

Oakland County Neighborhood & Housing Development

Inadvertent Discovery Plan for Human Remains or Cultural Items

This document sets forth the protocol to be followed in the event that human remains and funerary objects are encountered during ground-disturbing work on a HUD-funded project. As a statement of general procedure, any human remains encountered will be treated with care and respect. With any ground-disturbing activities, there is the possibility that human remains or artifacts will be encountered.

If human remains, suspected human remains, or cultural items are found, all parties must follow the current guidance from the State Historic Preservation Office (SHPO) for the discovery of human remains, copied below (v. 7/19/21):

The State Historic Preservation Office (SHPO) recommends that the following steps be implemented in the event of the discovery of human remains during a Section 106 project. It largely follows the steps set forward in Michigan Attorney General Opinion No. 6585 of 1989, *Cemeteries and Dead Bodies*.

This sequence of steps assumes that it will not be possible to preserve and maintain a given accidentally discovered burial place.

1. Upon the discovery of human remains, excavation in the immediate vicinity is halted. Cover and secure the area and do not handle finds. All project personnel shall treat any discovery as confidential. Personal photographs of finds may not be taken. The local police authority is immediately notified so that they may evaluate the site.
 2. Inform SHPO Staff Archaeologist Amy Krull (phone 517-285-4211, email krulla@michigan.gov).
 3. If the police determine that the remains do not represent evidence of a crime or missing person, a qualified archaeologist experienced in human remains recovery shall recover the remains and any artifacts that may be present. Archaeological expertise is important in documenting the discovery context and evaluating whether the remains are isolated or if additional remains may be immediately present. Archaeological recovery may be done under the auspices of law enforcement. If law enforcement chooses not to be involved, a permit for disinterment must be obtained from the local Department of Public Health, or through a court order. Human remains and artifacts must be recovered in a respectful manner.
 4. As soon as possible, the remains shall be examined by a physical anthropologist using standard non-invasive methods and procedures to create a basic biological profile and estimate ethnicity.
 5. When the recovery and examination of the remains are complete, results shall be conveyed to the SHPO's archaeology staff, and in cases involving Native American Ancestors, to the appropriate Tribal entity. Final written archaeological reports, physical anthropological reports, and associated law enforcement case documentation must be submitted to the SHPO and appropriate Tribes. Note that Tribes may have special needs regarding the taking and retention of photographs of Ancestral remains.
 6. The final disposition of Native American Ancestors and associated grave goods will be determined in discussions between the property owner and the appropriate Tribal authority at the conclusion of the recovery, examination, and reporting.
-

In addition to the notifications in SHPO's policy, it is mandatory that the following Oakland County Neighborhood & Housing Development staff be immediately notified:

Katie Tierney, Senior Specialist Environmental Officer
(248) 858-5309
tierneyk@oakgov.com

Or

Mike Pucher, Contracts Compliance Supervisor
(248) 858-0196
pucherm@oakgov.com

If forensics analysis indicates that the human remains are not Native American, disposition and reinterment of the remains will follow guidelines in AG Opinion 6585 (appended).

Appendix A

Attorney General Opinion No. 6585

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6585

June 7, 1989

CEMETERIES AND DEAD BODIES:

Disinterment of human remains

Reinterment of human remains

COURTS:

Order to disinter and reinter human remains

PUBLIC HEALTH:

Permit to disinter and reinter human remains

WORDS AND PHRASES:

"Established scientific institution or society"

A local health department permit or court disinterment decree is required before a landowner, excavator or scientific institution or society may disinter human remains.

A local health department permit or court disinterment decree is required before a landowner, excavator or scientific institution or society may disinter partial human remains, where the remains are in a condition from which it may reasonably be concluded that death has occurred.

An "established scientific institution or society" as used in MCL 750.160; MSA 28.357, and 1982 AACR 325.8051 means an institution for the advancement or promotion of knowledge or an association organized for the purpose of scientific investigation and pursuits, which has displayed some degree of permanence and longevity.

When an historic period cemetery is disinterred and moved, the disinterred remains must be reinterred in a cemetery located in the same governmental unit or in adjoining governmental units or within a reasonable distance from the municipality where the historic period cemetery is discovered.

The cost of removing bodies from unanticipated burials and reintering them should be at public expense, unless next of kin can be located and are willing to undertake those expenses.

Honorable Richard H. Austin

Secretary of State

Treasury Building

Lansing, Michigan 48918

You have requested my opinion on five questions regarding the disinterment of human remains. You have informed me that because the Michigan Department of State is charged with the responsibility for preserving and protecting Michigan's historic and archaeological resources, it has occasion to participate in the disinterment of historic and prehistoric human remains, and is consulted with respect to the subsequent storage or reinterment of those remains. Your questions will be answered seriatim.

Your first question asks:

Is a local health department permit or court disinterment decree required pursuant to MCL 35.841 et seq; MSA 4.1341 et seq, MCL 333.2801 et seq; MSA 14.15(2801) et seq, MCL 750.160; MSA 28.357, or 1982 AACRS, R 325.8051 before a landowner or excavator may disinter human remains? Is the answer different if the disinterer is a scientific institution or society?

The settled policy of this state is to preserve and maintain the burial places of the dead. *Avery v Forest Lawn Cemetery Co*, 127 Mich 125; 86 NW 538 (1901). Consistent with this policy, the Legislature has enacted a number of statutes regulating disinterment or reinterment of human remains.

Section 2853 of the Public Health Code, MCL 333.2853; MSA 14.15(2853), provides in pertinent part:

"(1) A permit for disinterment and reinterment is required before disinterment of a dead body. The local health department in whose jurisdiction the body is interred shall issue the permit upon proper application by a licensed funeral director or person acting as a funeral director in accordance with rules promulgated by the department.

"(2) A person shall not disinter or permit the disinterment of a dead body in a cemetery and the body's reinterment in a cemetery or removal from the cemetery unless a disinterment and reinterment permit is issued by the local health department in the jurisdiction in which the cemetery is located."

It is a basic rule of statutory construction that where the Legislature uses certain and unambiguous language, the plain meaning of the statute must be followed. *Browder v. Int'l Fidelity Ins Co*, 413 Mich 603, 611; 321 NW2d 668 (1982). Although the provisions of MCL 333.2853(2); MSA 14.15(2853)(2), are applicable only to the disinterment of a body located in a cemetery, the provisions of MCL 333.2853(1); MSA 14.15(2853)(1), are not so limited, and clearly and unambiguously require a permit for disinterment and reinterment before disinterment of a dead body.

The other statutes and the administrative rule to which you have referred in no way conflict with the requirements of MCL 333.2853; MSA 14.15(2853).

1982 AACRS, R 325.8051, states:

"A person who inadvertently discovers a burial or parts of a human skeleton shall immediately notify the police authority of the jurisdiction where the remains are found. If preliminary inspection by the police authority indicates that the remains are those of a prehistoric or historic native American, the state archaeologist of the Michigan history division, department of state, shall be immediately notified of the

finding. This rule does not apply to archaeological excavations conducted by representatives of established scientific institutions or societies."

This rule requires that the police be notified following the discovery of human remains. Such notification is required even if the remains are not eventually disinterred. Representatives of established scientific institutions or societies conducting archaeological excavations are exempted from the provisions of this rule, but are still required to obtain a local health department permit for disinterment and reinterment prior to disinterment of a dead body, pursuant to MCL 333.2853; MSA 14.15(2853).

MCL 35.841 et seq; MSA 4.1341 et seq, addresses the disinterment and removal of remains of war veterans for the purpose of reintering such remains in an area set aside exclusively for the graves of United States soldiers, sailors or marines. The Act authorizes the circuit court for the county in which the veteran is buried to enter a decree directing disinterment and removal. MCL 35.841; MSA 4.1341. The Act's applicability is limited to situations where the decree is sought on behalf of the Grand Army of the Republic, the United Spanish War Veterans, the American Legion or the Veterans of Foreign Wars. MCL 35.842; MSA 4.1342. Such a court decree is not necessary before a landowner or excavator disinters remains unless the purpose of disinterment is removal to a special veterans burial area. MCL 35.844; MSA 4.1344, requires that court decrees authorizing disinterment and removal provide that the same be done under the supervision of proper health officials. Where remains are disinterred under local health department supervision pursuant to a court decree, a separate health department permit is not necessary.

Section 160 of the Michigan Penal Code, MCL 750.160; MSA 28.357, states:

"A person, not being lawfully authorized so to do, who shall willfully dig up, disinter, remove, or convey away a human body, or the remains thereof, from the place where the body may be interred or deposited, or who shall knowingly aid in such disinterment, removal, or conveying away, or who shall mutilate, deface, remove, or carry away a portion of the dead body of a person, whether in his charge for burial or otherwise, when the mutilation, defacement, removal, or carrying away is not necessary in any proper operation in embalming the body or for the purpose of a postmortem examination, and every person accessory thereto, either before or after the fact, shall be guilty of a felony, punishable by imprisonment for not more than 10 years, or by fine of not more than \$5,000.00. This section shall not be construed to prohibit the digging up, disinterment, removal or carrying away for scientific purposes of the remains of prehistoric persons by representatives of established scientific institutions or societies, having the consent in writing of the owner of the land from which the remains may be disinterred, removed or carried away."

This section simply makes criminal the disinterment of a dead body by a person who acts willfully and without lawful authority. It would, therefore, not apply to a person who had obtained a proper permit as required by MCL 333.2853; MSA 14.15(2853), or a court decree as provided by MCL 35.841; MSA 4.1341. Nor would it apply to an accidental or unintentional disinterment, although once a person became aware of the presence of a dead body, the person would then be obligated to report the discovery to the police and obtain the necessary permit.

Finally, although not raised in your question, it is appropriate to examine the aboriginal records and antiquities act, as last amended by 1988 PA 452, MCL 299.51 et seq; MSA 13.21 et seq. This Act provides that it is unlawful for a person to remove any human bones without the consent of the landowner, MCL 299.54; MSA 13.24, and further provides that a person shall not explore or excavate an aboriginal remain covered by the Act upon state-owned lands unless the person has obtained a permit from the Director of the Department of Natural Resources with written approval by the Secretary of State. MCL 299.53; MSA 13.23. Violation of any of the provisions of this Act is a misdemeanor. MCL 299.55; MSA 13.25.

It is my opinion, in response to your first question, that a local health department or court disinterment decree is required before a landowner or excavator may disinter human remains, regardless of whether the disinterer is a scientific institution or society.

Your second question asks:

Is a local health department permit or court disinterment decree required before a landowner, excavator, or scientific institution or society may disinter partial human remains, e.g., a femur or a few finger bones?

"Dead body" is defined by Sec. 2803(1) of the Public Health Code, MCL 333.2803(1); MSA 14.15(2803)(1), to mean "a human body, or parts thereof, in a condition from which it may reasonably be concluded that death has occurred."

MCL 333.2853; MSA 14.15(2853), requires that a permit for disinterment and reinterment be obtained before disinterment of a dead body. This provision thus applies to the disinterment of partial human remains where those remains are "in a condition from which it may reasonably be concluded that death has occurred." In general, the discovery of partial human remains would lead to the conclusion that death has occurred, unless the circumstances under which they were found indicated that the remains were the result of a loss of limb which did not result in death, e.g., an accident or amputation.

Additionally, both MCL 750.160; MSA 28.357, and 1982 AACRS R 325.8051 expressly apply to bodies and portions thereof. Therefore, partial human remains may be disinterred only in compliance with this statute and this rule.

It is my opinion, in response to your second question, that a local health department or court disinterment decree is required before a landowner, excavator, or scientific institution or society may disinter partial human remains, where those remains are in a condition from which it may reasonably be concluded that death has occurred.

Your third question asks:

With regard to human disinterment, what is the proper definition of the term "scientific institution or society" as found in MCL 750.160; MSA 28.357, and 1982 AACRS, R 325.8051?

In *Detroit Home & Day School v Detroit*, 76 Mich 521, 523; 43 NW 593 (1889), the court stated:

"[I]t is matter of common knowledge that all general educational establishments have universally been known as 'scientific institutions,' and fall naturally and directly within it. A 'scientific institution,' under the language of all civilized countries, means an institution for the advancement or promotion of knowledge, which is the English rendering of 'science.' "

In a similar vein, a "scientific society" has been defined as any association of individuals organized for the purpose of mutual cooperation in scientific investigation and pursuits. *People v. Cothran*, 27 Hun 344, 345 (NY Sup Ct, 1882).

Additionally, the word "established" connotes some degree of permanency. *Cornell v. Dalpiaz*, 128 NE2d 132, 134 (Ohio App, 1952).

It is my opinion, in response to your third question, that an "established scientific institution or society," as that phrase is used in MCL 750.160; MSA 28.357, and 1982 AACRS, R 325.8051, means an institution for the advancement or promotion of knowledge or an association organized for the purpose of scientific investigation and pursuits, which has displayed some degree of permanence or longevity.

Your fourth question asks:

When an historic period cemetery is disinterred and moved, what are the standards under MCL 128.1 et seq; MSA 5.3165 et seq, concerning where the new cemetery or burial must be located?

1895 PA 49, MCL 128.31 et seq; MSA 5.3071 et seq, authorizes townships to seek and obtain a court order to vacate and remove private cemeteries located within a township for certain specified reasons. MCL 128.31; MSA 5.3071. The Act requires reinterment, at township expense, in the township cemetery or if the township does not have a suitable cemetery, then in a suitable cemetery in an adjoining township. MCL 128.34; MSA 5.3074. If the vacated cemetery belongs to a church or religious society, removal may be made to another suitable cemetery belonging to the same church or society within the township or an adjoining township, instead of to the township cemetery. Id.

1871 PA 164, MCL 128.41 et seq; MSA 5.3081 et seq, authorizes cities and villages to seek and obtain a court order to vacate and remove private and public cemeteries located within their boundaries for certain specified reasons. MCL 128.41; MSA 5.3081. Reinterment, at city or village expense, must be within a city or village cemetery if one exists, and if not, must be in a suitable cemetery within six miles of the corporate limits of the city or village. MCL 128.44; MSA 5.3084.

1929 PA 297, MCL 128.51 et seq; MSA 5.3091 et seq, authorizes the voluntary sale of public and private cemeteries to cities or villages upon order of the circuit court authorizing the vacating of the cemetery and approval of a 3/4 vote of scrip holders or stockholders in the cemetery association. MCL 128.52; MSA 5.3092. In such cases, the Act provides that the cemetery association shall be responsible for interment "within a reasonable distance from such city or village,..." Id. Objecting lot owners shall be separately compensated for removing and reintering dead bodies if removed to a different location. MCL 128.54; MSA 5.3094.

There are no statutes addressing directly the reinterment of human remains, except where removed pursuant to a formal cemetery vacation.

It is my opinion, in answer to your fourth question, that when an historic period cemetery is disinterred and moved, the disinterred remains must be reinterred in a municipal cemetery within the same township, village or city as the remains are discovered and, if no such cemetery exists, in a cemetery in an adjacent township if unearthed in a township or in a cemetery within six miles of the city or village corporate boundary if unearthed in a city or village. It is my further opinion that if the historic period cemetery is known to belong to a church or religious society, reinterment may be in another suitable cemetery belonging to the same church or society located within, or within a reasonable distance from, the township or municipality where the cemetery is discovered. Finally, it must be noted that while the statutes discussed in answer to your fourth question establish certain locations within which a municipality must reinter bodies removed from a vacated cemetery, they do not so limit an individual who may desire to reinter in a different location a body over which he or she may exercise control.

Your fifth question asks:

If a construction project, such as Detroit's people mover, encounters unanticipated burials, who pays for the disinterment and/or reinterment? What if many years earlier, someone had been paid to move the burials?

Relocation of established public or private cemeteries must be pursuant to the vacation procedures set forth in the statutes discussed in response to question 4. In each case, the vacating governmental entity is responsible for costs of disinterment and reinterment.

The Legislature has not addressed the issue of allocation of costs for disinterment and reinterment of burials which are not part of established public or private cemeteries. However, in the event a contractor inadvertently discovers a

burial or parts of a human skeleton, the contractor is obligated to immediately notify local police authorities. 1982 AACRS, R 325.8051. The contractor is also required to obtain a permit from the local health department for disinterment and reinterment before removing the body. MCL 333.2853; MSA 14.15(2853). Under these circumstances, it is most reasonable that local authorities make appropriate efforts to determine and notify any next of kin, who could then claim the body, and if unable to do so, undertake to bury the body at public expense. MCL 52.205(5); MSA 5.953(5)(5). See also MCL 333.2653; MSA 14.15(2653).

It is my opinion, in response to your fifth question, that the cost of removing bodies from unanticipated burials and reintering them elsewhere shall be at public expense, unless next of kin can be located and are willing to undertake those expenses.

Frank J. Kelley

Attorney General