

**USACE CONTRACT NO. DACW33-94-D-002  
TASK ORDER NO. 017  
TOTAL ENVIRONMENTAL RESTORATION CONTRACT**

**PLAN AND PROCEDURES  
ADDRESSING  
UNANTICIPATED DISCOVERIES  
OF CULTURAL RESOURCES  
AND HUMAN REMAINS  
NEW BEDFORD HARBOR SUPERFUND SITE  
New Bedford, Acushnet, and  
Fairhaven, Massachusetts  
October 2003**

**Prepared for  
U.S. Army Corps of Engineers  
New England District  
Concord, Massachusetts**



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**Prepared by**

**Foster Wheeler Environmental Corporation  
1000 The American Road  
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**PLAN AND PROCEDURES  
ADDRESSING UNANTICIPATED DISCOVERIES OF CULTURAL  
RESOURCES AND HUMAN REMAINS**

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# PLAN AND PROCEDURES ADDRESSING UNANTICIPATED DISCOVERIES OF CULTURAL RESOURCES AND HUMAN REMAINS

## 1.0 INTRODUCTION

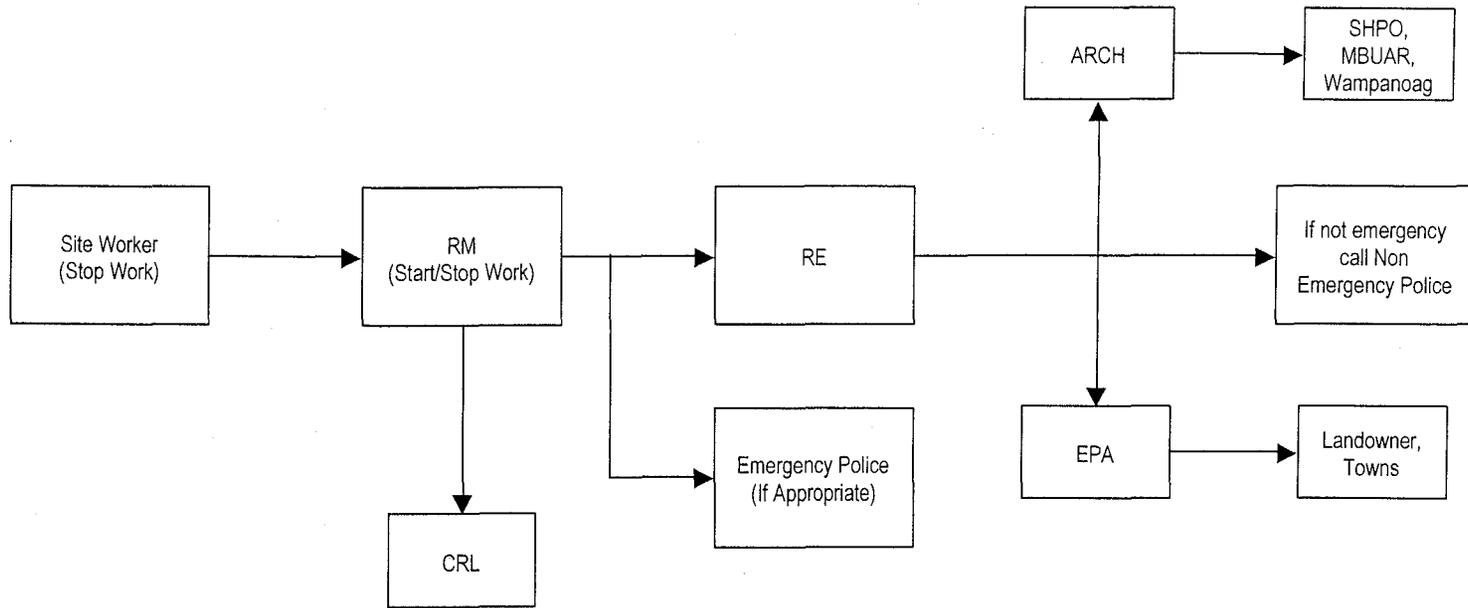
The United States Army Corps of Engineers (USACE) has contracted with Foster Wheeler Environmental Corporation (FWENC) under the USACE Total Environmental Restoration Contract (TERC) No. DACW33-94-D-0002 to provide pre-engineering, engineering, and environmental compliance support during implementation of the selected cleanup remedy for New Bedford Harbor. This plan has been written to assist the 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 construction. 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 construction. 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 Remediation Manager (FWENC-RM) will be responsible for advising FWENC project employees and construction contractor personnel on the procedure 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 FWENC-RM will advise all operators of equipment to:

- 2.1 **Stop work immediately if they observe any indications of the presence of cultural materials (artifacts or other man-made features), animal bone, or possibly human bone.**
- 2.2 **Contact the FWENC-RM (or the Site Superintendent [SS] if the FWENC-RM 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 RM have stop work authority.

Only RM 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.

RM = Remediation Manager (FWENC-RM)  
 RE = Resident Engineer (USACE-RE)  
 CRL= FWENC Archeologist (FWENC-CRL)  
 ARCH= USACE Archeologist (USACE-ARCH)  
 EPA = Co-Remedial Project Managers (EPA-RPMs)  
 SHPO = State Historic Preservation Office  
 MBUAR = Massachusetts Board of Underwater Archaeological Resources  
 Wampanoag = Wampanoag of Gay Head (Aquinnah)

**New Bedford Harbor Superfund Site**



**FOSTER WHEELER ENVIRONMENTAL CORPORATION**

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 by cobbles or brick or other material, other remnants of cultural activity). Cultural materials that may be of concern to the project would most likely approximately 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).

#### **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 FWENC-RM of the discovery.

3.1.2 If FWENC-RM believes that an unanticipated discovery has been made:

3.1.1.1 FWENC-RM directs all ground-disturbing activities within 250 feet of the discovery to stop.

3.1.1.2 FWENC-RM will protect and secure the evidence in place by delineating the find with flagging or fencing.

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

#### **3.3 FWENC-RM will immediately notify the Foster Wheeler Environmental Cultural Resources Lead (FWENC-CRL) and the USACE Resident Engineer- (USACE-RE).**

#### **3.4 The USACE-RE will notify the USACE-Archeologist (USACE-ARCH) and the EPA Remedial Project Managers (EPA-RPMs). The USACE-ARCS will notify the SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah). The EPA-RPMs will notify landowners and town officials.**

#### **3.5 Within 24 hours, if possible, the FWENC-CRL (or a designated professional archeologist) will examine the location of the discovery, accompanied by the FWENC-RM. Digital photographs of the find may initially be provided to the FWENC-CRL who will determine if an immediate trip to the location will be necessary.**

3.5.1 If the FWENC-CRL determines that the discovery is not a cultural resource, the FWENC-CRL will immediately advise the FWENC-RM and the USACE-ARCH. The FWENC-RM will notify the USACE-RE. The USACE-ARCH will notify the EPA-RPMs, SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah). The FWENC-RM will remove the stop work order. The FWENC-CRL will submit a memo including photographs of the discovery site to the USACE-ARCH and the FWENC-RM describing the find and conclusion.

3.5.2 If the FWENC-CRL determines that the discovery is a cultural resource, the FWENC-CRL will immediately advise the USACE-ARCH and the FWENC-RM. The FWENC-RM will notify the USACE-RE. The USACE-ARCH will notify the Environmental Protection Agency Project Managers (EPA-RPMs) and the SHPO, MBUAR, and the Wampanoag of Gay Head by telephone, with written confirmation by e-mail or overnight mail.

**3.6 Notifications to USACE, EPA, SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah) about observations of cultural material will:**

3.6.1 Explain why the archeologist believes the resource is not significant and request permission from the USACE-ARCH to provide concurrence that construction 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-ARCH will request concurrence from SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah) to authorize the immediate implementation of the work scope.

3.6.3 Invite the Wampanoag of Gay Head (Aquinnah) to observe the implementation of any proposed work (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 FWENC-CRL will notify USACE-ARCH and the FWENC-RM about the opinion of the project archeologist on the potential significance of the resource. FWENC-CRL will indicate the estimated time that will be required to advise of the significance of the unanticipated find. The FWENC-RM will discuss this with the USACE-RE.

3.7.2 USACE-ARCH will notify the EPA-RPMs, SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah) by telephone and report the opinion of the project archeologist about the potential significance of the resource.

3.7.3 As soon as possible, following the field investigation, the FWENC-CRL will provide USACE-ARCH and the FWENC-RM with a written letter report describing the results of the fieldwork.

3.7.4 If the resource is believed to be significant, the FWENC-CRL will prepare a proposal for data recovery.

3.7.5 If the resource is considered not potentially significant, the FWENC-CRL will communicate this to the USACE-ARCH and the FWENC-RM. The USACE-ARCH will inform the EPA-RPMs, SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah) and will obtain concurrence (with recommendations if appropriate) that work may resume in the area of the find. The FWENC-RM will inform the USACE-RE that the find is not considered potentially significant.

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

3.8.1 If an alternatives analysis is conducted, the FWENC-CRL will submit the alternatives analysis to the USACE-ARCH and the FWENC-RM. The USACE-ARCH will provide the report to the EPA-RPMs, SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah). The FWENC-RM will provide the report to the USACE-RE.

3.8.2 If proposed mitigation measures may be carried out without being impeded or affected by construction, the submittal to USACE-ARCH and the FWENC-RM will be accompanied by a request that construction in the area of the discovery be permitted to resume.

**3.9 Upon receipt of authorization from the USACE-ARCH and the FWENC-RM, implementation of mitigation measures will begin immediately.**

3.9.1 FWENC-CRL will advise FWENC-RM and USACE-ARCH when mitigation measures have been completed. FWENC-RM will advise the USACE-RE of the completed mitigation measures.

3.9.2 USACE-ARCH will advise the EPA-RPMs, SHPO, MBUAR, and Wampanoag of Gay Head (Aquinnah) when mitigation measures have been completed.

3.9.3 If construction was not previously resumed, FWENC-RM will also request authorization from USACE-RE to recommence construction.

3.9.4 FWENC-CRL will submit a summary memo describing the results of mitigation to USACE-ARCH and the FWENC-RM within 15 days of notification that mitigation fieldwork has been completed.

3.9.5 USACE-ARCH will provide the summary report to the SHPO, MBUAR, the Wampanoag of Gay Head Aquinnah, and EPA-RPMs.

3.9.6 If archeological data recovery is a component of the mitigation plan, a full report, if appropriate, will be submitted to USACE-ARCH and the FWENC-RM in accordance with a schedule to be established in consultation with the USACE-ARCH.

3.9.7 Upon receipt and approval of the report, the USACE-ARCH will provide the report to the EPA-RPMs, SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah). The FWENC-RM will provide the report to the USACE-RE.

#### **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 not 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 FWENC-RM about the find.**
- 4.4 If the FWENC-RM believes that potentially human skeletal remains have been found, the FWENC-RM will stop all ground-disturbing 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 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 FWENC-RM will immediately notify the local police by calling 911. In addition, the FWENC-RM will follow the lines of communication outlined in Section 5.0 below.
- 4.5 FWENC-RM will immediately notify the FWENC-CRL and the USACE-RE. The USACE-RE will notify the USACE-ARCH the EPA-RPM. The USACE-ARCS will notify the SHPO, MBUAR and the Wampanoag of Gay Head (Aquinnah). The EPA-RPMs will notify landowners and town officials.**
- 4.6 Within 24 hours of the discovery, if possible, a professional archeologist (FWENC-CRL or designee) will examine the discovery to determine if the remains are human and have an archeological 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 FWENC-CRL is unable to determine if the remains are human.

**4.7 If skeletal remains are determined not to be human, and there is no archeological association, the individual making the determination will immediately advise the FWENC-CRL (if not the same as the individual making the determination). The FWENC-CRL will notify the FWENC-RM and the USACE-ARCH. The FWENC-RM will notify the USACE-RE. The USACE-RE will notify the EPA-RPMs. The USACE-ARCH will notify the SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah) and receive concurrence that work may resume. The USACE-RE will notify the FWENC-RM that concurrence that work may resume has been attained. The FWENC-RM will notify the construction crew leaders that work may be resumed.**

**4.7.1 The archeologist will submit a letter report including photographs of the discovery site to the FWENC-RM and the USACE-ARCH within 15 business days of the determination.**

**4.8 If the skeletal remains are not human but are associated with an archeological site, follow the steps described in Section 3.6 through 3.9.**

**4.9 If the skeletal remains are human and not associated with an archeological context, the FWENC-CRL will notify the FWENC-RM and the USACE-ARCH. The USACE-ARCH will notify the EPA-RPMs and the SHPO, MBUAR, and the Wampanoag of Gay Head (Aquinnah). The FWENC-RM will notify the USACE-RE and the appropriate local police and the appropriate county medical examiner's office. The EPA-RPMs 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 either New Bedford, Fairhaven, or Acushnet, USACE-RE will call the respective police department. 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 archeological context will be assumed to be Native American. If Native American human remains are identified (whether or not in an archeological context), the USACE-ARCH will immediately notify the EPA-RPMs, SHPO, MBUAR, the Wampanoag of Gay Head (Aquinnah). The USACE-RE will notify the non-emergency departments of the local police.**

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

**4.11.1 Notifications to EPA-RPM, SHPO, MBUAR, Wampanoag of Gay Head (Aquinnah) will make special note that human remains have been found.**

4.11.2 Notifications to the Wampanoag of Gay Head (Aquinnah) 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, and the Wampanoag of Gay Head (Aquinnah), 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 FWENC-CRL and USACE-RE that the Wampanoag of Gay Head (Aquinnah) wish to take custody of any human remains and reinter them on non-tribal lands, FWENC-CRL and FWENC-RE will, if requested, assist in any negotiations between the tribe and the landowner that may be necessary.

4.11.5 FWENC-CRL and USACE-ARCH will make a good faith effort to accommodate requests from the Wampanoag of Gay Head (Aquinnah) 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 archeological context, the procedures described in Section 4.5 through 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 of Gay Head (Aquinnah) that the associated archeological 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 archeologist to implement an approved plan for removal of the remains or arrange for alternative appropriate removal of the human remains.

## 5.0 NOTIFICATIONS LIST

### ***FWENC-Remediation Manager (RM)***

#### ***Prime Contact***

Ray Francisco  
Foster Wheeler Environmental  
103 Sawyer Street  
New Bedford, MA 02746  
Phone: (508) 910-9960 x201  
(508) 400-0330 (cell phone)  
Fax: (508)979-5027  
e-mail: [rfrancisco@ttfwi.com](mailto:rfrancisco@ttfwi.com)

### ***Foster Wheeler- CRL***

Sydne Marshall  
Foster Wheeler Environmental  
1000 The American Road  
Morris Plains, NJ 07950  
Phone: (973) 630-8104  
Fax: (973) 630-8165  
e-mail: [smarshall@ttfwi.com](mailto:smarshall@ttfwi.com)

### ***USACE – Resident Engineer (USACE-RE) Prime Contact***

Maurice Beaudoin  
US Army Corps of Engineers  
103 Sawyer Street  
New Bedford, MA 02746  
Phone: (508) 990-2550  
(508) (cell phone)  
(508) 294-9857  
Fax: (508) 990-2721  
e-mail: [Maurice.Beaudoin@nac02.usace.army.mil](mailto:Maurice.Beaudoin@nac02.usace.army.mil)

### ***EPA-Co-Remedial Project Manger (EPA-RPMs)***

Jim Brown  
USEPA – Region 1, HBO  
1 Congress Street – Suite 1100  
Boston, MA 02114-2023  
Phone: (617) 918-1308  
Fax: (617) 918-1291  
(617) 918 -2294  
e-mail: [Brown.Jim@epamail.epa.gov](mailto:Brown.Jim@epamail.epa.gov)

### ***FWENC-Site Superintendent (SS)***

#### ***Alternate Contact***

Mark Gouveia  
Foster Wheeler Environmental  
103 Sawyer Street  
New Bedford, MA 02746  
Phone: (508) 910-9960 x202  
(508) 922-1379 (cell phone)  
Fax: (508)979-5027  
e-mail: [magouveia@mindspring.com](mailto:magouveia@mindspring.com)

### ***USACE-ARCH***

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Fax: (978) 318-8560  
e-mail: [marcos.a.paiva@usace.army.mil](mailto:marcos.a.paiva@usace.army.mil)

### ***USACE- Project Engineer (USACE-PE) Alternate Contact***

Paul L'Heureux  
US Army Corps of Engineers  
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Phone: (508) 990-2550  
(508) (cell phone)  
(508) 294-9859  
Fax: (508) 990-2721  
e-mail: [Paul.L'Heureux@nac02.usace.army.mil](mailto:Paul.L'Heureux@nac02.usace.army.mil)

### ***EPA- Co-RPM (EPA-RPMs)***

David Dickerson  
USEPA – Region 1, HBO  
1 Congress Street – Suite 1100  
Boston, MA 02114-2023  
Phone: (617) 918-1329  
Fax: (617) 918-1291  
e-mail: [dickerson.dave@epamail.epa.gov](mailto:dickerson.dave@epamail.epa.gov)

***MA SHPO Contact***

Eric Johnson  
Massachusetts Historical  
Commission  
220 Morrissey Boulevard  
Boston, MA 02125  
Phone: (617) 727-8470  
Fax: (617) 727-5128  
e-mail: [Eric.Johnson@SEC.state.MA.US](mailto:Eric.Johnson@SEC.state.MA.US)

***MBUAR Contact***

Victor Mastone  
MA Board of Underwater Archaeological  
Resources  
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Boston, MA 02125  
Phone: (617) 626-1141  
Fax: (617) 727-2754  
e-mail: [Victor.Mastone@state.ma.us](mailto:Victor.Mastone@state.ma.us)

***Wampanoag of Gay Head (Aquinnah)***

***Prime Contact***

Laurie Perry  
Tribal Historic Preservation Officer  
20 Blackbrook Road  
Aquinnah, MA 02535  
Phone: (508) 645-9265  
Fax: (508) 645-3790  
e-mail: [laurie@wampanoagtribe.net](mailto:laurie@wampanoagtribe.net)

***Wampanoag of Gay Head (Aquinnah)***

***Alternate Contact***

Ramona Peters  
(THPO)Assistant to THPO  
P.O. Box 244  
Mashpee, MA 02649  
Phone: (508) 477-1361  
Fax:  
e-mail: [nosap@cape.com](mailto:nosap@cape.com)

**NON-EMERGENCY POLICE:**

***In New Bedford:***

New Bedford Police Department  
871 Rockdale Avenue  
New Bedford, MA 02740  
Phone: (non-emergency #) (508) 991-6340

***In Fairhaven:***

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

***In Acushnet:***

Acushnet Police Department  
130 Main Street  
Acushnet, MA 02743  
Phone: (non-emergency #) (508) 998-0240