

2 New Hampshire Burial Laws

In the laws of New Hampshire (the Revised Statutes Annotated, or RSA for short) there are several chapters that deal with cemeteries and human remains. Three are particularly pertinent here.

RSA 227-C:8 a-i is the set of statutes that define the duties of the Division of Historical Resources. Among those duties are the responsibilities of the State Archaeologist to: 1) oversee the excavation and analysis of unmarked human burials discovered in the course of construction activities, 2) attempt to contact any individuals or groups with an interest in such remains, and 3) manage the disposition of these remains once they are excavated and analyzed.

RSA 289 deals with cemeteries, but more important here is RSA 290, which deals with burials and reinternments. Specifically, this statute makes it illegal, under most circumstances, to disinter a human body without a permit. Such a disinterment is a misdemeanor, but it is important to note that the *accidental* discovery of buried human remains is not a crime.

RSA 635 is part of the New Hampshire Criminal Code enacted by the 1987 legislature. This provision sets out the circumstances under which it is permitted to alter or remove cemetery items and/or the remains they mark. Such disturbances require written permission from those with rights to the burial ground, when they can be found, or from the local governing body if owners or descendants cannot be found. This statute also prohibits the possession or sale of tombstones and other objects from cemeteries. Violation of this law is a class B felony.

Contact Information

Mark Doperalski
State Archaeologist
NH Department of Natural and Cultural Resources
Division of Historical Resources
19 Pillsbury Street
Concord, NH 03301-3570
(603) 271-6433
mark.w.doperalski@dncr.nh.gov

Office Manager
NH Department of Natural and Cultural Resources
Division of Historical Resources
19 Pillsbury Street
Concord, NH 03301-3570
(603) 271-3483
preservation@dncr.nh.gov

This project has been financed in part with a federal "Historic Preservation Fund" matching grant from the National Park Service of the United States Department of the Interior, through the New Hampshire Division of Historical Resources/State Historic Preservation Office. However, its contents and opinions do not necessarily reflect the views or policies of the Department of the Interior or the Division of Historical Resources, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or the State of New Hampshire.

The United States Department of the Interior (under Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973), and the State of New Hampshire (under RSA 275 and RSA 354-A), prohibit discrimination on the basis of race, color, national origin, or handicap. If you believe that you have been discriminated against in any program, activity, or facility of this project, or if you desire further information, please write to: Office for Equal Opportunity, U.S. Department of the Interior, Washington, D.C. 20240.

WHAT TO DO UPON ENCOUNTERING HUMAN REMAINS

Before or During Land-Altering Activities in New Hampshire

A guide for planners, builders, landowners,
developers, and local governments



NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

February 2023

1 A Statement of Principles

Historians and archaeologists often help contemporary society remember its ancestors by studying materials and objects that were never intended by their makers to be memorials. Given this, the protection of old cemeteries and graveyards is particularly important because it is a way of honoring our forebears by respecting the things they made specifically for us to remember them by.

A second guiding principle allows us to extend our concern beyond extant cemeteries from the post-contact period to encompass all buried human remains. That principle, supported by the weight of judicial opinion throughout the U.S., is the idea that once a place has been used for human burial, it remains a special place in perpetuity, regardless of subsequent land transfers. In sections 3 and 4 of this pamphlet we spell out specific procedures for dealing with both marked and unmarked human burials and burial places encountered during the course of ground-disturbing activities.

The goal of the Division of Historical Resources (DHR) in formulating and publicizing these procedures is to ensure that there is someone to speak for every burial place in New Hampshire, public and private, post-contact and pre-contact. Citizens with rights to private burial grounds and descendants of those interred in them can speak for some private burial grounds, and local governments can speak for public cemeteries within their jurisdiction. The role of the DHR is nothing more than to speak for private cemeteries and Native American burial places which have no other advocates. In these cases our purpose is to extend to these memorials and remains the same kind of respect that any of us would want for the remains of our own ancestors.

3 Marked Burials

If you plan a landscape alteration, you should try to locate any old burial grounds in the area you intend to alter. There are many sources of this kind of information, including USGS quadrangle maps, town histories, and two organizations: The New Hampshire Historical Society and the New Hampshire Old Graveyard Association. In addition, under New Hampshire statute, towns are obligated to keep information on old gravesites. This list of sources is not exhaustive, but it is a good start.

If there are marked burials in the path of your proposed construction, the DHR prefers the burials be left undisturbed, and state law requires a 25-foot buffer around most cemeteries. However, marked burials may be removed legally, but requires two sets of approvals.

First, you need to determine who holds rights to the cemetery. Rights to visit, maintain, and approve alterations to a private cemetery belong to those who established the cemetery – and to their descendants – regardless of subsequent transfers of the surrounding property. The written permission of the holders of these rights is required to move a private cemetery. If those who hold these rights are impossible to locate, then written permission is required from the local government, which will consult with the DHR.

Second, the removal of burials to another location requires a permit. Typically, a funeral director applies to the New Hampshire Department of Health and Human Services for this permit, which must be countersigned by the local health officer. The DHR has the authority to review these applications and advise the Department of Health and Human Services.

4 Unmarked Burials

In the event that land-disturbing activities uncover unmarked human remains, a second set of procedures applies.

First, excavation must be discontinued and the local police notified. The police will call in the county medical examiner who will carry out an investigation to determine whether the remains require a criminal investigation or an archaeological investigation.

In the latter case, the county medical examiner will notify the State Archaeologist who has, in most cases, 48 hours to arrange with the landowner for the protection or removal of the remains. The State Archaeologist oversees the removal and analysis of the remains and has the responsibility of attempting to consult with individuals who may have an interest in them, next of kin and/or Native American groups. If located, the next of kin or Native American groups will have the right to determine what happens to the remains after they have been analyzed.

Finally, there are provisions for determining who will bear the costs of archaeological work necessitated by the discovery of unmarked burials. In the case of privately funded, non-commercial land-altering activities, the DHR will fund the work. For privately funded commercial land alteration, the land owner will bear the cost of the archaeology. In the case of state funded land alteration, the department funding the construction will also fund the archaeology.