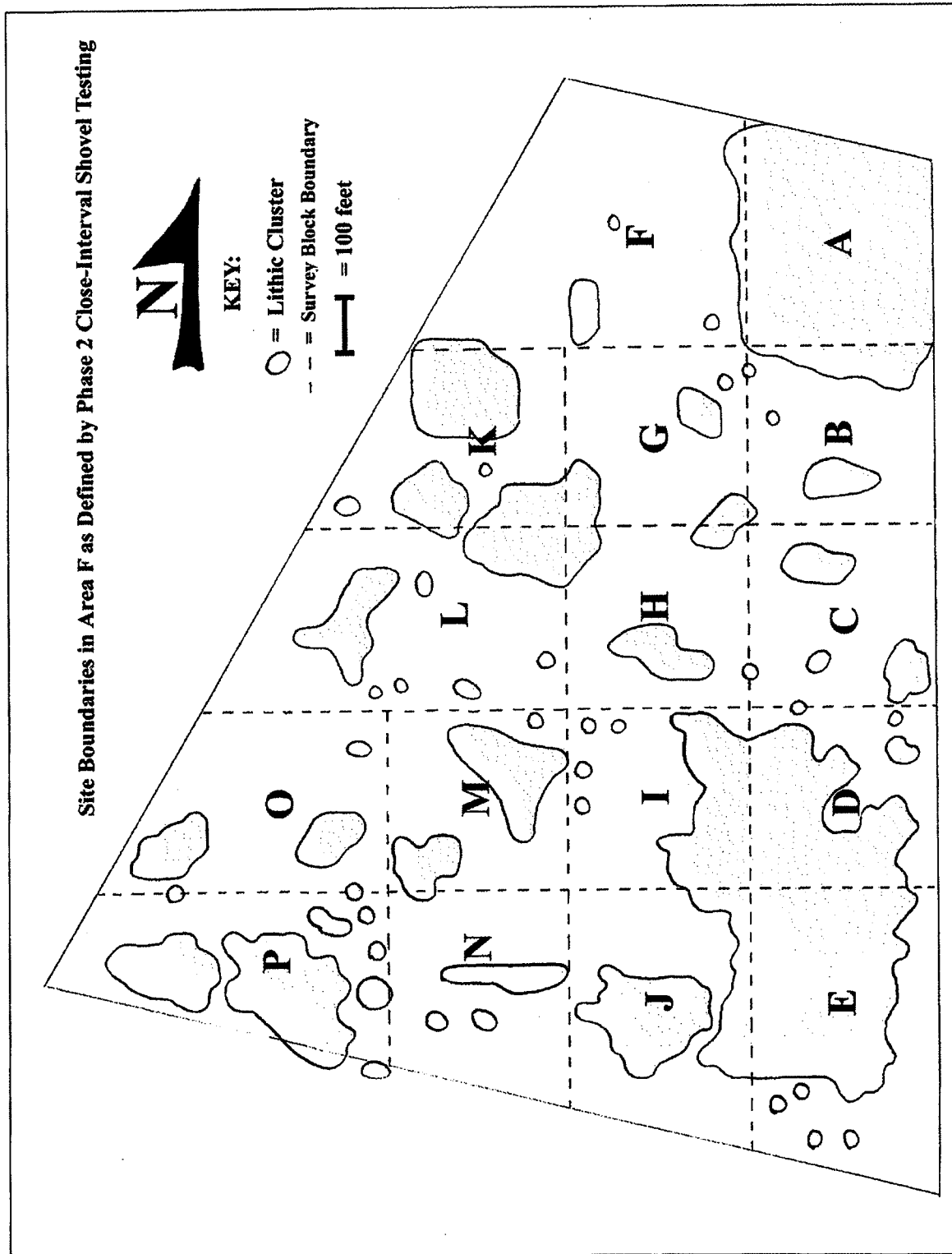




**Figure 1. Positive Phase 1 Shovel Tests and Surface Finds in Area F.**



**Figure 2. Positive Phase 2 Close-Interval Shovel Tests in Area F.**



**Figure 3. Clusters of Positive Close-Interval Shovel Tests in Area F.**

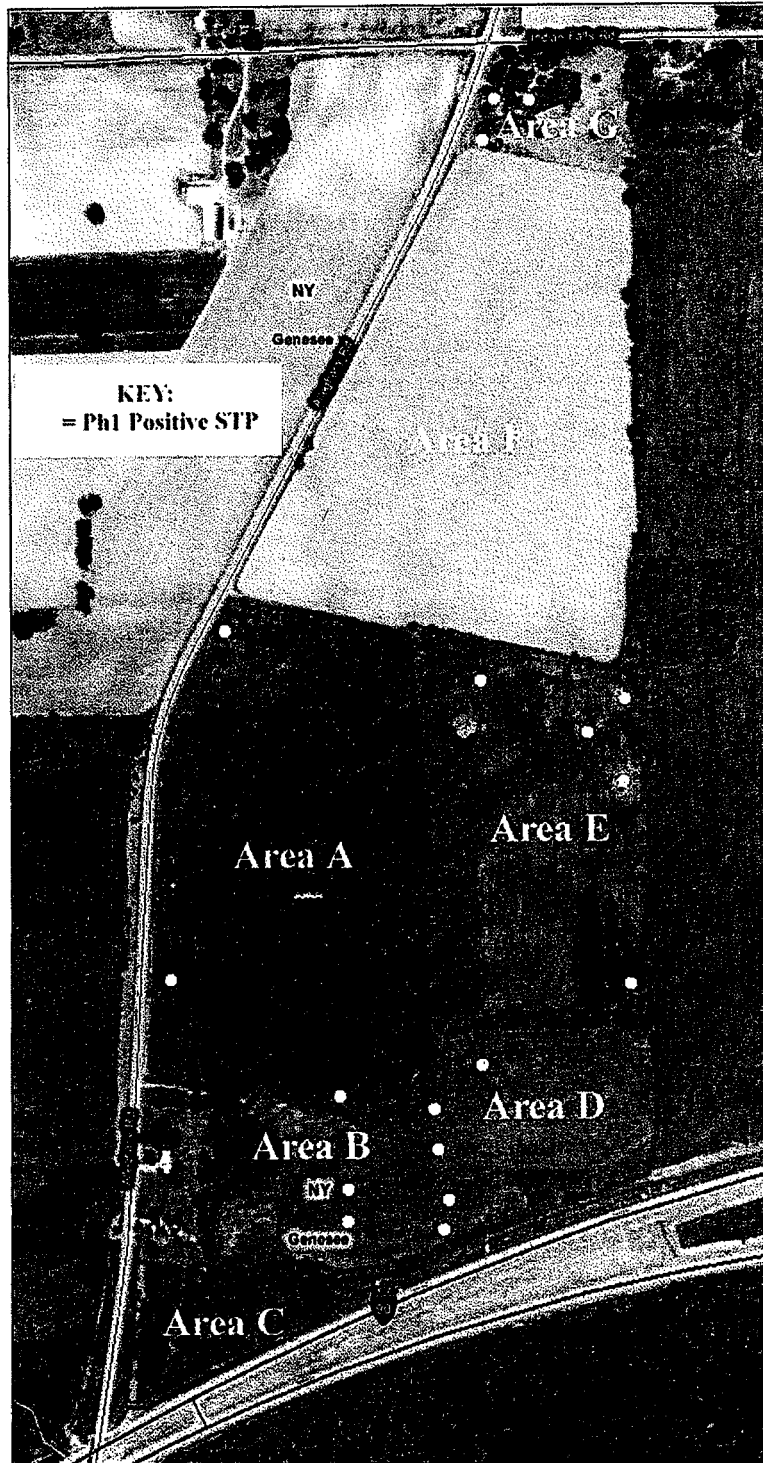
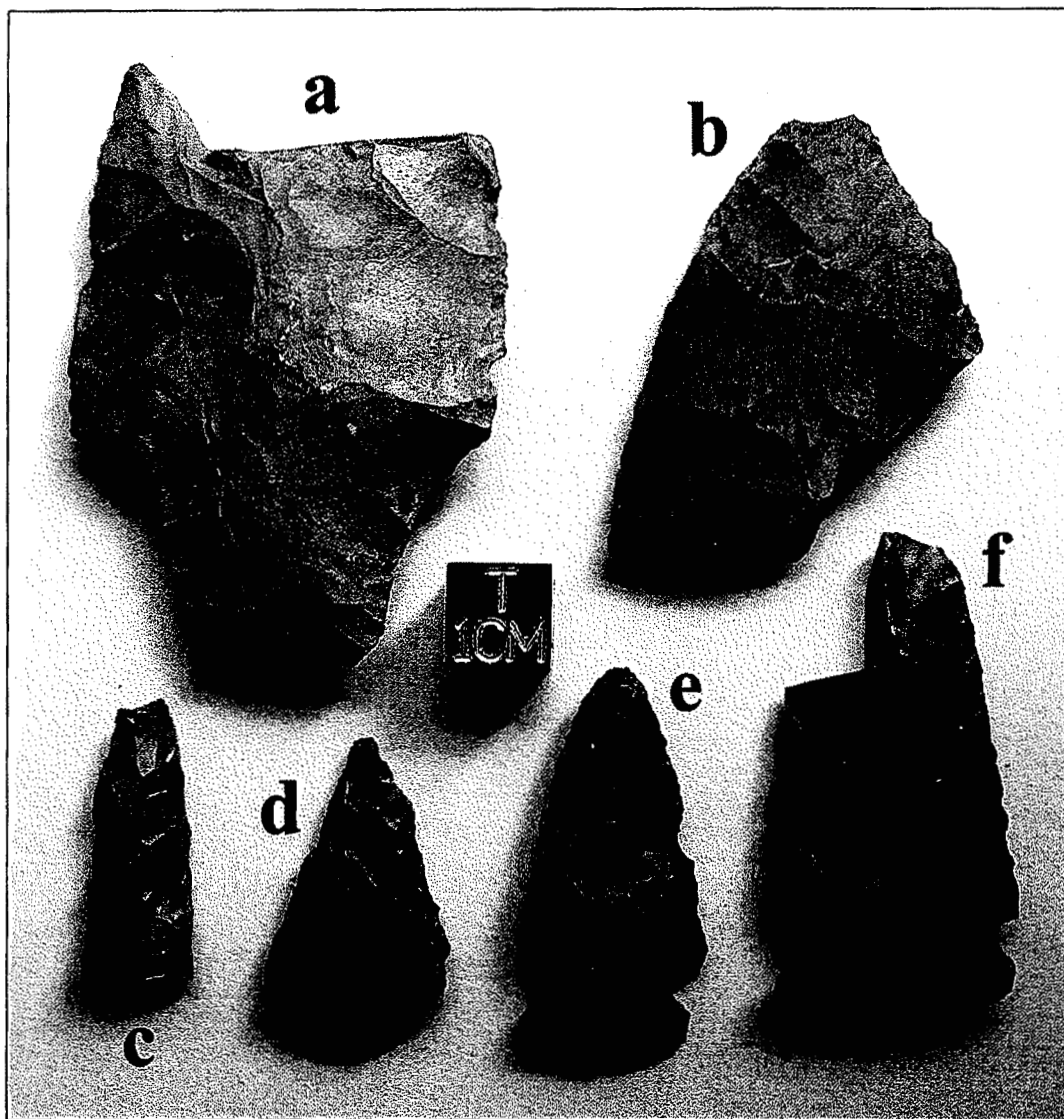


Figure 4. Positive Phase 1 Shovel Tests outside Area F.



**Figure 5.** Tools from Phase 1 and Phase 2 investigations.

**KEY:**

- a. Genesee Point fragment – Area A (Phase 1)
- b. Genesee-like distal biface fragment – Area D (Phase 2)
- c. Drill fragment – Area E (Phase 2)
- e. Meadowood Point – Area E (Phase 2)
- f. Meadowood Point Fragment – Area A (Phase 1)



**Repository Agreement:**

**Indian Falls Precontact Loci  
Proposed Western New York National Cemetery  
1232 Indian Falls Road  
Town of Pembroke, Genesee County, New York  
OPRHP No. 12PR2608**

**Issued to:** Council of Chiefs  
Tonawanda Seneca Nation

**Effective Date:** March 28, 2013

The Council of Chiefs, Tonawanda Seneca Nation (TSN) agrees to serve as a repository of the artifact collection and associated documentation resulting from the archaeological study conducted for the Western New York National Cemetery project, located at 1232 Indian Falls Road, Town of Pembroke, Genesee County, New York (OPRHP No. 12PR2608). The TSN will provide for the professional care and management of the artifacts and associated documentation deposited under this agreement. The transfer of the assemblage is considered a donation, as the collection will be permanently curated with the TSN.

Curation of artifacts requiring special environmental conditions, such as waterlogged materials, or particularly fragile or unstable materials will be discussed with the TSN prior to submittal. All materials submitted to the TSN for curation will be prepared in accordance with the procedures outlined in *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* as required by the Office of Parks, Recreation, and Historic Preservation and in accordance with the New York Archaeological Council specifications (NYAC 1994).

\_\_\_\_\_  
Chief Roger Hill  
Council of Chiefs  
Tonawanda Seneca Nation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Commonwealth Cultural Resources Group, Inc.  
Depositor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property/Artifact Owner

\_\_\_\_\_  
Date

Main office 2530 Spring Arbor Road, Jackson, MI 49203  
Minnesota office 1298 Yukon Court North, Golden Valley, MN 55427  
New York office 189 McKinley Avenue, Buffalo, NY 14217  
Wisconsin office 8669 North Deerwood Drive, Milwaukee, WI 53209  
ccrginc.com

(517) 788-3550 • fax (517) 788-6594  
(612) 812-5478 • fax (763) 545-8167  
(716) 510-9115  
(414) 446-4121 • fax (414) 446-4325

## ACCESS AGREEMENT

### PROPERTY ACCESS AGREEMENT

This Property Access Agreement ("Agreement") is made and entered into this 5<sup>th</sup> day of July, 2012 by and between Estate of Leroy Veenendaal who has address of 104 Bank Street, Batavia, NY 14020 (Owner") and the U. S. Department of Veterans' Affairs, a federal agency with an address of 810 Vermont Ave., Washington, DC 20420 ("Government").

Whereas, the Owner is the owner of certain real estate, consisting of approximately 132.5 acres of land, with improvements located thereon, situated in the State of New York in Genesee County, with an address of 1232 Indian Falls Road, Pembroke, New York, (hereinafter the "Property").

Whereas, Government has requested permission from Owner to enter the Property to appraise the value of the Property, to perform surveys, and to conduct engineering tests and studies, make test borings, and carry out such other exploratory investigations (collectively, the "Due Diligence") as may be reasonably necessary to complete the due diligence investigations of the Property.

Whereas, Owner is willing to give Government permission to enter the Property for the purpose of performing due diligence activities.

NOW, THEREFORE, in consideration of the foregoing, certain valuable non-monetary consideration, and of agreements hereafter contained, the Owner hereby grants to Government a license to enter the Property subject to terms and conditions set forth herein.

1. Purpose of Entry. The Government by its duly authorized officers, employees, agents and duly authorized employees of its contractors and subcontractors, may enter the Property at any reasonable time during the Term (as defined below) of this Agreement, as hereinafter described, solely for the purpose of performing due diligence activities.

2. Government's Responsibilities. Government shall be responsible for all costs associated with all such activities and shall leave the Property in the condition in which Government or Government's contractors, agents or representatives found it. Government shall not permit any liens to attach to the Property by reason of the exercise of Government's rights hereunder. All tools, equipment, buildings, improvements, and other property taken upon or placed upon the land by Government shall remain the property of Government and must be removed by Government prior to the expiration of this Agreement.

3. Term. The term of this license shall commence upon the date of execution of this Agreement and shall expire on February 15, 2013 (the "Term") except if a subsequent agreement between the parties respecting an offer by the Owner to sell the Property to the Government is accepted by the Government then the term of this license MAY BE EXTENDED as set forth in the subsequent agreement.

4. Compliance with Law. Government shall perform due diligence activities at Government's expense and in compliance with all applicable laws, ordinances and regulations and obtain at Government's own expense all permits, licenses, certificates and approvals required to perform due diligence activities.

5. Notice to Owner. At least five (5) business days prior to commencing Due Diligence, Government shall provide the Owner with notice of the commencement, and shall include a brief description and an estimated schedule for completion.

6. Security of Site. The Due Diligence shall include reasonable security measures, to minimize the risk of property damage or bodily injury at or in the vicinity of the site as the result of due diligence investigations.

7. Condition of Site. Government shall repair any damage to the Property caused by performing due diligence activities and shall leave the Property in substantially the same condition as existed when the Government entered the Property.

8. Insurance. Government is a self-insured instrumentality of the United States of America. Government's contractors and any and all subcontractors (hereinafter contractors) shall obtain at their own cost and expense, and keep in full force and effect, during the term of their access upon the Property, a comprehensive general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, death and property damage arising out of any one occurrence, protecting the Owner against any and all claims for bodily injury, death or property damage arising directly or indirectly from Government's use of the Property. Such policy or policies shall name the Owner as an additional insured. The policy or policies required hereunder shall be issued by insurance companies qualified to do business in the state and such policy or policies shall provide at least twenty (20) days' notice to the Owner before cancellation or material modification. The Government's contractors shall deliver to the Owner certificates of such insurance evidencing the coverage in force as of the commencement date of this Agreement, as well as any replacement certificates issued during the term of this Agreement.

9. Owner's Representation. Owner hereby represents and warrants that it is the owner of the Property and has the right to grant the Government permission to enter upon the property and perform Due Diligence.

10. Termination. The license granted pursuant to this Agreement may be terminated by Owner or Government by providing written notice to the other party. Upon any such termination, the Government shall have continued access to the Property for a reasonable and sufficient period of time to permit Government to complete any necessary repairs as set forth in Paragraph 7 of this Agreement.

11. Notices. Any notice permitted or required to be given under this Agreement shall be in writing and shall be deemed to be duly given if delivered by certified mail, return receipt requested, to the party entitled to such notice as set forth hereinabove, with a copy to:



For the Government: Director, Real Property Service  
Department of Veterans Affairs  
Real Property Service (003C1E)  
810 Vermont Ave NW  
Washington, DC 20420  
Jessica.Kaplan@VA.gov

With a copy to: Gary Rothfeld  
Realty Specialist  
Real Property Services  
Office of Construction and Facilities Management  
Department of Veterans Affairs  
425 I Street, NW  
Room 6W219A  
Washington, DC 20001  
(202) 632-55-11  
Gary.Rothfeld@va.gov

AND

Attn: Marion (Lee) Veenendaal  
With a copy to his attorney, David Metzler, Esq.  
104 Bank Street  
Batavia, NY 14020  
Tel: 585-343-3090  
Email rmglaw3@verzion.net

12. Third Parties. The license granted to Government under this Agreement is a personal privilege of Government and shall not be transferred or assigned except as provided in Paragraph 1 hereof. Nothing in this Agreement, whether express or implied, is intended to relieve or discharge the obligation or liability of any third persons to either party to this Agreement, nor will any provision give any third persons any right of subrogation or action over against either party to this Agreement.

13. Applicable Law; Entire Agreement. This Agreement shall be construed and enforced in accordance with and governed by the laws of the United States of America. The terms and conditions of this Agreement, together with the terms and provisions of all documents referred to herein, constitute the full and entire Agreement between the parties affecting the rights and obligations contained herein. No other agreement or understanding concerning the same has been entered into or will be recognized. Neither party has made inducements nor representations to the other except as expressly stated in

this Agreement. No amendments or modifications of this Agreement shall have any force or effect without the written consent of both parties.

Notwithstanding anything in this Agreement, any provision that purports to assign liability to the United States Government shall be subject to and governed by Federal law, including but not limited to, the Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613); the Anti-Deficiency Act (31 U.S.C. Sections 1341 and 1501); and the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq.).

14. Counterparts. This Agreement may be executed in counterparts, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof; each counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

WITNESSES:

Mary Ellen Wilby  
NAME (print): Mary Ellen Wilby

Michael J. [Signature]  
NAME (print): Michael J. [Signature]

OWNER:

Estate of Leroy  
Veenendaal

By:

[Signature]  
Marion (Lee) Veenendaal, Executor of  
the Estate

Date: 8/31/12

WITNESSES:

[Signature]  
NAME (print): DAVID POLAK

NAME (print): \_\_\_\_\_

GOVERNMENT:

DEPARTMENT OF VETERANS  
AFFAIRS

By:

[Signature]  
Name: \_\_\_\_\_

(CFM)

AMENDMENT TO PROPERTY ACCESS AGREEMENT

This AMENDMENT TO PROPERTY ACCESS AGREEMENT ("Amendment") is entered into as of this 13 day of September, 2013, by and between Estate of Leroy Veeneidaal, with an address of 104 Bank Street, Batavia, NY 14020 ("Owner") and THE UNITED STATES OF AMERICA FOR AND ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS, a Federal agency ("Government").

Witnesseth:

WHEREAS, the parties entered into a Property Access Agreement dated September 11, 2012 ("Agreement"); and

WHEREAS, the Agreement expired on February 15, 2013 as described in paragraph 3 of the Agreement; and

WHEREAS, following the expiration of the Agreement, Government continued to access the Property as provided in the Agreement with no objection by Owner; and

WHEREAS, Government intends to continue due diligence activities on the Property as described in the Agreement in an effort to purchase the Property; and

WHEREAS, the parties desire to amend paragraph 3 of the Agreement to provide that the Agreement shall expire on December 31, 2013.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. The expiration of the Agreement, noted in Paragraph 3, is hereby amended to be December 31, 2013.
2. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

WITNESSES:

OWNER:

Estate of Leroy Lou Veeneidaal

Eric Canolle  
Print Name: Eric Canolle

By: Marion L. Veeneidaal  
Marion (Lee) Veeneidaal  
Executor of the Estate

GOVERNMENT:

U.S. DEPARTMENT OF VETERANS' AFFAIRS

Amanda Wehner  
Print Name: Amanda Wehner

By: Jessica L. Kaplan  
Jessica L. Kaplan  
Director, Real Property Service

## **Attachment 5**

**By this attachment, the Parties to the MOA incorporate by reference the 2002 Haudenosaunee Policies and Practices, attached, which lists Haudenosaunee sacred objects and provides background information regarding Haudenosaunee cultural practices.**

**Pursuant to the protocols outlined in the 2002 Haudenosaunee Policies and Practices, the parties agree that:**

**In the event Medicine Masks, Haudenosaunee Sacred Objects, or Human Remains are found on the site by NCA or any entity designated by NCA to conduct work or other activities on the site, such work will immediately cease and NCA or its designee will promptly contact the Nation. (See contact below). The Nation and NCA will work together to determine what steps must be taken, bearing in mind the fundamental principle that human remains should not be disturbed and that, in the event such disturbance is unavoidable, no human remains should be removed from the site without proper Haudenosaunee cultural protocols.**

**Contact:**

**Chief Roger Hill: 716-542-4244 (office)**

## **Part 4 Haudenosaunee Policies and Practices Today**



### **4.1 Haudenosaunee Cultural Properties**

Haudenosaunee culture shapes the behavior of its' members in deep and persistent ways, some times, even beyond the conscious control of the individual. It is a way of being, of acting, of reacting. Culture, therefore, is a way of thinking, a way of feeling, but also an intuitive way of problem solving and a unique way to express oneself in the world. The Haudenosaunee call all of this Ongwehoweka meaning all things that pertain to the way of life of the Original People.

Each generation defines for itself what its culture is, and these definitions may be different across the generations. Certainly there will be some underlying foundations that remain, but there are also new ways to express cultural values.

Identifying cultural properties for the Haudenosaunee must be done in a manner that is consistent with our culture. It must consider what is important to the Haudenosaunee. It is less about identifying a building or monument and more about identifying locations that have spiritual, cultural, and political significance to the Haudenosaunee. Appendix F is a listing of types of cultural properties that is of interest to the Haudenosaunee.

### **4.2 Haudenosaunee Policy on Human Remains**

#### **The Haudenosaunee Beliefs**

We have been taught that we bury our dead into the ground so that their bodies can become part of the sacred Earth. We believe that we come from the Mother Earth and that the human remains that rest within the Earth are an important spiritual connection to the spirit of the Earth. The Earth is enriched by the dead as our flesh becomes part of the soil. The souls of the dead have a path of destiny that they must follow. We refer to this as their journey after life. In this way, we feel that the dead are around us and protects us as we hold our ceremonies or dances. We believe

that the dead have power and it is dangerous to neglect the spiritual needs of the dead. The protection of the human remains and associated graves, sacred burial sites and related objects from the graves of the Haudenosaunee are the responsibility of each generation of Chiefs, Clan mothers, and Faithkeepers. We believe that the remains, the associated burial objects and the actual soil in which they rest is sacred. There is no acceptable excuse to justify the desecration of this sacred burial.

### **Violation of our Spiritual Rights**

Removing the remains from their eternal resting place is a great desecration to both the dead and the living. The disturbance, destruction, and theft of the dead is a violation of the religious and spiritual welfare of the Haudenosaunee. As long as the human remains are disturbed, there will be spiritual consequences to our people. The desecration of the graves of our ancestors, no matter what the age of the burial, is a violation of our religious freedom. Permits issued by the State of New York or any other local government, to allow anyone to violate the sanctity of the graves of our ancestors can no longer be tolerated. In the past, our ancestors buried many objects along with the body with the belief that in the afterlife, you will need all of those things that you need in this life. All types of objects have been associated with burials, including decorated clothing, glass beads, shell beads, silver combs, tools and weapons, ceramic and metal cooking pots, wampum belts, strings of wampum, and a variety of personal items. The removal of these objects from the grave is a theft from the dead.

### **Violation of our Human Rights**

The remains of our deceased relatives are not "archaeological resources" that are subjects of study. They are human beings who one lived on this land. They had real lives and feelings. They had spiritual expectations about their final resting places. To look at Native Americans as objects rather than as human beings is a gross violation of our human rights. All graves and burial sites, Native or other races, deserve respect. Our dead relatives deserve the basic human right to a dignified burial. We do not believe in the use of permanent headstones to mark graves of our ancestors and state law makes a difference between cemeteries and unmarked burials. Our burial sites deserve to be considered hallowed ground, whether they are marked or not. There has been double standard in dealing with our people and non-Native remains. Non-Native grave sites are often afforded more protection than Native burials. Despite the efforts of state agencies to identify Native grave locations, construction permits are issued nonetheless. Our dead relatives deserve the same right to an eternal resting place as all other races and religions.

### **Violation of our Treaty Rights**

The unearthing of the remains of our ancestors from their eternal resting place is also a violation of promises made to the Haudenosaunee under the terms of the Canandaigua Treaty of 1794. By

that treaty, the United States, including the State of New York, promised not to "disturb" the Haudenosaunee in the free use and enjoyment of their lands. We have been on record protesting the desecration of our graves. The continual destruction of Native graves, the stealing of Native remains and the looting of burial objects causes us serious mental, emotional, and spiritual harm. Our people are continually upset by these events and we have been forced to adjust our spiritual traditions to accommodate outside developments. The desecration of the graves violates the mutual respect promised by the United States as they pledged a firm and permanent friendship between our peoples. The treaty also promised to remove the cause of complaint that upsets our peace. We therefore make it clear that the desecration of the graves of our ancestors causes great harm to our people and the United States and State of New York have an obligation to protect the general welfare of our people as promised in the legally binding treaties.

#### **4.3 Past Burial Practices and Sites**

In ancient days, the dead were handled differently than today. When people died, their bodies were wrapped in hides and placed on wooden scaffolds. Eventually, the flesh would decay and when the villages moved to a new location, the bones of the dead would be removed from the scaffolds, cleaned and re-wrapped. The small bundles of bones would then be buried in group graves called ossuaries. Some bodies were buried in single graves, with the body placed in a flexed position, as if sitting on the ground with the knees folded up and arms crossed over the knees.

In the late 1500s, fifty percent of Seneca graves contain artifacts showing the rituals of burial had become more complex. By the early 1600s, graves were oval or circular in shape. The grave was lined with furs, bark or woven grass mats. Bodies placed in a flexed position, with the head to the west side of the grave. The body was then covered with bark and field stones. By 1660, sixty percent of Seneca graves had brass trade items and fifty percent had iron trade items.

Wray and Schoff (1953) and Wray (1973) note that the custom of giving the dead offerings continued and probably used up their stock of trade goods as fast as it was acquired. After 1700, there appears to be a mixture of earlier and later bead types found on sites, which indicates that cemeteries were being looted at that time and the old bead types were coming into circulation. By 1687, the extended form of burial was slowly being adopted and the graves were becoming progressively shallower until by 1779, they were barely below plow depth.

Wooden caskets of pine boards with a few iron nails were beginning to be used by 1700 and the burials were made in rows instead of circular plots of scattered graves. As communities were breaking up and families began living in individual cabins, the burial plots became much smaller and more numerous with each family having their own plot behind their cabin. Burial offerings were often placed beside the body with food at the feet.

The goods included in burials during this time were mostly manufactured items with little of native make, replaced by crockery, pails, and iron tools of the European trader. The bodies would be dressed in their best clothes and would have been accompanied with food offerings in ceramic pots, tools and weapons, including flintlocks, necklaces of shell, silver ornaments on the clothing and specially prepared moccasins. All that was needed in this life was thought to be needed in the after life.

The bodies would be placed at the western end of the grave. The body of the deceased is now dressed in traditional style clothing, but no glass beads or metal is placed on the body. Glass and metal last a long time, even when buried, so they are not placed in the casket. Cloth, ribbon, feathers, or wood items are still placed on the body, as they will decay through time.

#### **4.4 Haudenosaunee Sacred Objects**

Since 1974, the Grand Council of the Haudenosaunee identified the following objects as being considered sacred and part of our national cultural patrimony. This is the underlying basis of our claims that have been made for the past twenty-eight years:

- 1) Wooden medicine masks, small and large
- 2) Corn husk masks, small and large
- 3) Snowsnakes, short and long
- 4) Condolence canes
- 5) Wampum
- 6) Peach stone game bowls and game dice
- 7) Wooden lacrosse sticks used in medicine games
- 8) Turtle rattles of all sizes
- 9) Ceremonial songs, speeches and prayers
- 10) Lacrosse sticks
- 11) Ceremonial clothing
- 12) Ceremonial dance instruments
- 13) Medicine objects and charms

In addition, a number of objects have been documented to have been included in graves of the Haudenosaunee, at one time or another.

- a) Ceramic pots
- b) Metal kettles
- c) Shell, stone or glass beads
- d) Wood spoons, ladles, or serving trays
- e) Wampum beads, ornaments or belts



- f) Metal tools, hatchets, guns, axes or knives
- g) Baskets
- h) Antler hair combs and carvings
- i) Manufactures hair combs
- j) Clay or manufactures pipes
- k) Silver and pewter ornaments

#### **4.5 Haudenosaunee Policy on Medicine (False Face) Masks**

The Grand Council of the Haudenosaunee issued, in 1995, this policy regarding all medicine masks of the Haudenosaunee.

##### **Medicine Societies**

Within the Haudenosaunee there are various medicine societies that have the sacred duty to maintain the use and strength of special medicines, both for individual and community welfare. A medicine society is comprised of Haudenosaunee who have partaken of the medicine and are thereby bound to the protection and perpetuation of the special medicines.

Such medicines are essential to the spiritual and emotional well-being of the Haudenosaunee communities. The medicine societies are a united group of individuals who must uphold and preserve the rituals that guard and protect the people, and the future generations.

Among these medicine societies are those that utilize the wooden masks and corn husk masks, which represent the shared power of the original medicine beings. Although there are variations of their images, all the masks have power and an intended purpose that is solely for the members of the respective medicine societies. Interference with the sacred duties of the societies and/or their masks is a violation of the freedom of the Haudenosaunee and does great harm to the welfare of the Haudenosaunee communities.

##### **Status of Masks**

All wooden and corn husk masks of the Haudenosaunee are sacred, regardless of size or age. By their very nature, masks are empowered the moment they are made.

The image of the mask is sacred and is only to be used for its intended purpose. Masks do not have to be put through any ceremony or have tobacco attached to them in order to become useful or powerful. Masks should not be made unless they are to be used by members of the medicine society, according to establish tradition.

### **Sales of Masks**

No masks can be made for commercial purposes. Individuals who make masks for sale or sell masks to non-Indians violate the intended use of the masks, and such individuals must cease these activities as they do great harm to the Haudenosaunee. The commercialization of medicine masks is an exploitation of Haudenosaunee culture.

### **Authority Over Medicine Masks**

Each Haudenosaunee [community] reservation has a medicine mask society that has authority over the use of masks for individual and community needs. Each society is charged with the protection of their sacred masks and the assurance of their proper use.

The Grand Council of Chiefs has authority over all medicine societies and shall appoint individual leaders or medicine societies as necessary. However, no individual can speak or make decisions for medicine societies or the displacement of medicine masks. No institution has the authority over medicine masks, as they are the sole responsibility of the medicine societies and the Grand Council of Chiefs.

### **Exhibition of Medicine Masks**

The public exhibition of all medicine masks is forbidden. Medicine masks are not intended for everyone to see and such exhibition does not recognize the sacred duties and special functions of the masks.

The exhibition of masks does not serve to enlighten the public regarding the culture of the Haudenosaunee as such an exhibition violates the intended purpose of the mask and contributes to the desecration of the sacred image. In addition, information regarding medicine societies is not meant for general distribution.

The non-Indian public does not have the right to examine, interpret, or present the beliefs, functions, and duties of the secret medicine societies of the Haudenosaunee. The sovereign responsibility of the Haudenosaunee over their spiritual duties must be respected by the removal of all medicine masks from exhibition and from access to non-Indians.

Reproductions, castings, photographs, or illustrations of medicine masks should not be used in exhibitions, as the image of the medicine masks should not be used in these fashions. To subject the image of the medicine masks to ridicule or misrepresentation is a violation of the sacred functions of the masks.

The Council of Chiefs find that there is no proper way to explain, interpret, or present the significance of the medicine masks and therefore, ask that no attempt be made by museums to do so other than to explain the wishes of the Haudenosaunee on this matter.

#### **Return of Medicine Masks**

All Haudenosaunee medicine masks currently possessed by non-Indians, including Museums, Art Galleries, Historical Societies, Universities, Commercial Enterprises, Foreign Governments, and Individuals should be returned to the Grand Council of Chiefs of the Haudenosaunee, who will ensure their proper use and protection for the future generations.

There is no legal, moral, or ethical way in which a medicine mask can be obtained or possessed by a non-Indian individual or institution, as in order for a medicine mask to be removed from the society it would require the sanction of the Grand Council of Chiefs. This sanction has never been given. We ask all people to cooperate in the restoration of masks and other sacred objects to the proper caretakers among the Haudenosaunee. It is only through these actions that the traditional culture will remain strong and peace will be restored to our communities.

#### **4.6 Haudenosaunee Standing Committee on Burial Rules and Regulations**

Our Nations operate their repatriation programs under the auspices of the Haudenosaunee. The Grand Council, in accordance with the Great Law of Peace and based on Haudenosaunee protocols and cultural beliefs established the Haudenosaunee Standing Committee on Burial Rules and Regulations (HSCBRR). The HSCBRR has been tasked to work with the Nations of the Haudenosaunee to develop protocols and procedures for a coordinated approach related to burial remains.

The HSCBRR works in cooperation and collaboration with the other nations and communities on both the United States and Canadian side of the border. Through our own internal governance, we then decide where repatriated objects will be assigned. In terms of cultural patrimony, these objects are held on behalf of all of the Haudenosaunee, no matter where they reside. In reality, we view all of our aboriginal territory on both sides of the U.S. - Canada boundary line as one land and we view all of the Haudenosaunee as one people.

#### 4.7 Procedures for Handling Discovery of Human Remains

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