FINDING OF NO SIGNIFICANT IMPACT (FONSI)
U.S. DEPARTMENT OF VETERANS AFFAIRS
PROPOSED CONSTRUCTION AND OPERATION OF THE
WESTERN NEW YORK NATIONAL CEMETERY
1232 INDIAN FALLS ROAD
TOWN OF PEMBROKE, GENESEE COUNTY, NEW YORK

Introduction
The U.S. Department of Veterans Affairs (VA), National Cemetery Administration (NCA), prepared a Final Site-Specific Environmental Assessment (SEA), included herein by reference, that was prepared to identify, analyze, and document the potential physical, environmental, cultural, and socioeconomic impacts associated with the Proposed Action to acquire an approximately 60-acre parcel and 77-acre parcel adjacent to the VA’s existing 132-acre parcel, and construct and operate Phase 1 of the new Western New York National Cemetery over an approximately 79-acre area spanning portions of the 60- and 132-acre parcels at 1232 Indian Falls Road, in the Town of Pembroke, Genesee County, New York. Under the Proposed Action, the Phase 1 cemetery would provide for 10 years of burial operations including casket, columbarium, in-ground cremation sites, and committal shelters, and well as supporting infrastructure including buildings, roadways, parking, irrigation, landscaping, visitor amenities, signage, and other operational facility improvements to support potential future cemetery expansion phases.

The SEA was prepared in accordance with the National Environmental Policy Act of 1969 ([NEPA]; 42 United States Code [USC] 4321 et seq.), the President’s Council on Environmental Quality (CEQ) Regulations Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] Parts 1500-1508), and VA’s NEPA implementing regulations, 38 CFR Part 26 (Environmental Effects of the Department of Veterans Affairs Actions). The SEA also tiers to and incorporates by reference, the findings of the Final Programmatic Environmental Assessment (PEA) of the Proposed Site Selection, Construction, and Operation of the Western New York National Cemetery, Erie and Genesee Counties, New York, dated May 9, 2014, and the Finding of No Significant Impact (FONSI) for potential physical, environmental, cultural, and socioeconomic effects associated with the VA’s selection and acquisition of a site suitable for the future proposed construction and operation of the new Western New York National Cemetery.

The purpose of the Proposed Action is to enable the NCA to provide eligible Veterans and their families with a National Cemetery of sufficient size and capacity to serve the projected needs in the western New York region for the next 10 years.

The Proposed Action is needed to meet the NCA’s goal of providing eligible Veterans and their families with reasonable access to VA burial options. The proposed National Cemetery would provide additional burial capacity, as well as improved access to Veterans and their families (i.e. reduced travel time), and would help to balance the current unequal geographic distribution of National Cemeteries in the region. The Bath National Cemetery is the nearest National Cemetery, located more than 75 miles away from this area. The new Western New York National Cemetery is also needed for VA to comply with the Service Members Civil Relief Act.

Background
NCA is responsible for providing cemetery services for veterans and other eligible persons pursuant to the provisions of the National Cemeteries Act of 1973 and other statutory authority and regulations. Under this mandate, NCA is responsible for the operation and maintenance of existing national cemeteries and the construction of new national cemeteries.
In August 2010, the VA began researching suitable locations (greater than 100 acres) for a new National Cemetery needed in western New York. The VA selected three potential locations and completed the aforementioned PEA to document potential impacts associated with development at each location. Based on the PEA findings, the VA ultimately selected the 132-acre parcel at 1232 Indian Falls Road and acquired it on May 30, 2014. The VA then began the site-specific master planning process for the National Cemetery and subsequently determined that the 132-acre parcel alone was less than suitable for development because it required aligning the entrance along Alleghany Road, which resulted in public concern over anticipated traffic-related safety issues. The VA determined a more ideal design involved acquiring the 60-acre and 77-acre parcels located immediately east of the 132-acre parcel, thereby providing a larger development area which in turn would allow the entrance to be aligned along Indian Falls Road and reduce anticipated traffic impacts. This latter approach was incorporated into the final Master Plan dated February 2016 and identified as the Proposed Action. The Alternative Action was identified as limiting development entirely within the 132-acre parcel without additional land acquisition.

**Description of Proposed Action and Alternatives**

**Proposed Action**

VA’s Proposed Action is to acquire the 60-acre and 77-acre parcels located immediately east of the 132-acre parcel already owned by the VA. The Phase 1 cemetery would cover approximately 79 acres spread across 70 acres on the 132-acre parcel and 9 acres on the 60-acre parcel. The Phase 1 cemetery would provide for 10 years of burial capacity including casket, columbarium, and in-ground cremation sites. The Phase 1 cemetery would also include committal shelters, supporting infrastructure, parking, irrigation, landscaping, visitor amenities, signage, and align the main entrance along Indian Falls Road at the northern boundary of the 60-acre parcel. The Phase 1 cemetery would be constructed over a period of approximately 30 months (summer of 2017 through fall of 2019). The Phase 1 development includes the physical infrastructure needed to support potential future cemetery development. The remainders of the 132- and 60-acre parcels, and the entirety of the 77-acre parcel, would not be developed as part of the Phase 1 cemetery, but would remain available for potential future cemetery development. The VA will evaluate the need for future development approximately every 8-10 years; separate NEPA analyses will be prepared for and in advance of any such development.

**Alternative Action**

In addition to the Proposed Action described above, VA evaluated an Alternative Action. Under the Alternative Action, VA would construct and operate the entirety of the Phase 1 cemetery within only the 132-acre parcel (i.e. the VA would not acquire the adjacent 60-acre or 77-acre parcels). The entrance to the proposed National Cemetery would be along the highly-trafficked Alleghany Road. The Alternative Action would also provide for 10 more years of burial operations including casket, columbarium, and in-ground cremation sites; and provide committal shelters, supporting infrastructure, parking, irrigation, landscaping, visitor amenities, and signage, committal shelters, supporting infrastructure, parking, irrigation, landscaping, visitor amenities, and signage.

**No Action**

No Action alternative represents the status quo and serves as the benchmark against which the effects of the Proposed Action and Alternative Action are evaluated. For this project, No Action is defined as not acquiring the 60- or 77-acre parcels, and not developing Phase 1 of the Western New York National Cemetery on any portion of the 132-acre parcel. The No Action alternative would challenge NCA’s goal of providing eligible Veterans and their families with reasonable access to VA burial options in the western New York region and, therefore, would not meet the purpose of and need for action. Veterans and their
families residing in western New York would continue to be underserved now and in the future; in many cases, this would require Veterans and their families to travel more than 75 miles to another available National Cemetery or to use a private cemetery. The distribution of National Cemeteries in the region would be unequal, and VA would not comply with the Service Members Civil Relief Act. Furthermore, the No Action alternative would create a hardship for the survivors attending the funerals and for grave visitations of deceased Veterans interred in other National Cemeteries, because of the distances between homes and the burial sites.

**Environmental Analysis**
As documented in the SEA, NCA concludes no significant adverse impact, either individually or cumulatively, would result from implementing the Proposed Action. The Proposed Action would have no or negligible adverse impacts on geology, land use, coastal zone management, floodplains, socioeconomics, community services, parking, utilities, or environmental justice. During construction and operation of the Proposed Action, less-than-significant adverse impacts would occur to aesthetics, air quality, cultural resources, topography and soils, hydrology and water quality, wildlife and habitat, noise, wetlands, solid and hazardous materials, and transportation. VA will implement the management, avoidance, and regulatory compliance measures to maintain or further minimize impacts to these resources at less-than-significant levels, as described in the SEA and summarized in the attached table included as Appendix A in this FONSI.

Additionally, VA will ensure that there are no adverse effects to cultural resources by applying the protective measures originally stipulated for the 132-acre parcel in the May 29, 2014 Memorandum of Agreement (MOA) to development work at the 60- and 77-acre parcels as well; the MOA is included as Appendix B in this FONSI. Furthermore, the VA will also implement the management measures described in the May 13, 2016 Avoidance Plan to protect the Indian Falls VA Precontact Site located on the 60-acre parcel (as shown on Figures 1 and 2) and detailed on the construction design requirements on Figures 3 and 4 in Appendix C in this FONSI. The VA will also implement topsoil management within the archaeological sites by limiting topsoil removal to 6 inches plus or minus 2 inches below grade (6” +/-2”); an archaeological monitor will be on-site during soil removal within the boundaries of archaeological sites; if this excavation depth (6” +/-2”) is exceeded in the archaeological sites, the VA will stop excavation and reinitiate Section 106 consultation with the SHPO and the Tonawanda Seneca Nation (TSN). These commitments are reiterated in Appendix A in this FONSI.

The Proposed Action would have less-than-significant beneficial impacts on aesthetics (long-term via creation of a National Shrine), socioeconomics (potential short-term via increased local employment and spending on construction supplies), and community services (long-term via creation of burial opportunities for Veterans and their families in western New York). No significant cumulative adverse impacts to any resource were identified or are anticipated. No potential for generating substantial public controversy was identified or is anticipated.

**Agency and Public Comment**
The public involvement process was designed to provide the public and regulatory stakeholders with an opportunity to learn about and provide comments on the Proposed Action while the Draft SEA was being prepared. This process included mailing letters on June 9, 2015 that described the Proposed Action and requested input from federal, state, and local regulatory agencies, and Native American Tribal representatives. This consultation process was documented in the Draft SEA. Concerns expressed by regulatory agencies and Native American Tribes were addressed and incorporated in the Draft SEA.
On September 8, 2015, the VA held a meeting to inform the public, regulators, and Native American Tribes about the purpose and need for the Proposed Action, the NEPA process, and the ongoing refinement of the master plan. The meeting occurred from 6-8 PM at the American Legion Post 900, 9 Eckerson Avenue, Akron, NY. The VA published a meeting announcement in the Buffalo News on August 15 and 16, 2015. Public comments received during the meeting were in favor of constructing and operating the Western New York National Cemetery at the Pembroke site, but recommended that the main entrance be located along the less trafficked Indian Falls Road (a two-lane rural minor roadway) to reduce traffic safety hazards anticipated to otherwise occur if the main entrance was located along Alleghany Road (a two-lane State Highway). The VA agreed with this safety concern and designed the final master plan for the Proposed Action with a main entrance at Indian Falls Road and only a maintenance entrance along Alleghany Road.

Additionally, VA published and distributed the Draft SEA for a minimum 30-day public comment period as announced by a Notice of Availability (NOA) published in the Buffalo News on August 19 and 21, 2016. VA also sent NOA letters on September 6, 2016, to regulatory agencies and Native American Tribes requesting input on the Draft SEA. The NOA stated that printed copies were available for public review at the Corfu Free Library, 7 Maple Ave, Corfu, New York, and the Newstead Public Library, 33 Main Street, Akron, New York, and electronically for download via a link on the VA website. During the public review period for the Draft SEA, VA received one public comment voicing support for the Proposed Action, confirmation from USFWS indicating they had no additional comment on the Proposed Action, comments from the SHPO and the TSN regarding historic preservation measures that were subsequently addressed and incorporated into the Proposed Action, and a request from the NY State Department of Environmental Conservation (NYSDEC) to receive a Full Environmental Assessment Form (FEAF) needed for NYSDEC to make a SEQR determination of non-significance and to issue a Section 401 – Clean Water Act Water Quality Certification. Accordingly, the VA will prepare an FEAF for NYSDEC review. No other major concerns from the public, regulatory agencies, or Native American Tribes were received during the Draft SEA comment period. This communication is documented in the Final SEA. No substantive changes in the Draft SEA were required to prepare the Final SEA.

Finding of No Significant Impact
As a result of the analysis of impacts in the SEA, summarized and incorporated by reference herein, it is the conclusion of VA that, with the implementation of appropriate management, avoidance, and regulatory compliance measures included herein as Appendix A, the Proposed Action would not generate significant public controversy and would cause no significant impact of an adverse nature on the quality of the natural or human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Therefore, per the NEPA, the CEQ regulations, and 38 CFR Part 26, I am signing this FONSI, and preparation of an Environmental Impact Statement for the Proposed Action is not required.

Elliott, Glenn (CFM)
Environmental Engineer
Construction Facility Management Office
### APPENDIX A

Best Management Practices/Environmental Avoidance and Protection Measures/Regulatory Compliance Measures Incorporated into the Proposed Action

#### AESTHETICS

**Construction.**
- Control fugitive dust emissions through routine construction BMPs, including covering haul trucks, minimizing construction vehicle speeds entering the site and within the site.
- As needed, install view-restricting fencing between the residences located on the southwestern portion of the 132-acre parcel and the cemetery to further reduce visual impacts.

**Operation.**
- Plant and maintain landscaped areas with native, non-invasive vegetation.
- Limit nighttime lighting to the flagpole, entrance, and security lights around buildings.
- Maintain the cemetery entrance and grounds, and conduct maintenance activities (mowing, etc.) on a schedule that limits potential disruptions to committal services.

#### AIR QUALITY

**Construction.**
- Use appropriate dust control methods during construction activities, including but not limited to water sprays, chemical soil additives, and wheel washers.
- Suspend construction activities during periods of sustained high winds to avoid releasing dust to the air.
- Reduce vehicle speeds to reduce dust generated by vehicles and equipment on unpaved surfaces.
- Turn off construction vehicles when not in use or idling more than five minutes.

**Operation.**
- Maintain standby backup generators in good working condition.

#### CULTURAL RESOURCES

**Construction.**
- The commitments and stipulations in the May 29, 2014 MOA (included in Appendix B in this FONSI) for the 132-acre parcel will also extend to the 60- and 77-acre parcels. Additionally, the May 13, 2016 Avoidance Plan (included in Appendix C in this FONSI) will be included in the Final SEA and in the construction specifications for the construction bid documents. The VA does not anticipate topsoil removal to exceed a depth of 6 inches plus or minus 2 inches (6” +/-2”) below grade during construction of the maintenance roadway. However, if more than 6” +/-2” of topsoil will be removed within an archaeological site boundary, then Section 106 consultation will be reinitiated with the SHPO and the TSN. Additionally, an archaeological monitor will be on-site during soil removal within the boundaries of an archaeological site. Topsoil removal is necessary to clear minor surficial vegetation/organic matter prior to placement of geotextile fabric and granular fill that will underlay the maintenance roadway. The removed topsoil will be placed on-site near the area of the roadway from where it originated, and, following construction, will be restored as close as possible to that area, to the maximum extent possible. The MOA, Avoidance Plan, and topsoil management requirements must be followed by the NCA and contracted construction firm during construction; these requirements include completion of a construction monitoring plan, construction monitoring, etc. that the NCA is responsible for and which require Section 106 coordination with the SHPO and the TSN.
• Should human remains or other cultural items as defined by the Native American Graves Protection and Repatriation Act (NAGPRA) be discovered during project construction, the construction contractor would immediately cease work until VA, a qualified archaeologist, the SHPO, and Native American Tribes are contacted to properly identify and appropriately treat discovered items in accordance with applicable State and Federal law(s).

**Operation.**

• Should human remains or other cultural items as defined by NAGPRA be discovered during project construction, the construction contractor or discovering party would immediately cease work until VA, a qualified archaeologist, the SHPO, and Native American Tribes are contacted to properly identify and appropriately treat discovered items in accordance with applicable State and Federal law(s).

**GEOLOGY, SOILS, AND TOPOGRAPHY**

**Construction.**

• Design, install, and maintain erosion and sediment controls during the duration of construction activities and any subsequent soil disturbance activities near site drainages. Such controls may include silt fences, runoff control berms, erosion control fabric, and rip-rap.

• Minimize the amount of exposed soils at any given time during construction activities.

• Quickly re-vegetate disturbed areas following completion of construction activities to minimize the length of time that bare soils are exposed.

• Minimize the disturbance to or creation of steep slopes (maximum of 15%).

• Provide an undisturbed natural buffer between the activity area and surface drainages, and direct stormwater runoff to vegetated areas.

• To control stormwater and reduce potential soil erosion and sedimentation, develop and implement a Stormwater Pollution Prevention Plan (SWPPP) meeting the requirements of the NYS SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). Implement SWPPP stormwater management control systems to also meet NYSDEC post-construction requirements. Maintain these stormwater management systems during operation of the Proposed Action.

• Implement spill and leak prevention and response procedures for construction equipment, including maintaining a complete spill kit at the project area, to minimize the potential impact from an accidental fuel release on soil quality.

• Re-use excess soils on-site to the maximum extent practicable.

• If requested by NRCS, submit an NRCS Farmland Conversion Impact Rating Form.

**Operation.**

• Maintain cemetery grounds with healthy vegetative cover to prevent soil exposure and soil erosion.

**HYDROLOGY AND WATER QUALITY**

**Construction and Operation.**

• Implement the BMPs listed above for Geology, Soils, and Topography.

• Utilize native, non-invasive, drought-resistant vegetation for area landscaping to reduce irrigation requirements.

• Ensure the SWPPP is updated should any post-construction stormwater modifications be made.

• Route stormwater runoff from impervious surfaces to designated stormwater retention and drainage areas.

• Implement spill and leak prevention and response procedures, including maintaining a complete spill kit at the project area, to reduce the impacts of incidental releases of vehicle
Proposed Finding

**Construction**

- Engage contractors or regulatory agencies in locating any new groundwater well(s) to minimize the potential to impact other groundwater users. Additionally, if warranted, obtain the NYSDEC water withdrawal permit if extracting more than 100,000 gallons per day (gpd) of groundwater.

- Limit use of pesticides and road deicing chemicals, following label requirements and keeping usage to the lowest quantities possible, thereby reducing the potential for water quality impacts.

- Construct and maintain crypts and other internments to avoid contact with groundwater.

**HABITAT AND WILDLIFE**

**Construction.**

- Limit tree clearing activities to occur outside of the nesting season for the Northern long-eared bat in order to avoid potential impacts to the species. Specifically, perform tree clearing between November 1 and March 31, when Northern long-eared bats are not using trees for nesting or roosting.

- Avoid impacts to forested or wetland communities by clearing only the necessary space needed to establish roadways within the property for ingress and egress of construction (and subsequent visitor) traffic, interment areas, and other physical infrastructure, as specified in the final Master Plan.

- Stage and operate construction equipment in designated areas and away from sensitive receptors (e.g. wetlands) when not in use.

**Operation.**

- Avoid impacting wildlife and degrading habitat by implementing the BMPs described above for construction and those described under Soils, Hydrology and Water Quality, and Wetlands.

**NOISE**

**Construction.**

- Schedule construction activities for daylight hours to minimize potential impacts to nearby residential areas during quieter evening periods. Also, schedule construction activities to minimize potential impacts on cemetery operations (e.g. committal services) associated with the Early turnover phase and occurring during construction of other Phase 1 cemetery elements.

- Maintain mufflers and sound shielding on construction equipment and routine maintenance equipment (e.g. lawn mowers), and shut down construction equipment when not in use.

**Operation.**

- Limit rifle salutes during committal services to daytime hours.

- Operate maintenance equipment during daylight working hours and away from committal services, thereby maintaining the dignity and solemnity of the National Cemetery environment during these services.

**FLOODPLAINS, WETLANDS, AND COASTAL ZONE MANAGEMENT**

**Construction and Operation.**

- Limit wetland clearing to the 0.74 acres specified in the MP5 design. Perform wetland clearing during relatively dry periods.

- Establish new site drainages potentially capable of developing new wetland areas.

- Purchase up to 1.0 Wetland Mitigation credit in the Niagara River service area.
**SOLID WASTE AND HAZARDOUS MATERIALS**

**Construction.**
- Prior to demolition, remove regulated building materials and any aboveground storage tanks from the residence on the 60-acre parcel. Dispose of regulated building materials according to applicable federal and state regulations.
- Perform routine scheduled maintenance and inspections on construction vehicles and equipment to reduce the potential for incidental releases of vehicle and equipment fluids or chemicals to the environment.
- Maintain spill kits to rapidly respond to and limit impacts from accidental releases of equipment fluids or chemicals. Report releases of regulated quantities of regulated chemicals to the VA and NYSDEC. Perform cleanup according to applicable regulatory requirements.

**Operation.**
- Perform proper vehicle maintenance and routine inspections to reduce the potential for incidental releases of vehicle and equipment fluids or chemicals.
- Manage solid wastes in designated areas and establish routine pickup and disposal to appropriate landfill facilities by qualified vendors.

**TRANSPORTATION AND PARKING**

**Construction.**
- Schedule construction activities such that anticipated construction-related traffic increases do not coincide with typical morning and evening periods of increased traffic associated with community commuting patterns.
- Route transportation of construction equipment (namely haul trucks bringing fill soils to the site) to minimize potential impacts to travel by the neighboring communities on local area roadways.
- Coordinate with NYSDOT regarding any necessary signage needed near the construction entrance to alert vehicles of entering and exiting construction traffic. As warranted, utilize law enforcement for traffic control during construction periods.

**UTILITIES**

**Construction.**
- Design and install properly-sized on-site septic wastewater systems according to the NYSDEC “Design Standards for Intermediate Sized Wastewater Treatment Systems” (March 5, 2014 or newer).
- Design and install stormwater management system (retention ponds) such that the required General Permit post-construction stormwater management system meets the performance criteria in the “New York State Stormwater Management Design Manual,” dated January 2015 or newer.
- In advance of extending private utilities to the site, communicate with private utility providers to ensure no or minimal disruptions occur to existing customers during the construction period.

**Operation.**
- Routinely maintain and inspect the on-site septic systems to ensure proper operation and compliance with an NYSDEC SPDES permit, as applicable.

*Source: Final SEA, February 2017*
MEMORANDUM OF AGREEMENT

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. 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(f) 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) **Scoa and Related Agreements.**

1. 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 curatorial agreement, between TSN and the landowner.

2. 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.

3. 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 the National Cemetery in Western New York on historic properties.

**Signatories**

National Cemetery Administration  
U.S. Department of Veterans Affairs  

By: [Signature]  
Date: 5/29/14

The Tonawanda Seneca Nation  

By: [Signature]  
Date: 5/29/14

State Historic Preservation Office  
State of New York  

By: [Signature]  
Date: 5/18/14

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

By: [Signature]  
Date: 5/18/14

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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 Antecki, 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 radiocarbon 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.
Site Boundaries in Area F as Defined by Phase 2 Close-Interval Shovel Testing

KEY:

- Lithic Cluster
- Survey Block Boundary
- = 100 feet
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)

de. Meadowood Point – Area E (Phase 2)

f. Meadowood Point Fragment – Area A (Phase 1)
Pursuant to the Indian Falls Precontact Loci Proposed Western New York National Cemetery 1232 Indian Falls Road Town of Pembroke, Genesee County, New York (OPRHP No. 12PR2608), the Council of Chiefs, Tonawanda Seneca Nation, 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

Commonwealth Cultural Resources Group, Inc.
Depositor

Property/Artifact Owner
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 once 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.

Some 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, ladies, 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 established tradition.


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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.


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### 4.7 Procedures for Handling Discovery of Human Remains

<table>
<thead>
<tr>
<th>Known Burials</th>
<th>Unidentified Burials</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When to contact?</strong></td>
<td><strong>Intentional excavation</strong></td>
</tr>
<tr>
<td></td>
<td>At the earliest time in the decision-making process.</td>
</tr>
<tr>
<td><strong>Which Nation to contact?</strong></td>
<td>If find is within existing nation boundary, contact that nations' Cultural Resource representatives.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Who to contact?</strong></td>
<td>Haudenosaunee Cultural Resource Representatives</td>
</tr>
<tr>
<td></td>
<td>HSCBRR</td>
</tr>
<tr>
<td><strong>How to contact?</strong></td>
<td>Contact list is provided.</td>
</tr>
<tr>
<td></td>
<td>HSCBRR</td>
</tr>
<tr>
<td><strong>Information required</strong></td>
<td>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</td>
</tr>
<tr>
<td></td>
<td>Nation will send a representative to review the site</td>
</tr>
<tr>
<td></td>
<td>Company must hire a Native American on-site observer.</td>
</tr>
<tr>
<td><strong>Next steps</strong></td>
<td>Non-disturbance of burials is preferred.</td>
</tr>
<tr>
<td></td>
<td>No remains should be removed without proper Cultural protocols.</td>
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<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Time Frame</strong></td>
<td>30 to 45 days</td>
</tr>
<tr>
<td></td>
<td>As soon as possible.</td>
</tr>
</tbody>
</table>

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APPENDIX C
May 13, 2016 Avoidance Plan
Incorporated into the Proposed Action
May 13, 2016

Attn: Ms. Nancy Herter
Coordinator and Native American Liaison
New York State Division for Historic Preservation
Peebles Island State Park
P.O. Box 189
Waterford, NY 12188-0189
RE: OPRHP No. 12PR02608 (Proposed Western New York National Cemetery)

Dear Ms. Herter,

The purpose of this letter is to reiterate the VA’s avoidance plan for the roadway to be constructed as part of the Early-turnover development (referred to as the Phase I development) at the proposed Western New York National Cemetery located at 1232 Indian Falls Road, Pembroke, New York.

As discussed during our telephone conversation on April 19, 2016, and in response to your letter dated April 13, 2016, the VA believes that the fill associated with construction of the Phase I roadway will not disturb potential subsurface archaeological resources, specifically the 30,000 square feet of the Indian Falls VA Precontact Site (3712.000035). Additionally, if the VA develops areas outside of the Phase I cemetery boundary in the future, the VA, as the lead federal agency, will reinitiate consultation with your office and applicable Native American Tribes as part of the NEPA and Section 106 processes. Furthermore, the VA is committed to conducting a Phase II cultural resource investigation prior to any potential future development outside of the Phase I cemetery boundary. Therefore, the VA believes there should be no adverse effects associated with the construction and operation of the Phase I roadway.

As previously described in the VA’s letter to your office dated February 17, 2016, and your letter dated April 28, 2016, the VA is committed to implementing the following measures to protect and assure long-term preservation of the 30,000 square feet of the Indian Falls VA Precontact Site:

- Erect temporary construction fencing at the limit of fill so that no construction personnel or vehicles enter the site area during or after construction;
- Install geo-textile fabric over the portion of the site onto which fill is to be introduced;
- Deposit fill onto the site area via mechanical equipment from outside the site area; no construction vehicles shall enter the limits of the site;
• Hire a professional archaeologist to monitor and document compliance with these measures
during the construction phase associated with the burial of 30,000 square feet of the Indian
Falls VA Precontact Site; and

• A cultural monitor will be provided both for the 132- and 60-acre areas for construction
activities requiring excavation or earthwork ground disturbance of a depth in excess of 36
inches (consistent with the language in the Memorandum of Agreement [MOA] signed on
May 29, 2014).

Additionally, per our meeting on May 5, 2016, the VA reiterates that it will implement the protective
measures previously documented in the MOA signed on May 29, 2014. These MOA stipulations
will apply both to the 132-acre parcel originally identified as the location for the cemetery, as well as
the adjacent 60-acre parcel subsequently identified for cemetery development by the VA. The
protective measures identified in the MOA and the NY SHPO’s April 28, 2016 letter (as outlined
above) will be documented as commitments in the forthcoming construction bid documents,
Draft EA, and the potential Finding of No Significant Impact (FONSI) so all contractors and VA
personnel are aware of these commitments when bidding on this project.

Furthermore, the NCA will restrict development in the areas identified and will not perform any
ground disturbing activities in these areas without first formally consulting with the Tonawanda
Seneca Nation and NY SHPO. Additionally, knowledge of the loci will be limited to and secured by
the cemetery director and NCA leadership such that information about the loci is not available to the
general public.

I look forward to receiving your response to this letter, which the VA will incorporate into the
subsequent Environmental Assessment findings for this project and to document the VA’s
commitment to incorporating the appropriate measures required to comply with Section 106 of the
National Historic Preservation Act.

If you have any questions or require additional information, please do not hesitate to contact me at
(202) 632-5879 or Glenn.Elliott@va.gov.

Sincerely,

Glenn Elliott
Environmental Engineer, Program/Project Manager
Figure 1. Proposed Western New York National Cemetery – Phasing Plan
Figure 2. Overlay of Proposed Development Fill Areas over the 2015 Phase IB Resource Boundary Map
CONSTRUCTION SPECIFICATIONS

1. Minimum stone size shall be 1'-4" stone installed over filter fabric to a minimum depth of 2'.
2. Minimum width shall be 18' for one way traffic, 24' for two way traffic.
3. All work areas clearing or disturbed during construction shall be fully revegetated, including the installation of a temporary erosion control structure.
4. Post and other temporary structures shall be installed according to the plans and specifications.
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6. Temporary erosion control structures shall be removed prior to the issuance of the final inspection certificate.

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