



Gwich'in Tribal Council

*Guidelines Respecting the Discovery of
Human Remains and Burial Sites in the
Gwich'in Settlement Area*

*Approved by: Gwich'in Tribal Council Board of Directors
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Administered by: Gwich'in Social & Cultural Institute

**GUIDELINES RESPECTING THE DISCOVERY OF
HUMAN REMAINS AND BURIAL SITES IN THE
GWICH'IN SETTLEMENT AREA**

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Introduction and Background

The treatment of every burial site requires respect. Legislation of various types protects burial sites and cemeteries from being disturbed. Government agencies and First Nations keep and consult records of known sites so that land use plans or proposals can avoid such sites.

There are many historic and First Nation graves in the Gwich'in Settlement Area including the Yukon, which are no longer marked and which may be disturbed accidentally through land use or development. Other sites may be disturbed by natural forces, such as erosion, leading to the exposure of human remains.

As more people travel in backcountry areas, for work or pleasure, it is expected that the number of such discoveries may increase. It is important therefore to have guidelines for reporting, investigating and managing such sites in a coordinated and effective manner, to give them proper respect.

This document has been prepared for burial sites discovered within the Gwich'in Settlement Area in the Northwest Territories.

The Transboundary Agreement in the Gwich'in Comprehensive Land Claim Agreement (GCLCA) (Section 9.5) require the development of procedures to protect and manage Yukon First Nation (YFN) or TG burial sites, and specify certain actions when such sites are discovered. If burial sites are discovered within the Yukon or the Tetlit Gwich'in Yukon Lands, please consult the document "Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon".

Purpose

To provide direction on the reporting, identification, treatment and disposition of human remains found outside of recognized cemeteries in the Gwich'in Settlement Area, and to ensure these remains are respected and protected consistent with legislation and the GCLCA.

Scope and Application

These guidelines apply to anyone who discovers human remains or grave "goods" outside of recognized cemeteries in the Gwich'in Settlement Area, and to provide direction to Northwest Territorial Government and Gwich'in officials involved in protecting and caring for such sites.

The guidelines reflect existing practices in many ways. They do not replace legislation or

regulations protecting burial sites, but are intended to integrate obligations contained in the GCLCA with land use permitting regimes and the Environmental Assessment Process. These guidelines apply on Settlement Lands at the discretion of Gwich'in Tribal Council (GTC). The Prince of Wales Northern Heritage Museum – Territorial Archaeologist approval is required for management plans for sites on non-Settlement Land.

Existing known burial sites that are marked or otherwise recorded are protected by existing legislation.

Management plans for these sites may be developed on a case by case basis.

Burial sites discovered within the boundaries of a designated heritage site may be subject to the management plan for that site.

The guidelines do not apply within National Historic Sites owned and operated by Parks Canada or National Parks. Parks Canada has its own guidelines respecting burial sites and human remains.

Evaluation and Revision of Guidelines

The implementation of these guidelines will be evaluated as necessary to ensure that they are fulfilling their purpose.

Guiding Principles

All human remains, graves, and grave goods will remain undisturbed and protected regardless of cultural affiliation except where extraordinary circumstances require further action.

All human remains, and items found at graves (grave offerings, markers etc.) shall be treated with respect and dignity regardless of their cultural affiliation.

Actions taken following the discovery of sites in the Yukon will be consistent with GCLCA Transboundary Agreement provisions respecting Yukon First Nation and Tetlit Gwich'in Burial Sites and the Guidelines Respecting the Discovery of Human Remains and First Nation Burial Sites in the Yukon.

Each discovery will be handled on a case by case basis in consultation with the affected parties in a coordinated and timely manner.

Definitions - see Appendix 1

References - see Appendix 2

Land claims provisions - see Appendix 3

Guidelines Respecting the Discovery of Human Remains and Burial Sites in the GSA

These guidelines cover five steps: discovery and notification; site protection and investigation; investigation and reporting; and site disposition or management agreements. A final step, arbitration, is provided for where no disposition agreement is reached.

1. Discovery and Notification

If human burial remains are accidentally discovered the following guidelines apply:

- a) The finder will immediately cease any further activity at the site and report the site to the RCMP.
- b) *If the finder is operating under a land use licence, permit or authorization*, the site must also be reported immediately to the land manager/permitting authority, as set out on the permit or authorization. The land manager or permitting authority shall confirm that the site is reported to the RCMP.
- c) Based on the information it receives, the RCMP will notify: 1) the Coroner's office if the site is of a forensic or criminal nature; or 2) the Gwich'in Tribal Council and the Designated Gwich'in Organization(s) (DGO) in whose Traditional Territory the Site is located and the Gwich'in Social and Cultural Institute, if the site is a suspected historic or a First Nation burial site and the Prince of Wales Northern Heritage Center Territorial Archaeologist.

2. Site Protection and Identification

- a) the land manager, the Territorial Archaeologist and the permitting authority shall take reasonable measures to protect the site from environmental factors and any form of unauthorized interference or disturbance.
- b) based on the evidence reported at the scene, the RCMP/Coroner will investigate the site and make a preliminary determination as to the nature of the remains.
- c) *if the site is of a criminal or forensic nature* (potential crime scene or missing person), then the Coroner's office and police will assume authority over the site/remains.
- d) Gwich'in Social and Cultural Institute may recommend that an archaeologist assist police or coroner in the preliminary assessment of the site.
- e) *If the site is **not** of police/coroner interest* then the Lands Manager, the Territorial Archaeologist, the Gwich'in Social and Cultural Institute, and the

affected DGO(s) will assume interim responsibility for protection and investigation of the site.

- f) the Lands Manager, the Territorial Archaeologist, the Gwich'in Social and Cultural Institute, and the affected First Nation(s) shall take reasonable measures to restrict access and ensure that the human remains and any grave offerings are not further disturbed pending the investigation and identification of the remains. The RCMP may be consulted about protecting the site.
- g) Where human remains are at risk of being destroyed or damaged, the Lands Manager may issue a stop work order prohibiting any further activities and may make an agreement with the DGO or user for any investigation, excavation, examination and preservation and removal of the remains, consistent with these guidelines. (*This would address concerns about unknown remains.*)

Existing site inventories, land use records, affected DGO's and community elders, and military authorities, should be consulted as soon as possible about possible identification of the remains. Some examination of the site/remains may be required to determine its cultural affiliation and age, and whether or not the site is modern or historic.

3. Investigation and Reporting

- a) The GTC land manager will direct the Territorial Archaeologist or qualified examiner to carry out an investigation under any required permits, in consultation with the affected DGO and other affected parties, to make an initial report citing, if possible*, the cultural affiliation of the human remains.
- b) Within a reasonable time to be specified by the Lands Manager, and the affected DGO(s), the Territorial Archaeologist or qualified examiner shall deliver a written report and any notification not yet made, to:
 - the Land Manager, and the affected First Nation(s) if appropriate;
 - the Director of the Gwich'in Social and Cultural Institute;
 - the permitting authority (GLWB);
 - any other representative of the interred, if known.
- c) The written report shall attempt *to identify:
 - the representative group of the interred;
 - the geographic boundaries of the site;
 - the grave offerings or other heritage resources that may be associated with the remains or the site.
- d) The Territorial Archaeologist or examiner may, with the agreement of the proper authority and the representative of the interred, if known, remove all or part of the human remains for further analysis or for temporary custody where the remains may otherwise be at risk.
- e) Any exhumation, examination and reburial of human remains from a DGO burial site shall be at the discretion of the affected DGO; and if ordered by an arbitrator pursuant to land claim provisions, will be done or supervised by the Gwich'in Tribal Council and DGO.

3.1 Reporting

- a) If the site is determined to be a Gwich'in burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains. *
- b) A person carrying out MVRMA or GLA authorized activity where a First Nation site is discovered can continue that activity with the consent of the the Land Manager, where appropriate. The activity must stay 150 meters away from the grave. If consent is denied, the person can seek terms and conditions from an arbitrator about continuing the activity (see Section 5).
- c) If after the final report, the human remains are found to be those of a different aboriginal people than those mentioned previously, the proper authority of that group shall be notified in order that they may assume the role of the representative.
- d) Where a site is **not** found to be a Gwich'in burial site, the Lands Manager may publish notice of the discovery in a newspaper or other public notice seeking information on the remains.

4. Site Disposition Agreement (Management Plan)

4.1 When the site or remains are identified

- a) The site shall not be disturbed and the Lands Manager, if on Settlement Land, shall initiate discussions towards entering into a site disposition agreement with the representative of the interred.
- b) If the site is a Gwich'in burial site on non-settlement land, there must be joint approval of the site management plan by the DGO in whose Traditional Territory the site is located and the Government.
- c) Decisions regarding reburial, relocation or other disposition should be determined on a case by case basis in consultation with those concerned and in a timely manner.

Site disposition agreements shall determine such things as:

1. the interim care of the human remains;
2. the scope and extent of analysis to be performed on the human remains, if any;
3. the exact location of the place where the human remains are to remain or to be interred;
4. the style and manner of disinterment, if applicable;
5. the style and manner of reinterment, if applicable;
6. the time period in which disinterment and reinterment is to take place;
7. the procedures relating to, and the final disposition of any grave offerings discovered with the human remains and any additional analysis of them;
8. the provision for future maintenance of the cemetery or site where the human

- remains are to be located;
- 9. access to the site and ways to prevent disturbance;
- 10. any other issue agreed upon.

4.2 When no representative is identified or no disposition is specified:

If disposition is not specified by a representative, or the remains are not claimed or no affiliation is established within a reasonable time, the Lands Manager, or DGO if on Settlement Land, shall with the necessary permits and approvals provide for the following disposition:

- a) cover and leave the remains where they were found and have the site recorded as a burial site/heritage site, if on land suitable for a burial site; or
 - b) have the remains disinterred and reinterred in the nearest appropriate cemetery; or
 - c) remove the remains from the site for analysis and may have them reinterred in a recognized cemetery or;
 - d) may act as the temporary repository of the remains.
- (Where the remains were found on Settlement Land but are not considered First Nations remains, the Territorial Archaeologist may remove the remains in consultation with the First Nation.)

5. Arbitration

- a) If no disposition agreement or management plan is reached within a reasonable time the matter may be referred to arbitration for settlement.

6. Records

- a) A record of the site and a report of the discovery and disposition plan shall be kept by the Territorial Archaeologist, the Gwich'in Social and Cultural Institute and the affected First Nation(s)/representative for future reference to protect the site.
- b) Access to information about discovered sites will be addressed in any site management plan developed under these guidelines, and will be protected under the *Access to Information and Protection of Privacy Act*, and the *Historic Resources Act* or any similar First Nations legislation.

Appendix 1 Definitions.

burial site the location of any human grave or remains that have been interred, cremated or otherwise placed, and include ossuaries, single burials, multiple burials; rock cairns; cave or cache burials etc. not situated within a cemetery

Burial Site which is defined as: a place outside a recognized cemetery where the remains of a cultural ancestor of a Gwich'in have been interred, cremated or otherwise placed.”

human remains mean the remains of a dead human body and include partial skeletons, bones, cremated remains and complete human bodies that are found outside a recognized cemetery” (*adapted from Historic Resources Act*)

grave offering any object or objects associated with the human remains which may reflect the religious practices, customs or belief system of the interred.

historic under the Historic Resources Act this generally means something older than 45 years.

land manager Agency responsible for the administration of the land on which the site is located. For example, currently territorial parks are managed by NT Parks and Tourism; Settlement Land is administered by the Gwich'in Tribal Council. Crown land is administered by the federal government, but the Territorial Archaeologist manages burial sites. (Burial sites may not be disturbed on any land without proper authorization.)

recognized cemetery a defined area of land that is set aside for the burial of human bodies.

representative means a descendant of the interred or of the person whose remains are found, or where no descendant survives or is identified, an official representative of the appropriate First Nation in whose Traditional Territory the burial site is located or the closest culturally affiliated group, religious denomination, military or marine authority as evidenced by the location or mode of burial. Where no representative can be determined the Territorial Archaeologist shall act as the representative on Non-Settlement Lands and the Lands Manager on Settlement Lands at the discretion and with the consent of the DGO(s)

representative group means the appropriate Gwich'in First Nation or the closest culturally affiliated group, religious denomination, military or marine authority as evidenced by mode and style of burial which is willing to act as a representative.

site disposition agreement means a written agreement to be reached between the Lands Manager and the representative of the interred regarding the disposition of the remains, including any disinterment and reinterment, and management plan

management plan means a plan to identify the roles of the representative, Territorial

Archaeologist and land owner or manager respecting the care and protection of the site, including a consideration of site records, site access, and ways to protect a site from disturbance.

Appendix 2 References

The following include requirements to protect burial sites and were considered in the development of these Guidelines.

Yukon Transboundary Agreement (Gwich'in Tribal Council), Sections 9 and 18, and Implementation Plan

Historic Resources Act – NT Archaeological Sites Regulations,

Part 6 Criminal Code Cemeteries and Burial Sites Act

Coroner's Act

Mackenzie Valley Land Use Regulations

Vital Statistics Act

Appendix 3 Land Claims Provisions Relating to Burial Sites

9.5. Tetlit Gwich'in Burial Sites*

9.5.1 Government and Tetlit Gwich'in shall each establish procedures to manage and protect Tetlit Gwich'in burial sites which shall:

- (a) restrict access to Tetlit Gwich'in burial sites to preserve the dignity of Tetlit Gwich'in burial sites;
- (b) where the Tetlit Gwich'in burial site is outside the primary use area (*Fort McPherson Group Trapping Area*), require the joint approval of government and the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located for any management plans for the Tetlit Gwich'in burial site;
- (c) where the Tetlit Gwich'in burial site is on land in the primary use area which is not Tetlit Gwich'in Yukon land, require the joint approval of government and the Tetlit Gwich'in for any management plans for the Tetlit Gwich'in burial site; and
- (d) provide that, subject to 9.5.2, where a Tetlit Gwich'in burial site is discovered, the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in, if the Tetlit Gwich'in burial site is in the primary use area, shall be informed and the Tetlit Gwich'in burial site shall not be further disturbed.

9.5.2 Where a person discovers a Tetlit Gwich'in burial site in the course of carrying on an activity authorized by government, a Yukon First Nation or the Tetlit Gwich'in, as the case may be, that person may carry on the activity with the agreement of the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in if the Tetlit Gwich'in burial site is in the primary use area.

9.5.3 In the absence of agreement under 9.5.2, the person may refer the dispute to arbitration under chapter 18 of this appendix for a determination of the terms and conditions upon which the Tetlit Gwich'in burial site may be further disturbed.

9.5.4 Any exhumation, examination and reburial of human remains from a Tetlit Gwich'in burial site ordered by an arbitrator under 9.5.3 shall be done by, or under the supervision of, the Tetlit Gwich'in.

9.5.5. Except as provided in 9.5.2 to 9.5.4, any exhumation, scientific examination and reburial of remains from Tetlit Gwich'in burial sites shall be at the discretion of the Tetlit Gwich'in.

*This is an excerpt from Appendix C - Yukon Transboundary Agreement between Canada and the Gwich'in Tribal Council, (1992), p. 32.