



**U.S. ARMY CORPS OF ENGINEERS  
NEW ENGLAND DISTRICT**  
Total Environmental Restoration Contract  
USACE Contract Number: DACW33-03-D-0006  
Task Order No. 0008

**PLANS AND PROCEDURES  
ADDRESSING  
UNANTICIPATED DISCOVERIES  
OF CULTURAL RESOURCES  
AND HUMAN REMAINS**

New Bedford Harbor Superfund Site  
New Bedford, MA

September 2010

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## **1.0 INTRODUCTION**

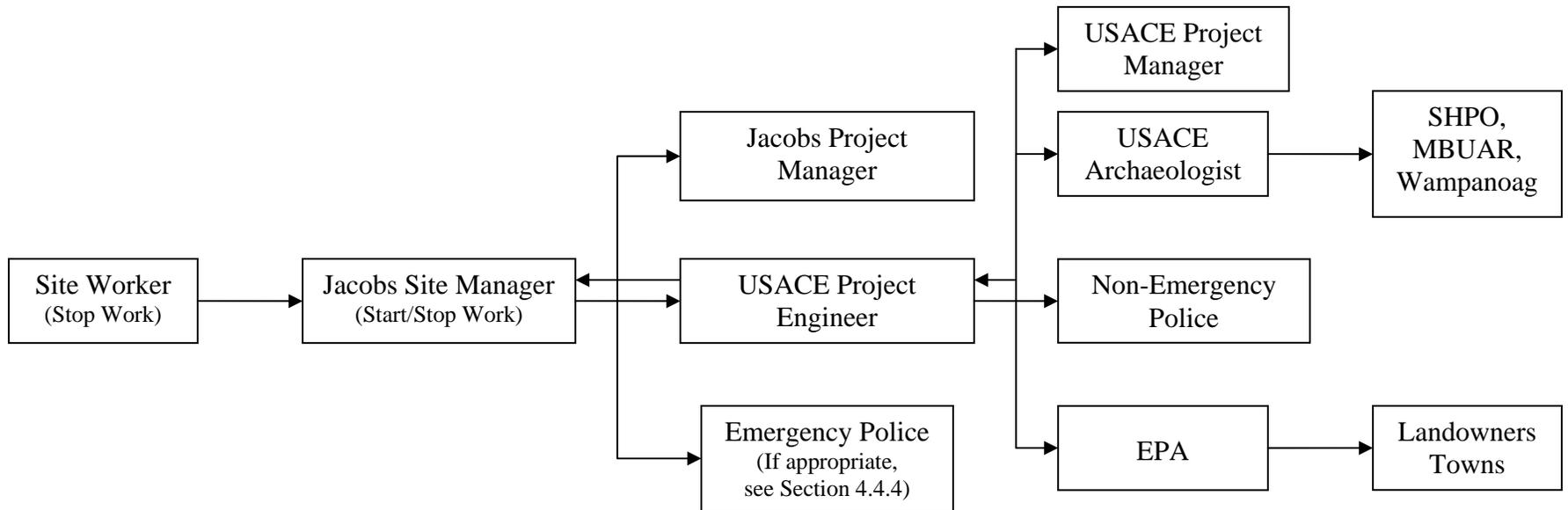
The United States Army Corps of Engineers (USACE) has contracted with Jacobs Engineering Group (Jacobs) under the USACE Total Environmental Restoration Contract (TERC) No. DACW33-94-D-0002 to provide engineering and environmental compliance support during implementation of the selected cleanup remedy for New Bedford Harbor. This plan has been written to assist the U.S. Environmental Protection Agency (EPA) in its compliance with the National Historic Preservation Act of 1966, as amended; Native American Graves Protection and Repatriation Act (NAGPRA); laws of the Commonwealth of Massachusetts pertinent to discoveries of unmarked burials; and pertinent protocols followed in New Bedford, Acushnet, and Fairhaven, Massachusetts to address the unanticipated discovery of historic properties or human remains during remediation activities. This document outlines the procedure EPA and USACE will follow to prepare for and address any unanticipated discoveries. It also provides guidance to EPA and USACE personnel and their consultants as to the proper procedure to follow in the event that an unanticipated discovery of historic properties or human remains is made during remediation. A summary of the lines of communication that will generally be followed is illustrated in [Figure 1](#). A contact list is provided below in Section 5.0.

## **2.0 TRAINING AND ORIENTATION**

The Jacobs Site Manager will be responsible for advising Jacobs and Severson Environmental Services (SES) project employees and construction contractor personnel on the procedures to follow in the event that an unanticipated discovery is made. Training will occur as part of the pre-construction on-site training program for foremen, company inspectors, and construction supervisors. The procedures and notifications described below are summarized in the attached flow chart. The Site Manager will advise all operators of equipment to:

- 2.1 Stop work immediately if they observe any indications of the presence of cultural materials, animal bone, or possibly human bone.**
- 2.2 Contact the Site Manager (or the Jacobs Project Manager if the Site Manager is not available) as soon as possible.**
- 2.3 Comply with unanticipated discovery procedures.**
- 2.4 Treat human remains with dignity and respect.**

## Lines of Communication Unanticipated Finds Plan and Procedures



Site workers as designated by Site Manager have stop work authority.

Only the Site Manager or his designee has start work authority.

Lines shown denote minimum notification requirements and do not preclude other correspondence.

Where approval or consensus is required, reverse correspondence to same contacts (where appropriate) will apply.

EPA = Co-Remedial Project Managers

SHPO = State Historic Preservation Office

MBUAR = Massachusetts Board of Underwater Archaeological Resources

Wampanoag = Wampanoag Tribes of Aquinnah and Mashpee

<b>New Bedford Harbor Superfund Site</b>
 Jacobs Engineering Figure 1 Lines of Communication Unanticipated Finds Plan and Procedures

### **3.0 PROCEDURE WHEN CULTURAL MATERIALS ARE OBSERVED**

Cultural materials include man-made objects (prehistoric and historic period items) and features [e.g., walls constructed of natural materials (such as cobbles), paved surfaces (such as cobbles, brick, or other material), or other remnants of cultural activity]. Cultural materials that may be of concern to the project would most likely pre-date 1950 and might be recognized by the layperson as non-modern debris (e.g., early historic period artifacts and/or Native American stone or ceramic artifacts). Exceptions would be discovery of soda bottles, golf balls, or other modern artifacts that are of less important historical significance.

#### **3.1 Field Personnel or Person who discovers the possible cultural material will notify co-workers to temporarily stop work in the immediate vicinity of the observed cultural materials.**

3.1.1 Notify the Site Manager of the discovery.

3.1.2 If the Site Manager believes that an unanticipated discovery has been made:

3.1.2.1 Site Manager directs all ground-disturbance and or harbor bottom-disturbance activities within 250 feet of the discovery to cease.

3.1.2.2 Site Manager will protect and secure the evidence in place by delineating the find with flagging, marking, or fencing.

#### **3.2 Minimize movement of vehicles and equipment in area immediately surrounding the discovery.**

#### **3.3 Site Manager will immediately notify the Jacobs Project Manager and the USACE Project Engineer and Emergency Police if appropriate.**

#### **3.4 The USACE Project Engineer will notify the USACE Project Manager, the USACE-Archaeologist (USACE-ARCH) and the EPA Remedial Project Managers (EPA). The USACE-ARCH will notify the State Historic Preservation Office (SHPO), the Massachusetts Board of Underwater Archeological Resources (MBUAR), and the Wampanoag Tribes of Aquinnah and Mashpee. The EPA will notify landowners and town officials.**

#### **3.5 Within 24 hours, if possible, the USACE-ARCH will examine the location of the discovery, accompanied by the Site Manager. Digital photographs of the find may initially be provided to the USACE-ARCH who will determine if an immediate trip to the location will be necessary.**

- 3.5.1 If the USACE-ARCH determines that the discovery is not a significant cultural resource, the USACE-ARCH will immediately advise the USACE Project Engineer. The USACE Project Engineer will notify the Jacobs Project Manager, the Site Manager, and the EPA. The USACE-ARCH will notify the SHPO, MBUAR, and the Wampanoag. The Site Manager will remove the stop work order. If possible, the USACE-ARCH will submit a memo including photographs of the discovery site to the USACE Project Engineer describing the find and conclusion.
- 3.5.2 If the USACE-ARCH determines that the discovery is a significant cultural resource, the USACE-ARCH will immediately advise the USACE Project Engineer. The USACE Project Engineer will notify the Jacobs Project Manager, the Site Manager, and EPA. The USACE-ARCH will notify SHPO, MBUAR, and the Wampanoag by telephone, with written confirmation by e-mail or overnight mail.

**3.6 Notifications to USACE, EPA, SHPO, MBUAR, and the Wampanoag about observations of cultural material will:**

- 3.6.1 Explain why the archaeologist believes the resource is not significant and request permission from the USACE Project Engineer to provide concurrence that remediation may recommence, or recommend that additional work be conducted to evaluate significance.
- 3.6.2 Describe a scope-of-work for evaluating the significance of the resource and evaluating project effects on it. USACE Project Engineer will request concurrence from EPA, SHPO, MBUAR, and the Wampanoag to authorize the immediate implementation of the work scope.
- 3.6.3 Invite the Wampanoag to observe the implementation of any proposed work should the resource be of Native American or prehistoric origin (while keeping in conformance with project health and safety policies).
- 3.6.4 All work to evaluate significance and project effects will be confined to the project's area of effect.

**3.7 When the evaluation of cultural resources is complete.**

- 3.7.1 USACE-ARCH will notify USACE Project Engineer about the potential significance of the resource. USACE-ARCH will indicate the estimated time that will be required to determine the significance of the unanticipated find. The USACE Project Engineer will discuss this with the USACE Project Manager, the Jacobs Project Manager and the Site Manager.

- 3.7.2 USACE Project Engineer will notify the EPA, SHPO, MBUAR, and the Wampanoag by telephone and report the opinion of the project archaeologist about the significance of the resource.
- 3.7.3 As soon as possible, following the field investigation, the USACE-ARCH will provide USACE Project Engineer with a written letter report describing the results of the determination.
- 3.7.4 If the resource is believed to be significant, the USACE-ARCH will prepare a proposal for data recovery.
- 3.7.5 If the resource is determined not significant, the USACE-ARCH will communicate this to the USACE Project Engineer. The USACE Project Engineer informs the Jacobs Project Manager and the Site Manager that the find is not considered potentially significant. The USACE Project Engineer will inform the EPA, SHPO, MBUAR, and the Wampanoag and will obtain concurrence (with recommendations if appropriate) that work may resume in the area of the find.

**3.8 USACE-ARCH may choose to prepare an analysis of alternatives for data recovery to determine what form of mitigation is preferable.**

- 3.8.1 If an alternative analysis is conducted, the USACE-ARCH will submit the alternatives analysis to the USACE Project Engineer. The USACE Project Engineer will provide the report to the USACE Project Manager, Jacobs Project Manager, EPA, SHPO, MBUAR, and the Wampanoag.
- 3.8.2 If proposed mitigation measures may be carried out without being impeded or affected by remediation, the submittal to the Jacobs Project Manager will be accompanied by a request to the Site Manager that remediation in the area of the discovery be permitted to resume.

**3.9 Upon receipt of authorization from the USACE Project Engineer, implementation of mitigation measures will begin immediately.**

- 3.9.1 USACE-ARCH will advise Site Manager and USACE Project Engineer when mitigation measures have been completed. The Jacobs Site Manager will advise the Jacobs Project Manager of the completed mitigation measures.
- 3.9.2 USACE Project Engineer will advise the EPA, SHPO, MBUAR, and Wampanoag when mitigation measures have been completed.

- 3.9.3 If remediation was not previously resumed, Site Manager will also request authorization from USACE Project Engineer to recommence remediation.
- 3.9.4 USACE-ARCH will submit a summary memo describing the results of mitigation to USACE Project Engineer within 15 days of notification that mitigation fieldwork has been completed.
- 3.9.5 USACE Project Engineer will provide the summary report to the Jacobs Project Manager, EPA, SHPO, MBUAR, and the Wampanoag.
- 3.9.6 If archaeological data recovery is a component of the mitigation plan, a full report, if appropriate, will be submitted by the USACE-ARCH to the USACE Project Engineer and Site Manager in accordance with a schedule to be established in consultation with the USACE Project Manager.
- 3.9.7** Upon receipt and approval of the report, the USACE Project Engineer will provide the report to the EPA, SHPO, MBUAR, and the Wampanoag. The Site Manager will provide the report to the Jacobs Project Manager.

#### **4.0 PROCEDURE WHEN HUMAN REMAINS AND/OR POTENTIALLY HUMAN SKELETAL MATERIALS ARE OBSERVED**

Human remains are physical remains of a human body including, but no limited to, bones, teeth, hair, ashes, and preserved soft tissues (mummified or otherwise preserved) of an individual. Remains may be articulated or disarticulated bones or teeth.

- 4.1 Workers will treat all human remains with dignity and respect.**
- 4.2 Immediately stop work in the vicinity of an unanticipated discovery involving potentially human remains.**
- 4.3 Immediately notify the Site Manager about the find.**
- 4.4 If the Site Manager believes that potential human remains have been found, the Site Manager will stop all ground-disturbance and or harbor bottom disturbance activities within 250 feet of the potential discovery.**
  - 4.4.1 Protect and secure the evidence of the discovery.
  - 4.4.2 Delineate area with flagging, marking, or safety fencing.
  - 4.4.3 Minimize movement by vehicles and equipment in the immediate vicinity of the discovery.

- 4.4.4 If the remains appear to be those of a recently deceased human, the Site Manager will immediately notify the local police by calling 911. In addition, the Site Manager will follow the lines of communication outlined in Section 5.0 below.
- 4.5 Site Manager will immediately notify the USACE Project Engineer. The USACE Project Engineer will notify the USACE Project Manager, the USACE-ARCH and the EPA. The USACE-ARCH will notify the SHPO, MBUAR, and the Wampanoag. The EPA will notify landowners and town officials.**
- 4.6 Within 24 hours of the discovery, if possible, a professional archaeologist (FWENC-ARCH or designee) will examine the discovery to determine if the remains are human and have an archaeological association and, if so, if that association is aboriginal or non-aboriginal.**
- 4.6.1 The services of a physical anthropologist or other qualified professional will be retained if the professional archaeologist is unable to determine if the remains are human.
- 4.7 If skeletal remains are determined not to be human, and there is no significant archaeological context, the individual making the determination will immediately advise the USACE Project Engineer and Site Manager that work may resume. The Site Manager will notify the Jacobs Project Manager that concurrence has been attained. The USACE Project Engineer will notify the USACE Project Manager and the EPA. The USACE-ARCH will notify the SHPO, MBUAR, and the Wampanoag and receive concurrence that work may resume. The Site Manager will notify the construction crew leaders that work may be resumed.**
- 4.7.1 The archaeologist will submit a letter report including photographs of the discovery site to the USACE Project Engineer within 15 business days of the determination.
- 4.7.2 The USACE Project Engineer will forward a copy of the report to the Jacobs Project Manager.
- 4.8 If skeletal remains are not human but are associated with an archaeological site (such as a prehistoric butchering site or kitchen midden), follow the steps described in Section 3.6 through Section 3.9.**
- 4.9 If the skeletal remains are human and not associated with an archaeological context, the individual making the determination will notify the USACE Project Engineer and the Site Manager. The USACE Project Engineer will**

**notify the EPA, the SHPO, MBUAR, and the Wampanoag. The Site Manager will notify the Jacobs Project Manager. The EPA will notify the landowners and town officials. If burial context indicates a crime, then a criminal investigation may ensue.**

4.9.1 If discoveries are made in the towns of New Bedford, Fairhaven, or Acushnet, USACE Project Engineer will call the respective police department(s). Each of the municipality's police departments will call the appropriate medical examiner's office and follow their community's protocol for addressing discoveries of unanticipated human remains.

**4.10 Human remains found in a prehistoric archaeological context will be assumed to be Native American. If Native American human remains are identified (whether or not in an archaeological context), the USACE Project Engineer will immediately notify the EPA, SHPO, MBUAR, and the Wampanoag. The USACE Project Engineer will also notify the non-emergency departments of the local police.**

**4.11 If human remains are present in a Native American archaeological context, the USACE-ARCH and USACE Project Engineer will follow the procedures described in Section 3.5 through Section 3.9, except as follows:**

4.11.1 Notifications to EPA, SHPO, MBUAR, and the Wampanoag will make special note that human remains have been found.

4.11.2 Notifications to the Wampanoag will request that the tribe advise USACE-ARCH about any special desires they have regarding the disposition of the human remains.

4.11.3 Proposals for site evaluation will give special consideration to the fact that human remains are present and:

4.11.3.1 Prohibit intrusive examination of the immediate area of the remains prior to receipt of concurrence from SHPO, MBUAR, the Wampanoag, and a Massachusetts Historical Commission permit-equivalency.

4.11.3.2 Evaluate the potential for the presence of multiple graves and describe procedures for determining if other unidentified graves may be present.

4.11.3.3 Describe efforts made to accommodate the desires of the Indian tribes regarding the treatment of human remains.

- 4.11.4 If USACE-ARCH advises the USACE Project Engineer that the Wampanoag wish to take custody of any human remains and re-inter and them on non-tribal lands, the USACE Project Manager, Jacobs Project Manager and Site Manager will, if requested, will assist in any negotiations between the tribe and the landowner that may be necessary.
- 4.11.5 USACE-ARCH will make a good faith effort to accommodate requests from the Wampanoag that they be present during the implementation of mitigation measures related to human remains.

**4.12 If human remains are present in a non-Native American archaeological context, the procedures described in Section 4.5 through Section 4.10, will be followed except that:**

- 4.12.1 Proposals for site evaluation will give special consideration to the fact that human remains are present (no intrusive examination of the immediate area of the remains; proposal will include an evaluation of the potential for the presence of multiple graves and describe procedures for determining if other unidentified graves may be present).
- 4.12.2 If it is determined by USACE-ARCH, in consultation with SHPO, MBUAR, and the Wampanoag that the associated archaeological site is not eligible for the National Register of Historic Places, and that no mitigative measures are necessary, the respective medical examiner's office will be requested to coordinate with the local coroner and either direct the archaeologist to implement an approved plan for removal of the remains or arrange for alternative appropriate removal of the human remains.

**5.0 NOTIFICATIONS LIST**

***Jacobs Site Manager***

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***Wampanoag Tribe of Aquinnah***

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***Wampanoag Tribe of Mashpee***

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**NON-EMERGENCY POLICE:**

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New Bedford, MA 02740  
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***In Fairhaven:***

Fairhaven Police Department  
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Fairhaven, MA 02719  
Phone: (508) 997-7421  
(non-emergency #)

***In Acushnet:***

Acushnet Police Department  
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(non-emergency #)