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TITLE 6. HISTORIC PRESERVATION

CHAPTER 1. PROJECT REVIEW STANDARD REGULATION

§ 1. Purpose and Scope

- a. Tribal Council Resolution TCR050808-01 approved the Mashantucket [Western] Pequot Tribal Nation (MPTN) Historic Preservation Plan (Plan) which declares that MPTN:
 - (1) has responsibility for preservation of an extensive inventory of significant and/or potentially significant cultural resources located within Mashantucket, and aboriginal territory, which are important as they reflect cultural continuity of the Tribe's occupation of Mashantucket and adjacent lands throughout the pre-Contact and Historic periods;
 - (2) is committed to the responsibilities outlined in the National Historic Preservation Act to identify, preserve, and protect these resources in concert with the tribe's mission.
 - (3) has appointed a Tribal Historic Preservation Officer (THPO) who will assume some or all of the functions of the State Historic Preservation Officer as set forth in Section 106(b) of the National Historic Preservation Act.
- b. Tribal Council Resolution TCR060807-01 established the Tribal Historic Preservation Office declaring that the THPO will:
 - (1) assist MPTN in better understanding and implementing federal cultural resource management and tribal historic preservation policy;
 - (2) recognize and integrate cultural resource considerations in decisions affecting Mashantucket and balance such considerations with other Tribal mission requirements; and,
 - (3) develop procedures to protect significant cultural resources within Mashantucket and aboriginal territory.

§ 2. Authority

- a. The MPTN Historic Preservation Plan established that the Land Use Commission shall have the authority to enforce compliance with the Plan.
- b. Tribal Council Resolution TCR060807-01 established that the Tribal Historic Preservation Officer will:
 - (1) assume some or all of the functions of the State Historic Preservation Officer as set forth in Section 106(b) of the National Historic Preservation Act;
 - (2) identify, by conducting archaeological reconnaissance surveys, those proposed projects or actions that may result in an adverse effect on cultural properties;
 - (3) assess the need for further archaeological investigations in order to define site boundaries, cultural contexts and/or the significance for individual cultural properties;
 - (4) oversee or implement those surveys, site evaluations, and data recovery programs; and
 - (5) determine whether any action will have "no effect," "no adverse effect", or "adverse effect" on important cultural resources pursuant to 36 CFR 800 regulatory guidance.

§ 3. Applicability

- a. Applicants seeking a Land Use Permit for an activity which involves new construction, demolition of existing structures, or that will in any way involve ground-disturbance, must first consider the effects that activity could have on historical and cultural resources and avoid, minimize or mitigate any adverse effects on those resources.
- b. The typical assessment involves four primary steps:
 - (1) Consultation with the MPTN THPO;
 - (2) Identification of Historical and Cultural Resources;
 - (3) Assessment of Adverse Effects; and
 - (4) Resolution of Adverse Effects.

§ 4. Assessment Required

- a. Reconnaissance Survey
 - (1) The THPO will require a reconnaissance survey to determine the potential for archaeological sites in an area.
 - (a) Reconnaissance surveys generally do not involve extensive field investigation, though often will require a field visit by the THPO and/or designated archaeology staff.
 - (b) Staff will assess archival research and site survey information and provide written recommendations to the THPO.
 - (2) The archaeologist may recommend that no additional archaeological site work is necessary if:
 - (a) it is unlikely that cultural resources are present because the area had been previously disturbed, or
 - (b) no significant cultural resources had been identified through previous survey work within the area.
 - (3) In many cases additional field survey will be required.
- b. Phase I Investigation
 - (1) Phase I investigation consists of a combination of background research and fieldwork designed to identify resources and define site boundaries within a given project area or Area of Potential Effect (APE).
 - (a) During the Phase I investigation, the entirety of the project area must be studied.
 - (b) Locations not surveyed or only partially examined during a Phase I investigation will require additional work.
 - (2) If it is determined that a Phase I investigation is required it shall be completed by qualified archaeologist, approved by the THPO, at the Applicant's expense.
 - (3) It may be the case that preliminary field work had previously been completed by others. In such cases the THPO will provide the approved archaeologist with any archaeology survey data available for the APE.
- c. Phase II Investigation
 - (1) Phase II archaeological investigations are conducted in order to test or evaluate an archaeological site's eligibility for inclusion in the National Register of Historic Places (NRHP).

- (a) Field investigations should be designed to retrieve the information necessary to determine the eligibility of a site without seriously impacting the contextual integrity of the resource. Therefore, a limited testing regimen should be developed upon consultation with the THPO.
 - (b) In order to facilitate the evaluation process, specific information should be recovered during a Phase II investigation. This information may include, but is not limited to:
 - (i) evaluating areas of moderate and high artifact densities,
 - (ii) determination of the vertical limits of the site, the presence of intact, sub-surface, and/or stratified deposits, site structure, and site formation processes.
 - (2) Phase II Investigations must also determine the horizontal and vertical limits of the archaeological sites, and retrieve spatial, temporal, and subsistence information about the sites.
 - (3) Prior to the initiation of fieldwork, a detailed and concise scope of work must be submitted to the THPO for approval.
 - (a) The Phase II scope of work may be submitted as an appendix or addendum to the completed Phase I technical report.
 - (b) If, during the course of fieldwork, Phase II methods are found to be inadequate, the scope of work may be modified upon consultation with the THPO.
 - (c) A number of field methods and techniques may be implemented during Phase II investigations. These include:
 - (i) systematic, controlled surface collection, and additional shovel tests;
 - (ii) hand-excavated test units, deep testing, of mechanical removal of the plowzone; and,
 - (iii) use of remote sensing techniques.
 - (4) If the archaeological site(s) is determined to be eligible for inclusion in the National Register, the effect the project may have on the site(s) must be assessed.
 - (a) Avoidance of the site results in a determination of no effect.
 - (b) If the property cannot be avoided, and if any damage or disruption of the resource will result from implementation of the project, a determination of adverse effect is made.
 - (5) The THPO will consider the recommendations of the archaeologist and then discuss how to minimize or prevent the project's negative effect on the historically significant property with the Applicant.
 - (6) Data recovery efforts may be required to mitigate the adverse effect by recovering significant data or information prior to disturbance or destruction. Data recovery is also known as Phase III investigation.
- d. Phase III Investigation
- (1) If an archaeological site cannot be avoided or protected during construction, for a project to proceed, it may become necessary to recover as much data from the site as possible before it is destroyed. At this point, a Phase III archaeological excavation (or “dig”) may be required.
 - (a) Phase III Investigations are large-scale efforts that require a great deal of labor both in the field and in the laboratory.
 - (b) The outcome is a research volume that fully discusses the results of the investigation and represents a significant scientific contribution to the fields of prehistory and/or history.
 - (2) Prior to the initiation of data recovery, a detailed and concise scope of work must be submitted to the THPO for approval. The data recovery plan must include:
 - (a) an overview of previous investigations that were conducted for the archaeological resource(s).
 - (b) a brief description of the Phase II finding and justification for the determination of eligibility, and
 - (c) a detailed description of the level and effort of fieldwork to be conducted.

§ 5. Inspections and Notifications

a. Authority to Inspect

- (1) Pursuant to 14 M.P.T.L. Ch 9b. the THPO shall have the authority to inspect site work to ensure compliance with this Regulation and the MPTN Historic Preservation Plan.
- (2) The THPO may also require, at Applicant's expense, that qualified and approved archaeology staff be present to witness any site activities involving disturbance of previously undisturbed ground.

b. Mandatory Notifications

- (1) In the event that undocumented cultural or historical resources are unexpectedly encountered during construction, the contractor will immediately cease all construction activities in the immediate vicinity that may reasonably be assumed to affect the cultural or historical resource.
 - (a) The THPO may require, at the Applicant's expense, that a qualified approved archaeologist perform the required investigation/evaluation.
 - (i) Such resources discovered shall to the extent possible be protected in-situ.
 - (ii) Resources may, on a case-by case basis, in consultation with the THPO, be mitigated by archaeologist qualified and approved by the THPO.
 - (iii) Under no circumstance shall artifacts be removed from the site unless approved by the THPO.
 - (iv) Notwithstanding anything to the contrary herein, the curation and disposition of any cultural or historical resources shall be consistent with 36 C.F.R. Part 79 and any other applicable laws.
 - (b) While the matter is being resolved with the appropriate parties, the contractor and archaeologist, will isolate the area and convey to the permittee that no construction will take place in the immediate area of the find.
 - (c) Construction outside the immediate area of the find may continue.
- (2) If human remains are unexpectedly encountered during construction, the remains will be treated in a respectful manner and in accordance with all applicable laws.
 - (a) In addition to immediately cessation of all construction activities and contacting the THPO, the site shall be treated as a suspected crime scene and the Applicant shall immediately notify the MPTN Police Department.
 - (i) The Applicant is responsible for ensuring the confidentiality of the discovery by instructing all contractors that communication needs to be made through the appropriate authorities.
 - (ii) Until it is determined that the discovery is not a crime scene, all communication shall be directed through the MPTN Police Department.
 - (b) When the determination is made that the human remains are not related to a crime scene, the THPO may involve the Connecticut State Historic Preservation Officer (SHPO) and the CT State Archaeologist to assist with determination of whether the remains are native American.
 - (c) The THPO will consult with the Mashantucket (Western) Pequot Historic Cultural Preservation Committee (HCPC) and Tribal Council to make a determination for reburial.

CHAPTER 2. RESTRICTED SITES

§ 1. Findings and Purpose

The Mashantucket Pequot Tribal Nation, to ensure long-term protection and preservation of sites of archaeological, historical, cultural, or spiritual significance, in order to preserve, protect, and advance the governmental, social, cultural, and economic strength of the Mashantucket Pequot Tribal Nation for the benefit of past, present, and future Mashantucket Pequot Tribal people, finds it necessary to ensure certain sites, parcels, or lots of land are permanently restricted from development, damage or intrusion.

§ 2. Restricted sites

The Mashantucket Pequot Tribal Nation, to ensure long-term protection and preservation of sites of archaeological, historical, cultural, or spiritual significance, in order to preserve, protect, and advance the governmental, social, cultural, and economic strength of the Mashantucket Pequot Tribal Nation for the benefit of past, present, and future Mashantucket Pequot Tribal people, designate the following sites, parcels, or lots of land as permanently restricted from development, damage, or intrusion:

- a. TCR071306-03 of 15
 - (1) Lots F2 and F15 of Phase 7 Housing Area;
 - (2) Preston Plains — a sample of the Archaic Period pit houses;
 - (3) Lot 153R – the 17th Century Pequot Fort;
- b. TCR111407-01 of 02
 - (1) Site 72-91 (Monhantic Fort—Lot 153R);
 - (2) Site 72-97 (Sandy Hill);
 - (3) Site 164 (Phase 7 Housing);
 - (4) Site 72-70A (Mashantucket Pequot house/farmstead);
 - (5) Site 72-190 (Lot 15 Fox Trail—Phase 7 Housing);
- c. TRC062909-03 of 06
 - (1) Site 72-282 (Island at the cul-de-sac of Amos George Drive)
- d. TCR033111-09 of 09
 - (1) Fanning Road Cemetery (Site 72-49);
 - (2) Lot 2[*sic*] 32 Fanning Road; and
 - (3) The dirt road from the graveled, Parking Area, immediately adjacent to Fanning Road, to the palisade passes through an area of extreme cultural sensitivity as the areas on either side of the gravel road contains unmarked Pequot graves dating to the 17th and 18th centuries. No parking, turning, or driving should be allowed in this area other than on the gravel road. The areas on either side of the gravel road shall be permanently excluded from development, damage, or intrusion.
- e. TCR042513-06 of 06
 - (1) Fanning Road Cemetery (Site 72-49).
 - (a) Lots 32 and 50 Fanning Road.
 - (2) Council Rocks: Site 72-117, Lot 39
 - (3) Sites located outside of Mashantucket
 - (a) Long Pond Cemetery-Mashantucket (Western) Pequot: Site 72-200, Lot 37.
 - (b) Mashantucket (Western) Pequot - Lake of Isles/Ridge Burial (Lake of Isles Golf Course).
 - (c) Mason's Island Cemetery, Site 137-9; 93 Old North Road, Stonington, CT.
- f. [Reserved]

§ 3. Authorization, Enforcement and Review.

a. Only full review by the Tribal Historic Preservation Officer and Tribal Council can amend or revise this restriction. Tribal Council may not amend or revise this restriction unless there are prudent or feasible alternatives to the long-term preservation and protection of the restricted sites.

b. The Tribal Historic Preservation Officer and the Director of Research and Information Services for the Mashantucket Pequot Museum and Research Center shall be responsible for ensuring these sites are clearly identified and logged with the Natural Resources Protection and Regulatory Affairs Department; the Land Use Commission Chairman; the Department of Public Works, Community Planning & Property Management; the Office of Legal Counsel; the Tribal Clerk; and the Chief Operating Office.

c. The Tribal Historic Preservation Officer will conduct Tribal Project review for any new construction, including new facilities, buildings, roadways, and any maintenance and landscaping activities on Tribal trust and fee lands that would result in either ground disturbance within archaeologically sensitive areas or visual changes to and/or alteration of significant traditional cultural properties. Identification of historic and cultural properties within unsurveyed Tribal trust and fee lands shall involve conducting reconnaissance archaeological surveys. The Tribal Historic Preservation Officer will identify protective buffer zones around sites and places of traditional and cultural importance as well as significant archaeological and historic sites. Significant sites and archaeologically sensitive areas on Tribal trust and fee lands shall be studied further as project-related needs require. Impacts to sites and sensitive areas shall be avoided, minimized, or mitigated.