

**HERITAGE INSPECTION REPORT FOR HUMAN BURIAL
ACCIDENTALLY EXPOSED DURING CONSTRUCTION WORK ON
THE IMPROVEMENT OF NATIONAL ROAD R37, SECTION 1.
MODIKWA MINE TO BURGERSFORT AND CONSTRUCTION OF
PEDESTRIAN SAFETY FACILITIES BETWEEN MODIKWA MINE
AND BURGERSFORT IN LIMPOPO PROVINCE**

HERITAGE INSPECTION REPORT

04 May 2023

1 DOCUMENT INFORMATION

Item	Description
Proposed development and location	The improvement of National Road R37, Section 1. Modikwa Mine to Burgersfort and construction of pedestrian safety facilities between Modikwa Mine and Burgersfort in Limpopo Province
Purpose of the study	To verify the nature and extent of the accidental find/exposure
1:50 000 Topographic Map	2530BD
Coordinates	S24° 37' 04.1" E030° 10' 40.4."
Municipalities	Greater Tubatse Local Municipality, Sekhukhune District Municipality.
Predominant land use of surrounding area	R37 Road
Developer/Applicant	Road Agency Limpopo
Contractor	Edwin Construction
Contract no.	NRA R.037-020-2005/1 R37
Heritage Consultant	Integrated Specialist Services (Pty) Ltd 65 Naalدهout Avenue, Heuweloord, Centurion, 0157 Tel: 011 037 1565 Cell: 071 685 9247 Email: trust@issolutions.co.za
Date of Report	04 May 2023

Copyright

Authorship: This Inspection Report has been prepared by Mr Trust Mlilo (MA Archaeology, BA Hons, PDGE, BA) (Professional Archaeologist). The report is for the review of the Provincial Heritage Resources Agency

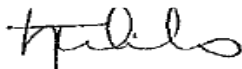
Copyright: This report and the information it contains is subject to copyright and may not be copied in whole or part without written consent of Edwin Construction, and Sativa (Pty) Ltd except that the report can be reproduced by Edwin Construction and The South African Heritage Resources Agencies to the extent that this is required for the purposes of the Archaeological and Heritage Management purposes in accordance with the National Heritage Resources Act, Act 25 of 1999.

Geographic Co-ordinate Information: Geographic co-ordinates in this report were obtained using a hand-held Garmin Global Positioning System device. The manufacturer states that these devices are accurate to within +/- 5 m.

Maps: Maps included in this report use data extracted from the NTS Map and Google Earth Pro.

Disclaimer: The Author is not responsible for omissions and inconsistencies that may result from information not available at the time this report was prepared.

Signed by



04 May 2023

Acknowledgements

The author acknowledges project manager and staff at the construction site for their assistance with project information, and previous reports for the project as well as responding to technical queries related to the project.

2 TABLE OF CONTENTS

1	DOCUMENT INFORMATION.....	2
2	TABLE OF CONTENTS.....	4
3	EXECUTIVE BRIEF	5
4	ABBREVIATIONS.....	6
5	DEFINITIONS.....	7
6	INTRODUCTION	9
7	SITE INSPECTION.....	9
8	SUMMARY OF INSPECTION PROCESS.....	10
9	CONTEXT OF THE SUSPECTED HUMAN REMAINS DISCOVERY	10
10	LEGAL CONTEXT	12
11	PUBLIC CONSULTATION.....	13
12	PHOTOS SHOWING THE INSPECTION PROCESS AND ACCIDENTAL FINDS.....	14
13	FURTHER ACCIDENTAL DISCOVERIES.....	21
14	FURTHER WORK ON SITE.....	22
15	CONCLUDING REMARKS:TREATMENT OF REMAINS WITH RESPECT	22
16	BIBLIOGRAPHY	24
17	APPENDIX 1:CHANCE FIND PROCEDURE	25
18	APPENDIX 1:BURIAL RELOCATION PROJECT METHOD STATEMENT.....	32
	DISCOVERY AND NOTIFICATION	32
19	APPENDIX 2: GENERAL PRECAUTIONS	36
20	APPENDIX 3: HUMAN REMAINS AND BURIALS IN DEVELOPMENT.....	- 38 -
21	APPENDIX 4: LEGAL BACKGROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA.....	41

3 EXECUTIVE BRIEF

This report outlines the heritage inspection and site condition results of human remains accidentally exposed during construction work along R37 Road. The remains were accidentally exposed on the 14th of February 2023 at CH129+100 left hand side road embarkment. The contractor reported the matter to SAPS Driekop (Driekop SAPS Case Number 2/2/2023). Driekop SAPS inspected and confirmed that the remains were of a human being. They requested the pathology department to attend to the scene. The pathologist found out that there were two human skulls at the site. They collected the remains for safe storage while investigations are under way. Sativa Travel and Environmental Consultants (Pty) Ltd undertook the inspection of the accidental find site after the remains were removed. The Phase 2 mitigation exercise was commissioned by Edwin Construction. The exercise constitutes a Phase 2 mitigation process of inspecting and verification of suspected human remains during construction work along R37 Road near Driekop, Burgersfort in Limpopo Province.

The heritage mitigation exercise involves assessing, classification, searching and diagnosing of suspected human remains exposed during construction activities along R37 Road. The site inspection confirmed that the chance find site is located within a previously disturbed section of the road with no signs of graves on the surface. The site inspection by Mlilo (2023) did not record any traces of burials or graving marking on the edge of the road. The current site inspection found out that some skeletal remains associated with potsherds were still present at the site. As such there is need for search and rescue to ensure that all skeletal remains are retrieved from the disturbed burial site. The site inspection of the skeletal remains and associated potsherds confirmed that the affected site has potential of yielding more skeletal remain of probably two or more individuals. Accordingly, the site was documented, and the remains were stabilized and marked for security reasons. The site inspection was conducted in accordance with relevant legislations including the Section 36 of the National Heritage Resources Act (Act No 25 of 1999), the Human Tissue Act (1983) and SAHRA Regulations of 2020.

Although the site is barricaded, the site is exposed to excessive erosion due to previous diggings. As such the search and rescue must be done before the rain season.

4 ABBREVIATIONS

AIA	Archaeological Impact Assessment
C	Contractor
CECO	Construction Environmental Conservation Officer
EAP	Environmental Assessment Practitioner
ECO	Environmental Conservation Officer
EIA	Environmental Impact Assessment
EM	Environmental Manager
EMP	Environmental Management Plan
HIA	Heritage Impact Assessment
LIA	Late Iron Age
NHRA	Nation Heritage Resources Act, Act 25 of 1999
PM	Project Manager
SM	Site Manager
SAHRA	South African Heritage Resources Agency

5 DEFINITIONS

The following terms used in this Archaeological /Heritage Impact Assessment are defined in the National Heritage Resources Act [NHRA], Act Nr. 25 of 1999, South African Heritage Resources Agency [SAHRA] Policies as well as the Australia ICOMOS Charter (*Burra Charter*):

Archaeological Material remains resulting from human activities, which are in a state of disuse and are in, or on, land and which are older than 100 years, including artifacts, human and hominid remains, and artificial features and structures.

Chance Finds means Archaeological artefacts, features, structures or historical cultural remains such as human burials that are found accidentally in context previously not identified during cultural heritage scoping, screening and assessment studies. Such finds are usually found during earth moving activities such as powerline pole position excavations.

Cultural Significance also encompasses the complexities of what makes a place, materials or intangible resources of value to society or part of, customarily assessed in terms of aesthetic, historical, scientific/research and social values.

Environmental impact assessment An Environmental Impact Assessment (EIA) refers to the process of identifying, predicting and assessing the potential positive and negative social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which may significantly affect the environment. The EIA includes an evaluation of alternatives. As well as recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and environmental management and monitoring measures.

Expansion means the modification, extension, alteration or upgrading of a facility, structure or infrastructure at which an activity takes place in such a manner that the capacity of the facility or the footprint of the activity is increased;

Fabric means all the physical material of the place including components, fixtures, contents and objects.

Grave A place of interment (*variably referred to as burial*), including the contents, headstone or other marker of such a place, and any other structure on or associated with such place. A grave may occur in isolation or in association with others where upon it is referred to as being situated in a cemetery (*contemporary*) or **Burial Ground** (*historic*).

Heritage impact assessment (HIA) refers to the process of identifying, predicting and assessing the potential positive and negative cultural, social, economic and biophysical impacts of any proposed project, plan, programme or policy which requires authorisation of permission by law and which may significantly affect the cultural and natural heritage resources. The HIA includes recommendations for appropriate mitigation measures for minimising or avoiding negative impacts, measures enhancing the positive aspects of the proposal and heritage management and monitoring measures.

Historic Material remains resulting from human activities, which are younger than 100 years, but no longer in use, including artefacts, human remains and artificial features and structures.

Impact The positive or negative effects on human well-being and / or on the environment.

In Situ material Material culture and surrounding deposits in their original location and context, for example an archaeological site that has not been disturbed by farming.

Interested and affected parties Individuals, communities or groups, other than the proponent or the authorities, whose interests may be positively or negatively affected by the proposal or activity and/ or who are concerned with a proposal or activity and its consequences.

Mitigate The implementation of practical measures to reduce adverse impacts or enhance beneficial impacts of an action.

Public participation process A process of involving the public in order to identify issues and concerns, and obtain feedback on options and impacts associated with a proposed project, programme or development. Public Participation Process in terms of NEMA refers to: a process in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to specific matters

Significance can be differentiated into impact magnitude and impact significance. Impact magnitude is the measurable change (*i.e. intensity, duration and likelihood*). Impact significance is the value placed on the change by different affected parties (*i.e. level of significance and acceptability*). It is an anthropocentric concept, which makes use of value judgments and science-based criteria (*i.e. biophysical, physical cultural, social and economic*).

Site A distinct spatial cluster of artefacts, structures, organic and environmental remains, as residues of past human activity.

6 INTRODUCTION

Brief Background

In the course of on-going construction along R37 Road in Limpopo Province, construction workers accidentally exposed human remains associated with a few undecorated potsherds. The human remains were exposed on the edge of the road at GPS coordinates S24° 37' 04.1" E030° 10' 40.4." Edwin Construction workers reported the matter to Driekop SAPS about the discovery. SAPS Driekop request a pathologist to inspect the site. The pathologist collected the remains for safe keeping. A heritage specialist at Sativa visited and inspected the site on the 2nd of May 2023. Based on the report by Ratshitanga (2023) the pathologist collected skeletal remains of two individuals (see Plate 6). The inspection was done in accordance with National Heritage Resources Act (Section 36(3b) and the Human Tissue Act of 1983.

This site inspection report details the results of the inspection exercise conducted by Sativa specialists. The site inspection revealed that the human remains may be archaeological pot burials associated with early inhabitants of the project area. Although the site was heavily disturbed, the archaeologist managed to establish the heritage status of the find (see plates 3 to 6). The heritage inspection recorded undecorated potsherds in association with the human remains. As such the heritage specialist concluded that the site is of archaeological significance and appropriate mitigation measures should be mooted to rescue the site. The applicable regulations operate within the National Heritage Resources Act, Act 25 of 1999 specifically Section 36, Human and Tissue Act of 1983 and local government legislations and burial and grave ordinances passed in this regard.

7 SITE INSPECTION

During site inspection conducted by Sativa Heritage Specialists, potsherds were identified in association with some fragmented remains. As such further search and rescue is required to ensure that all remains are retrieved from the site and also to determine the extent of the site. The contractor marked the site and sealed it off for security reasons (see Plate). This exercise involved the heritage specialists and team from Edwin Construction. Sativa Heritage specialists were responsible for assessing, searching for possible exposed skeletal remains and grave goods and verifying the suspected human burial.

8 SUMMARY OF INSPECTION PROCESS

Table 1: Brief Inspection Exercise details.

Project	Incident Location	Status of the remains	Location of remains	Custodian/Authority
R37 Road	S24° 37' 04.1" E030° 10' 40.4."	<i>Archaeological human remains</i>	Collected by SAPS	SAPS

9 CONTEXT OF THE SUSPECTED HUMAN REMAINS DISCOVERY

The exposed remains were only identified after being exposed by excessive erosion. The original position where the remains might have been located was identified and some remains and potsherds are still in situ. The study confirmed that they could more one individual buried at the site, as such further search and rescue is required at the site. The affected burials are most likely to older than 60 years old and they fall under the jurisdiction of the National Heritage Resources Act 25 of 1999.

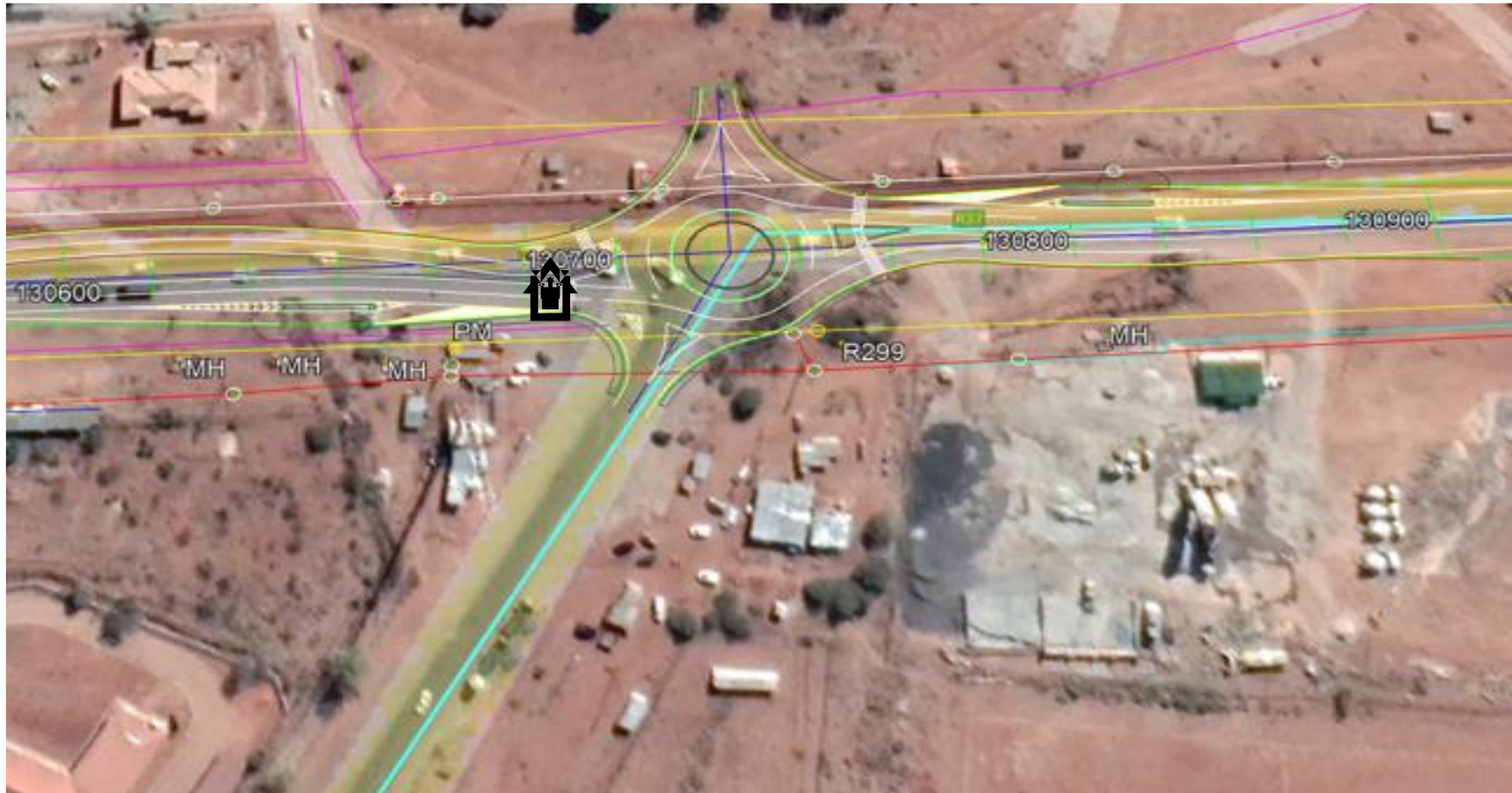


Figure 1: Map showing chance find site.

10 LEGAL CONTEXT

In terms of Section 36(3) of the National Heritage Resources Act, no person may, without a permit issued by the relevant heritage resources authority:

(a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves.

(b) destroy, damage, alter, exhume or remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or

(c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation, or any equipment which assists in the detection or recovery of metals.

Human remains that are less than 60 years old are subject to provisions of the Human Tissue Act (Act 65 of 1983) and to local regulations. Exhumation of graves must conform to the standards set out in the Ordinance on Excavations (Ordinance no. 12 of 1980) (replacing the old Transvaal Ordinance no. 7 of 1925). Permission must also be gained from the descendants (where known), the National Department of Health, Provincial Department of Health, Premier of the Province and local police. Furthermore, permission must also be gained from the various landowners (i.e. where the graves are located and where they are to be relocated to) before exhumation can take place. Human remains can only be handled by a registered undertaker, or an institution declared under the Human Tissues Act (Act 65 of 1983 as amended).

The NHRA classify Graves and burial grounds into the following categories.

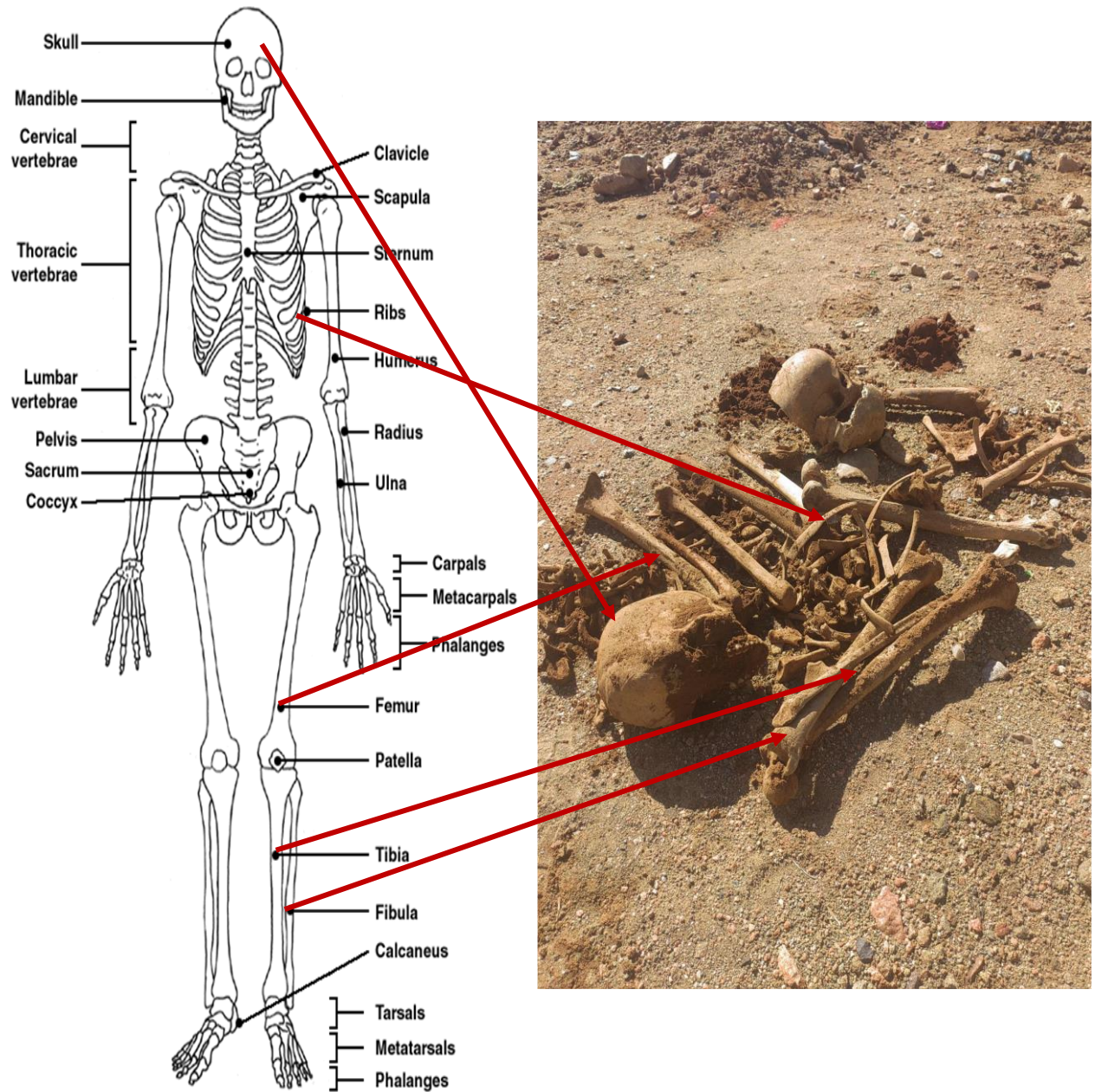
- ❖ ancestral graves
- ❖ royal graves and graves of traditional leaders
- ❖ graves of victims of conflict
- ❖ graves designated by the Minister.
- ❖ historical graves and cemeteries
- ❖ human remains.

The site inspection confirmed that the remains in question are indeed human. As such public consultation in accordance with Section 36 the NHRA and SAHRA Regulations of 2020 is mandatory. Since the site is located within the jurisdiction of traditional authorities, the Local Traditional authorities must be consulted for further information regarding the burial and its potential custodians. Archival records in respect of the farm must be consulted to track villagers who may have information regarding the whereabouts of potential custodians of the burial in question. If archival search fails to establish the potential custodians of the burial, the nearest local traditional authorities must be consulted to assist with information in respect of families that might have inhabited the site. If the consultation exercise fails to yield any information relating to the custodians of the affected burial, then the burial will be declared unknown. Should the remains in question be considered unknown and be cleared by relevant authorities for re-burial, such re-interment will be conducted under the same regulations as would apply for known human remains. It is illegal in terms of the Human Tissue Act for individuals to keep human remains, even if they have a permit, and even if the material was found on their own land. In this case the nearest traditional authority will be requested to endorse the rescue of the finds in question and provide a safe burial place for reburial. The local councillor and SAPs must also endorse the relocation exercise and assist in the reburial process. The new reburial site must be provided by the local traditional authorities, preferably at a local cemetery (see Appendix 1-4)

11 PUBLIC CONSULTATION

The remains in question were accidentally exposed in a development context and were confirmed to be human remains. As such public consultation is necessary and it is ongoing. All the relevant authorities and interested and affected parties will be consulted as part of rescue process. Edwin Construction obtain a letter from the Traditional authority confirming that the affected burials are unknown, and that no family has claimed custodianship of the affected burials. Edwin Construction also obtained an endorsement letter from SAPS Driekop indicating that the affected burials are not linked to any reported crime and that they support the relocation of the affected remains.

12 PHOTOS SHOWING THE INSPECTION PROCESS AND ACCIDENTAL FINDS



Plates 1: Shows a labelled human skeleton used to identify and diagnose the chance find.



Plates 2: Shows site where human remains were exposed during construction.



Plates 3: Shows site where human remains were exposed during construction.



Plates 4: Shows the chance find site.



Plate 5: Shows the soil profile of the chance find site (Note the midden with shaded colour).



Plate 6: Shows skeletal remains retrieved by the pathologist invited by SAPS (Ratshitanga 2023)



Plates 7: Shows pathologist retrieving skeletal remains at the site (Photo by Ratshitanga 2023).



Plates 7: Shows a human skull that was initial exposed by erosion (Photo by Ratshitanga 2023).



Plate 8: Shows a human skull exposed by erosion (Photo by Ratshitanga 2023).



Plate 9: Shows human bones exposed by erosion.



Plate 10: Shows the current state of the site.



Plate 11: Shows the current state of the site.



Plate 12: Shows potsherd and bones exposed at the site.



Plate 13: Shows the current state of the site.

13 FURTHER ACCIDENTAL DISCOVERIES

This being a case of a human burial or archaeological site exposed accidentally, the regulations state that when a grave is discovered accidentally in the course of development or other activity: a). SAHRA or the provincial heritage resources authority (or delegated representative) must, in co-operation with the Police, inspect the site and decide whether it is likely to be older than 60 years or otherwise protected in terms of the Act; and whether any further graves exist in the vicinity. b). If the suspected burial is likely to be so protected, no activity may be resumed in the immediate vicinity of the suspected grave, without due investigation approved by SAHRA or the provincial heritage resources authority). SAHRA or the provincial heritage resources authority may at its discretion modify these provisions in order to expedite the satisfactory resolution of the matter. Archaeological materials, which include human and hominid remains that are older than 100 years (see definition in section 2 of the Act), is protected by the National Heritage Resources Act (Section 35(4), which states that no person may, without a permit issued by the responsible heritage resources authority - destroy, damage, excavate, alter or remove from its original site any archaeological or palaeontological material.

14 FURTHER WORK ON SITE

Construction work within radius of approximately 30m from the accidental find was halted and the site barricaded. Given the fact that the remains in question were classified as human remains, it is not possible at this stage to rule out the possibility of recovering more human remains. It is therefore recommended that Edwin Construction must not move stockpiled topsoil which may bear human remains and must report any further findings to heritage specialist for further inspection.

15 CONCLUDING REMARKS:TREATMENT OF REMAINS WITH RESPECT

As a pre-cautionary measure, as work proceed on affected site where human burial was exposed, Edwin Construction must:

- Appoint a professional archaeologist to track and consult with potential custodians of the affected burial, consult stakeholders, apply for a rescue permit and relocate the affected burial.
- Ensure that no buried artefacts should be removed from any protected grave or archaeological site without the prior approval of SAHRA. All artefacts should be re-buried with the remains with which they are associated. If this is not possible, proper arrangements should be made for the storage of such relics with the approval of SAHRA.
- Ensure that should any other bone materials be recovered and confirmed as human from the site, the remains from each grave should be placed in individual caskets or other suitable containers, permanently marked for identification.
- Ensure that the site, layout and design of the area for re-interment should take into account the history and culture associated with, and the design of, the original grave or graveyard.
- Re-burials in mass graves and the use of common vaults are not recommended. Should these be recovered on site, material from the original grave or graveyard such as chains, kerbstones, railing and should be re-used at the new site wherever possible.
- A plaque recording the origin of the graves should be erected at the site of re-burial.
 - In the event of protest by local communities in respect of the accidental exposure of human remains, Edwin Construction must refer all queries to the project archaeologist (071 685 9247) or SAHRA/LIHRA (012 3208490/9414960) for professional advice.
 - Should any disruption occur as a result of this accidental find, the project manager must report the matter to SAPS to maintain order and ensure that the project proceeds without further disruptions and the CLO must assist in this regard.
 - Members of the community are not allowed to interfere with find unless if they are brought by the project archaeologist or SAPS to verify the accidental find.
 - Note that matters relating to human remains are sensitive and must be handled with caution.

- Exposed human remains are at high risk of being stolen by unscrupulous and bogus people therefore the relocation exercise must be done with urgency.

16 BIBLIOGRAPHY

- Australia ICOMOS (1999) *The Burra Charter: The Australia ICOMOS charter for places of cultural significance*. Burwood.
- Bickford, A and Sullivan, S. 1977. "Assessing the research significance of historic sites" in S Sullivan and s. Bowdler (eds), *Site Surveys and Significance assessment in Australian Archaeology*. Canberra: ANU.
- Brothwell, D.R. 1981. *Digging up Bones: The excavation, treatment, and study of human skeletal remains*. UK: OUP.
- Burke, H. And Smith, C. 2004. *The archaeologist's field handbook*. Allen and Unwin. Australia.
- Hammond-Tooke, D.1993. *The roots of Black South Africa*. Johannesburg: Jonathan Ball Publishers.
- Human Tissue Act, 1983 (Act No.65 of 1983)
- Murimbika M. & Huffman, TN. 2003 (December Issue). *Shona ethnography and Late Iron Age burials* Journal of African Studies, Vol.1 (2): 237-246.
- National Heritage Resources Act (No. 25 of 1999).
- National Heritage Resources Act (No 25 of 1999). 2002. Regulations.
- Pelser, A.J. 2013. *A Short Report on the preliminary mapping of a Stone Walled Late Iron Age Site impacted on by the development of the ESKOM Tubatse Switching Station, near Steelpoort in the Limpopo Province*. Unpublished Report APAC013/48 APELSER
- Pelser, A.J. 2013. *Guidelines on the protection and management of graves and cemeteries impacted on by the Eskom Steelpoort Tubatse Marble Hall 400kv Integrated Transmission line Limpopo and, Mpumalanga Provinces*. Unpublished Report APelser Archaeological Consulting APAC013/59. For: Savannah Environmental (Pty) Ltd. September 2013
- Pelser, A.J. 2014. *Report on the assessment for the re alignment of towers on the Marble Hall Tubatse and Tubatse Turn ins powerline (APACO14/14)*
- SAHRA. 2002. General Introduction to surveys, impact assessments and management plans.
- SAHRA. 2002. General guidelines to Archaeological Permitting Policy.
- SAHRA. What to do when Graves are uncovered accidentally.
- Steyn, H. 2017. Site visit report: Investigation of possible Heritage sites near Roosenekal, Limpopo Province
- Van Schalkwyk, J. 2012. *Compilation of construction environmental management programmes for the Steelpoort to Marble Hall 400Kv power line and the Steelpoort integration project: Heritage resources assessment*.

17 APPENDIX 1:CHANCE FIND PROCEDURE

May 2023

ACRONYMS

BGG	Burial Grounds and Graves
CFPs	Chance Find Procedures
ECO	Environmental Control Officer
HIA	Heritage Impact Assessment
ICOMOS	International Council on Monuments and Sites
NHRA	National Heritage Resources Act (Act No. 25 of 1999)
SAHRA	South African Heritage Resources Authority
SAPS	South African Police Service
UNESCO	United Nations Educational, Scientific and Cultural Organisation

CHANCE FIND PROCEDURE

INTRODUCTION

An Archaeological Chance Find Procedure (CFP) is a tool for the protection of previously unidentified cultural heritage resources during construction. The main purpose of a CFP is to raise awareness of all mine workers and management on site regarding the potential for accidental discovery of cultural heritage resources and establish a procedure for the protection of these resources. Chance Finds are defined as potential cultural heritage (or paleontological) objects, features, or sites that are identified outside of or after Heritage Impact studies, normally as a result of construction monitoring. Chance Finds may be made by any member of the project team who may not necessarily be an archaeologist or even visitors. Appropriate application of a CFP on development projects has led to discovery of cultural heritage resources that were not identified during archaeological and heritage impact assessments. As such, it is considered to be a valuable instrument when properly implemented. For the CFP to be effective, the site manager must ensure that all personnel on the site understand the CFP and the importance of adhering to it if cultural heritage resources are encountered. In addition, training or induction on cultural heritage resources that might potentially be found on site should be provided. In short the Chance find procedure details the necessary steps to be taken if any culturally significant artefacts are found during construction.

DEFINITIONS

In short the term 'heritage resource' includes structures, archaeology, meteors, and public monuments as defined in the South African National Heritage Resources Act (Act No. 25 of 1999) (NHRA) Sections 34, 35, and 37. Procedures specific to burial grounds and graves (BGG) as defined under NHRA Section 36 will be discussed separately as this require the implementation of separate criteria for CFPs.

BACKGROUND

The construction site is subject to heritage survey and assessment at planning stage in accordance with the NHRA. These surveys are based on surface indications alone and it is therefore possible that sites or significant archaeological remains can be missed during surveys because they occur beneath the surface. These are often accidentally exposed in the course of road construction or any associated construction work and hence the need for a Chance Find Procedure to deal with accidental finds. In this case an extensive site inspection was conducted Mlilo (2023). The site inspection was very comprehensive covering the entire site.

PURPOSE

The purpose of this Chance Find Procedure is to ensure the protection of previously unrecorded heritage resources along the road. This Chance Find Procedure intends to provide the applicant and contractors with appropriate response in accordance with the NHRA and international best practice. The aim of this CFP is to avoid or reduce project risks that may occur as a result of accidental finds whilst considering international best practice. In addition, this document seeks to address the probability of archaeological remains finds and features becoming accidentally exposed during earth moving and ground altering activities during construction. The proposed construction activities along the road have the potential to cause severe impacts on significant tangible and intangible cultural heritage resources buried beneath the surface or concealed by vegetation cover. Sativa developed this Chance Find Procedure to define the process which govern the management of Chance Finds during work at the site. This ensures that appropriate treatment of chance finds while also minimizing disruption of the construction schedule. It also enables compliance with the NHRA and all relevant regulations. Archaeological Chance Find Procedures are to promote preservation of archaeological remains while minimizing disruption of road construction. It is recommended that due to the low to moderate archaeological potential of the project area, all site personnel and contractors be informed of the Archaeological Chance Find procedure and have access to a copy while on site. This document has been prepared to define the avoidance, minimization and mitigation measures necessary to ensure that negative impacts to known and unknown archaeological remains as a result of project activities and are prevented or where this is not possible, reduced to as low as reasonably practical during construction along the road.

Thus this Chance Finds Procedure covers the actions to be taken from the discovering of a heritage site or item to its investigation and assessment by a professional archaeologist or other appropriately qualified person to its rescue or salvage.

CHANCE FIND PROCEDURE

General

The following procedure is to be executed in the event that archaeological material is discovered:

- All construction and clearance activity in the vicinity of the accidental find/feature/site must cease immediately to avoid further damage to the find site.
- Briefly note the type of archaeological materials you think you've encountered, and their location, including, if possible, the depth below surface of the find
- Report your discovery to your supervisor or if they are unavailable, report to the project ECO who will provide further instructions.

- If the supervisor is not available, notify the Environmental Control Officer immediately. The Environmental Control Officer will then report the find to the Site Manager who will promptly notify the project archaeologist and SAHRA.
- Delineate the discovered find/ feature/ site and provide 30m buffer zone from all sides of the find.
- Record the find GPS location, if able.
- All remains are to be stabilised *in situ*.
- Secure the area to prevent any damage or loss of removable objects.
- Photograph the exposed materials, preferably with a scale (a yellow plastic field binder will suffice).
- The project archaeologist will undertake the inspection process in accordance with all project health and safety protocols under direction of the Health and Safety Officer.
- **Finds rescue strategy:** All investigation of archaeological soils will be undertaken by hand, all finds, remains and samples will be kept and submitted to a museum as required by the heritage legislation. In the event that any artefacts need to be conserved, the relevant permit will be sought from the SAHRA.
- An on-site office and finds storage area will be provided, allowing storage of any artefacts or other archaeological material recovered during the monitoring process.
- In the case of human remains, in addition to the above, the SAHRA Burial Ground Unit will be contacted and the guidelines for the treatment of human remains will be adhered to. If skeletal remains are identified, an archaeological will be available to examine the remains.
- The project archaeologist will complete a report on the findings as part of the permit application process.
- Once authorisation has been given by SAHRA, the Applicant will be informed when construction activities can resume.

MANAGEMENT OF CHANCE FINDS

Should the Heritage specialist conclude that the find is a heritage resource protected in terms of the NRHA (1999) Sections 34, 36, 37 and NHRA (1999) Regulations (Regulation 38, 39, 40), Sativa will notify SAHRA and/or PHRA on behalf of the applicant. SAHRA/PHRA may require that a search and rescue exercise be conducted in terms of NHRA Section 38, this may include rescue excavations, for which Sativa will submit a rescue permit application having fulfilled all requirements of the permit application process.

In the event that human remains are accidentally exposed, SAHRA Burial Ground Unit or Sativa Heritage Specialist must immediately be notified of the discovery in order to take the required further steps:

- a. Heritage Specialist to inspect, evaluate and document the exposed burial or skeletal remains and determine further action in consultation with the SAPS and Traditional authorities:
- b. Heritage specialist will investigate the age of the accidental exposure in order to determine whether the find is a burial older than 60 years under the jurisdiction of SAHRA or that the exposed burial is younger than 60 years under the jurisdiction of the Department of Health in terms of the Human Tissue Act.
- c. The local SAPS will be notified to inspect the accidental exposure in order to determine where the site is a scene of crime or not.
- d. Having inspected and evaluated the accidental exposure of human remains, the project Archaeologist will then track and consult the potential descendants or custodians of the affected burial.
- e. The project archaeologist will consult with the traditional authorities, local municipality and SAPS to seek endorsement for the rescue of the remains. Consultation must be done in terms of NHRA (1999) Regulations 39, 40, 42;
- f. Having obtained consent from affected families and stakeholders, the project archaeologist will then compile a Rescue Permit application and submit to SAHRA Burial Ground and Graves Unit.
- g. As soon as the project archaeologist receives the rescue permit from SAHRA he will in collaboration with the company/contractor arrange for the relocation in terms of logistics and appointing of an experienced undertaker to conduct the relocation process.
- h. The rescue process will be done under the supervision of the archaeologist, the site representative and affected family members. Retrieval of the remains shall be undertaken in such a manner as to reveal the stratigraphic and spatial relationship of the human skeletal remains with other archaeological features in the excavation (e.g., grave goods, hearths, burial pits, etc.). A catalogue and bagging system shall be utilised that will allow ready reassembly and relational analysis of all elements in a laboratory. The remains will not be touched with the naked hand; all Contractor personnel working on the excavation must wear

clean cotton or non-powdered latex gloves when handling remains in order to minimise contamination of the remains with modern human DNA. The project archaeologist will document the process from exhumation to reburial.

- i. Having fulfilled the requirements of the rescue/burial permit, the project archaeologist will compile a mitigation report which details the whole process from discovery to relocation. The report will be submitted to SAHRA and to the company.

Note that the relocation process will be informed by SAHRA Regulations and the wishes of the descendants of the affected burial.

18 APPENDIX 1: BURIAL RELOCATION PROJECT METHOD STATEMENT

Discovery and Notification

If human burial remains are accidentally discovered during development at the construction site, the following guidelines apply:

- a) The finder will immediately cease any further activity at the site and report the site to the Project ECO. The ECO will notify the heritage expert (Archaeologist) and authorities.

2. SITE PROTECTION AND IDENTIFICATION

- a) The ECO and the 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 Archaeologist will investigate the site and make a preliminary determination as to the nature of the remains.
- c) Existing site inventories, land use records, and community, and 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.
- d) The Archaeologist shall apply and acquire the relevant exhumation and rescue Permit from SAHRA Graves and Burial Unit.

3. INVESTIGATION AND REPORTING

- a) The ECO will direct the Archaeologist to carry out an investigation under any required permits, in consultation with the affected custodians (if available) 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 EO, and the affected parties, the Archaeologist shall deliver a written report and any notification not yet made to:
 - the ECO, and the affected custodians if appropriate;
 - the SAHRA;
 - the permitting authority of SAHRA Graves and Burials Unit
 - 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 Archaeologist 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 temporary custody where the remains may otherwise be at risk prior to their re-burial at a safe site.

3.1 REPORTING

a) If the site is determined to be a contemporary burial site, the appropriate representative will be contacted in writing to provide further direction on the disposition of the remains.

b) Project contractors carrying out authorized activity where a historic or archaeological burial site is discovered can continue that activity with the consent of the EO, where appropriate. The activity must stay 150 meters away from the grave while further arrangements are made by the Archaeologist to rescue and relocate the remains to a safe cemetery.

d) The Archaeologist may publish notice of the discovery in a newspaper or other public notice seeking information on the remains and alerting members of the public about the impending relocation of the remains to a predetermined formal cemetery or burial ground.

4. SITE DISPOSITION AGREEMENT (MANAGEMENT PLAN)

4.1 When the site or remains are identified.

a) The site shall not be disturbed and the EO, if on direct path of Project development work, shall initiate discussions towards entering into a site disposition agreement with the representative of the interred where applicable.

b) If the site is a historic or archaeological burial site, there must be joint approval of the site management plan on reburial as stated in the scope of services in terms of contract between Project proponents and Sativa.

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 Archaeologist shall with the necessary SAHRA 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 until they are re-located for reburial at designated cemetery.

(Where the remains were found on Construction Site but are not historic or archaeological remains, the Archaeologist may remove the remains in consultation with the Project EO and the affected parties.)

5. ARBITRATION

- a) If no disposition or reburial 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 Archaeologist, for future reference to protect the site or identify the re-burial 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 legislations, and the NHRA.

7. BURIAL RELOCATION & REBURIAL

- Burial Relocation involves the identification of each grave and the manual excavation of the interred remains. Human remains, coffin features, and grave goods are exposed, their positions in the grave are carefully recorded, and maps and photographs of each grave are made following standard archaeological recovery techniques.

- Once excavation and examination are completed, the interred along with their grave goods are inventoried and carefully wrapped in acid-free tissue. Human remains are arranged anatomically, and all materials are placed in specially designed containers, specified by the laws and regulations governed by the state where the re-interment location has been determined. The goal of re-interment is to restore as much of the original mortuary meaning as possible.
- Burial relocation is extremely culturally sensitive, and Project and contractors/service provider staff understands that the utmost respect must be shown to the interred, as well as the descendant communities. We advocate respectful involvement of descendent communities in the relocation process, whenever possible, and have an excellent reputation for communicating with descendant groups.
- BST Funeral and Integrated Specialist Services (Pty) Ltd has extensive experience conducting cemetery relocations for government agencies, other cultural resource firms, developers and private citizens in South Africa. We assure our clients as well as the descendent communities that the greatest amount of respect and care is taken when excavating and relocating these cemeteries.

8. Risks

1. Legal Risks

Project is exposed to a myriad of legal requirements on the local and national level when having to relocate burials. Burial relocation can infringe a number of human rights enshrined in the Constitution and legislations such the NHRA. If not carried out properly, grave relocation can impact the right to burial and dignity. Community opposition may result in protests and delays on development.

Mitigation

When human remains are identified during the development, all measures must be taken to ensure the law applicable regulations are enforced including mandatory public notifications.

2. Reputational risk

Relocation of human burials in particular also brings with it high risks for the Project's reputation which is exacerbated by the instantaneous spread of news across the world via the internet. Lack of proper planning and management may lead to negative consequences, which in turn may affect the Project's reputation.

Mitigation

Human remains identified in development contexts should be handled with utter most care to ensure the exhumation and relocation takes place in accordance with the law.

3. Operational risks

Legal action arising from the inadequate planning and implementation of burial relocation may result in Project's permission to work on the construction site being revoked via preliminary injunctions. Operational risks may also arise from community protests directly. Cases of community opposition and protests, has previously disrupted work for days and weeks, involving, for example, the blockage of construction sites and vital roads and infrastructure. Construction may be delayed or disrupted. Protests may be violent and impact on the health and safety of Project staff perpetuating work delays in construction and operations. Project facilities, machinery, housing and other assets may be damaged and rendered unusable.

Mitigation

The security trench servitude should have adequate security. All burial related matters should be held by the professional heritage team and reburial specialists. Human remains discovered during development should be reported to the ECO urgently and the Archaeologist notified in time to avoid any delays with the remains exposed on site. All exhumations and reburial exercises should be handled or schedule in a manner that does not require the remains to be held elsewhere temporarily.

4. Financial risks

Legal, reputational and operational risks may also lead other financial costs to the project. Moreover, costs may arise from legal action or disruptions in operations and work delays. Additional costs may be incurred when public protests require work to stop on site as a result of human remains discovery on site.

5. Human Remains Handling Risks

Exhumation, handling, transportation and reburial of human remains also pose a threat to public health if not handled to strict protocols. This risk is particularly highest in contemporary burials.

19 APPENDIX 2: GENERAL PRECAUTIONS

The following precautionary measures can help employers and employees remain safe and healthy whilst handling human remains. The transportation, handling and storage of human remains must also be carried out in a manner that preserves public safety and maintains the dignity of the deceased person.

PERSONAL PROTECTIVE EQUIPMENT

Hand Protection:

When handling potentially infectious materials, use appropriate barrier protection including latex and nitrile gloves (powder-free latex gloves with reduced latex protein content can help avoid reaction to latex allergies). These gloves can be worn under heavy-duty gloves which will, in turn, protect the wearer from

cuts, puncture wounds, or other injuries that break the skin (caused by sharp environmental debris or bone fragments). A combination of a cut-proof inner layer glove and a latex or similar outer layer is preferable.

Foot Protection:

Footwear should similarly protect against sharp debris.

Hygiene:

- Wash your hands with soap and water or with an alcohol-based hand cleaner immediately after you remove your gloves.
- Give prompt care to any wounds sustained during work with human remains, including immediate cleansing with soap and clean water. Workers should also be vaccinated against hepatitis B and get a tetanus booster if indicated.
- Ensure disinfection of vehicles and equipment.

SUMMARY

- In general, personnel involved in the recovery and handling of human remains from a burial site can limit risk from potential exposure by following the guidelines below.
- Vinyl or Latex gloves should be worn.
- Masks and protective eyewear or face shields should be worn during procedures that are likely to generate fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.
- Gowns or aprons should be worn during procedures that are likely to generate splashes of blood or other body fluids.
- Hands and other skin surfaces should be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands should be washed immediately after gloves are removed.
- Ensure universal precautions for blood and body fluids.
- Ensure use of body bags.
- Ensure disinfection of vehicles and equipment.
- Bodies do not need to be disinfected before disposal (except in case of cholera).
- Vaccinate workers against hepatitis B.

20 APPENDIX 3: HUMAN REMAINS

AND BURIALS IN DEVELOPMENT

Developers, land use planners and professional specialist service providers often encounter difficult situations with regards to burial grounds, cemeteries and graves that may be encountered in development contexts. This may be before or during a development project. There are different procedures that need to be followed when a development is considered on an area that will impact upon or destroy existing burial grounds, cemeteries or individual graves. In contexts where human remains are accidentally found during development work such as road construction or building construction, there are different sets of intervention regulations that should be instigated. This brief is an attempt to highlight the relevant regulations with emphasis on procedures to be followed when burial grounds, cemeteries and graves are found in development planning and development work contexts. The applicable regulations operate within the national heritage and local government legislations and ordinances passed in this regard. These guidelines assist you to follow the legal pathway.

1. First, establish the context of the burial:

A. Are the remains less than 60 years old? If so, they may be subject to provisions of the Human Tissue Act, Cemeteries Ordinance(s) and to local, regional, or municipal regulations, which vary from place to place. The finding of such remains must be reported to the police but are not automatically protected by the National Heritage Resources Act (Act 25 of 1999).

B. Is this the grave of a victim of conflict? If so, it is protected by the National Heritage Resources Act (Section 36(3a)). (Relevant extracts from the Act and Regulations are included below).

C. Is it a grave or burial ground older than 60 years, which is situated outside a formal cemetery administered by a local authority? If so, it is protected by the National Heritage Resources Act (Section 36(3b)).

D. Are the human or hominid remains older than 100 years? If so, they are protected by the National Heritage Resources Act (Section 35(4), see also definition of "archaeological" in Section 2).

2. Second, refer to the terms of the National Heritage Resources Act most appropriate to the situation, or to other Acts and Ordinances:

A. Human remains that are NOT protected in terms of the National Heritage Resources Act (i.e. less than 60 years Graves and Burial Grounds Mitigation Project Report May 2023

old and not a grave of a victim of conflict or of cultural significance) are subject to provisions of the Human Tissue Act and to local and regional regulations, for example Cemeteries Ordinances applicable in different Provincial and local Authorities.

B). All finds of human remains must be reported to the nearest police station to ascertain whether or not a crime has been committed.

C). If there is no evidence for a crime having been committed, and if the person cannot be identified so that their relatives can be contacted, the remains may be kept in an institution where certain conditions are fulfilled. These conditions are laid down in the Human Tissue Act (Act No. 65 of 1983). In contexts where the local traditional authorities given their consent to the unknown remains to be re-buried in their area, such re-interment may be conducted under the same regulations as would apply for known human remains.

3. In the event that a graveyard is to be moved or developed for another purpose, it is incumbent on the local authority to publish a list of the names of all the persons buried in the graveyard if there are gravestones or simply a notification that graves in the relevant graveyard are to be disturbed. Such a list would have to be compiled from the names on the gravestones or from parish or other records. The published list would call on the relatives of the deceased to react within a certain period to claim the remains for re-interment. If the relatives do not react to the advertisement, the remains may be re-interred at the discretion of the local authority.

A. However, it is the responsibility of the developer to ensure that none of the affected graves within the cemetery are burials of victims of conflict. The applicant is also required in line with the heritage legislation to verify that the graves have no social significance to the local communities.

B. It is illegal in terms of the Human Tissue Act for individuals to keep human remains, even if they have a permit, and even if the material was found on their own land.

4. The Exhumations Ordinance (Ordinance No. 12 of 1980 and as amended) is also relevant. Its purpose is "To prohibit the desecration, destruction and damaging of graves in cemeteries and receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies, and to provide for matters incidental thereto". This ordinance is supplemented and support by local authorities regulations, municipality by-laws and ordinances.

DEFINITIONS AND APPLICABLE REGULATIONS

- 1). A "Cemetery" is defined as any land, whether public or private, containing one or more graves.
- 2). A "grave" includes "(a) any place, whether wholly or partly above or below the level of ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and (b) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure of whatsoever nature forming part of or appurtenant to a grave.
- 3). No person shall desecrate, destroy or damage any grave in a cemetery, or any coffin or urn without written approval of the Administrator.
- 4). No person shall exhume, disturb, remove or re-inter anybody in a cemetery, or any coffin or urn without written approval of the Administrator.
- 5). Application must be made for such approval in writing, together with:
 - a). A statement of where the body is to be re-interred.
 - b). Why it is to be exhumed.
 - c). The methods proposed for exhumation.
 - d). Written permission from local authorities, nearest available relatives and their religious body owning or managing the cemetery, and where all such permission cannot be obtained, the application must give reasons why not.
- 6). The Administrator has the power to vary any conditions and to impose additional conditions.
- 7). Anyone found guilty and convicted is liable for a maximum fine of R200 and maximum prison sentence of six months.
5. Human remains from the graves of victims of conflict, or any burial ground or part thereof which contains such graves and any other graves that are deemed to be of cultural significance may not be destroyed, damaged, altered, exhumed or removed from their original positions without a permit from the National Heritage Resources Agency. They are administered by the Graves of Conflict Division at the SAHRA offices in Johannesburg.

"Victims of Conflict" are:

 - a). Those who died in this country as a result of any war or conflict but excluding those covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992).
 - b). Members of the forces of Great Britain and the former British Empire who died in active service before 4 August 1914.

- c). Those who, during the Anglo Boer War (1899-1902) were removed from South Africa as prisoners and died outside South Africa, and,
- d). Those people, as defined in the regulations, who died in the "liberation struggle" both within and outside South Africa.

6. Any burial that is older than 60 years, which is outside a formal cemetery administered by a local authority, is protected in terms of Section 36(3b) of the National Heritage Resources Act. No person shall destroy damage, alter, exhume or remove from its original position, remove from its original site or export from the Republic any such grave without a permit from the SAHRA.

There are some important new considerations applicable to B & C (above).

SAHRA may, for various reasons, issue a permit to disturb a burial that is known to be a grave of conflict or older than 65 years, or to use, at a burial ground, equipment for excavation or the detection or the recovery of metals.

(Permit applications must be made on the official form Application for Permit: Burial Grounds and Graves available from SAHRA or provincial heritage resources authorities.) Before doing so, however, SAHRA must be satisfied that the applicant:

- a). Has made satisfactory arrangements for the exhumation and re- interment of the contents of such a grave at the cost of the applicant.
- b). Has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such a grave and,
- c). Has reached an agreement with these communities and individuals regarding the future of such a grave or burial ground.

PROCEDURE FOR CONSULTATION

The regulations in the schedule describe the procedure of consultation regarding the burial grounds and graves. These apply to anyone who intends to apply for a permit to destroy damage, alter, remove from its original position or otherwise disturb any grave or burial ground older than 60 years that is situated outside a formal cemetery administered by a local authority. The applicant must make a concerted effort to identify the descendants and family members of the persons buried in and/or any other person or community by tradition concerned with such grave or burial ground by:

- 1). Archival and documentary research regarding the origin of the grave or burial ground;
- 2). Direct consultation with local community organizations and/or members;
- 3). The erection for at least 60 days of a notice at the grave or burial ground, displaying in all the official

languages of the province concerned, information about the proposals affecting the site, the telephone number and address at which the applicant can be contacted by any interested person and the date by which contact must be made, which must be at least 7 days after the end of the period of erection of the notice; and

4). Advertising in the local press.

The applicant must keep records of the actions undertaken, including the names and contact details of all persons and organizations contacted and their response, and a copy of such records must be submitted to the provincial heritage resources authority with the application. Unless otherwise agreed by the interested parties, the applicant is responsible for the cost of any remedial action required.

If the consultation fails to reach an agreement, the applicant must submit records of the consultation and the comments of all interested parties as part of the application to the provincial heritage resources authority.

In the case of a burial discovered by accident, the regulations state that when a grave is discovered accidentally in the course of development or other activity:

a). SAHRA or the provincial heritage resources authority (or delegated representative) must, in co-operation with the Police, inspect the grave and decide whether it is likely to be older than 60 years or otherwise protected in terms of the Act; and whether any further graves exist in the vicinity.

b). If the grave is likely to be so protected, no activity may be resumed in the immediate vicinity of the grave, without due investigation approved by SAHRA or the provincial heritage resources authority; and

c). SAHRA or the provincial heritage resources authority may at its discretion modify these provisions in order to expedite the satisfactory resolution of the matter.

d). Archaeological material, which includes human and hominid remains that are older than 100 years (see definition in section 2 of the Act), is protected by the National Heritage Resources Act (Section 35(4)), which states that no person may, without a permit issued by the responsible heritage resources authority - destroy, damage, excavate, alter or remove from its original site any archaeological or palaeontological material.

The implications are that anyone who has removed human remains of this description from the original site must have a permit to do so. If they do not have a permit, and if they are convicted of an offence in terms of the National Heritage Resources Act as a result, they must be liable to

a maximum fine of R100 000- or five-years imprisonment, or both.

TREAT HUMAN REMAINS WITH RESPECT

a). Every attempt should be made to conserve graves in situ. Graves should not be moved unless this is the only means of ensuring their conservation.

b). The removal of any grave or graveyard or the exhumation of any remains should be preceded by an historical and archaeological report and a complete recording of original location, layout, appearance and inscriptions by means of measured drawings and photographs. The report and recording should be placed in a permanent archive.

c). Where the site is to be re-used, it is essential that all human and other remains be properly exhumed and the site left completely clear.

d). Exhumations should be done under the supervision of an archaeologist, who would assist with the identification, classification, recording and preservation of the remains.

e). No buried artifacts should be removed from any protected grave or graveyard without the prior approval of SAHRA. All artifacts should be re-buried with the remains with which they are associated. If this is not possible, proper arrangements should be made for the storage of such relics with the approval of SAHRA.

f). The remains from each grave should be placed in individual caskets or other suitable containers, permanently marked for identification.

g). The site, layout and design of the area for re-interment should take into account the history and culture associated with, and the design of, the original grave or graveyard.

h). Re-burials in mass graves and the use of common vaults are not recommended.

i). Remains from each grave should be re-buried individually and marked with the original grave markers and surrounds.

j). Grouping of graves, e.g. in families, should be retained in the new layout.

k). Material from the original grave or graveyard such as chains, kerbstones, railing and should be re-used at the new site wherever possible.

l). A plaque recording the origin of the graves should be erected at the site of re-burial.

m). Individuals or groups related to the deceased who claim the return of human remains in museums and other institutions should be assisted to obtain documentary proof of their ancestry

21 APPENDIX 4: LEGAL BACKGROUND AND PRINCIPLES OF HERITAGE RESOURCES MANAGEMENT IN SOUTH AFRICA

Extracts relevant to this report from the National Heritage Resources Act No. 25 of 1999, (Sections 5, 36 and 47):

General principles for heritage resources management

5. (1) All authorities, bodies and persons performing functions and exercising powers in terms of this Act for the management of heritage resources must recognise the following principles:

(a) Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;

(b) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;

(c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and

(d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain.

(2) To ensure that heritage resources are effectively managed—

(a) the skills and capacities of persons and communities involved in heritage resources management must be developed; and

(b) provision must be made for the ongoing education and training of existing and new heritage resources management workers.

(3) Laws, procedures and administrative practices must—

(a) be clear and generally available to those affected thereby;

(b) in addition to serving as regulatory measures, also provide guidance and information to those affected thereby; and

(c) give further content to the fundamental rights set out in the Constitution.

(4) Heritage resources form an important part of the history and beliefs of communities and must be managed in a way that acknowledges the right of affected communities to be consulted and to participate in their management.

(5) Heritage resources contribute significantly to research, education and tourism and they must be developed and presented for these purposes in a way that ensures dignity and respect for cultural values.

(6) Policy, administrative practice and legislation must promote the integration of heritage resources conservation in urban and rural planning and social and economic development.

(7) The identification, assessment and management of the heritage resources of South Africa must—

(a) take account of all relevant cultural values and indigenous knowledge systems;

(b) take account of material or cultural heritage value and involve the least possible alteration or loss of it;

(c) promote the use and enjoyment of and access to heritage resources, in a way consistent with their cultural significance and conservation needs;

(d) contribute to social and economic development;

(e) safeguard the options of present and future generations; and

(f) be fully researched, documented and recorded.

Burial grounds and graves

36. (1) Where it is not the responsibility of any other authority, SAHRA must conserve and generally care for burial grounds and graves protected in terms of this section, and it may make such arrangements for their conservation as it sees fit.

(2) SAHRA must identify and record the graves of victims of conflict and any other graves which it deems to be of cultural significance and may erect memorials associated with the grave referred to in subsection (1), and must maintain such memorials.

(3) (a) No person may, without a permit issued by SAHRA or a provincial heritage resources authority—

(a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

(b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than 60 years which is situated outside a formal cemetery administered by a local authority; or

(c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) SAHRA or a provincial heritage resources authority may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3)(a) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant and in accordance with any regulations made by the responsible heritage resources authority.

(5) SAHRA or a provincial heritage resources authority may not issue a permit for any activity under subsection (3)(b) unless it is satisfied that the applicant has, in accordance with regulations made by the responsible heritage resources authority—

(a) made a concerted effort to contact and consult communities and individuals who by tradition have an interest in such grave or burial ground; and

(b) reached agreements with such communities and individuals regarding the future of such grave or burial ground.

(6) Subject to the provision of any other law, any person who in the course of development or any other activity discovers the location of a grave, the existence of which was previously unknown, must immediately cease such activity and report the discovery to the responsible heritage resources authority which must, in co-operation with the South African Police Service and in accordance with regulations of the responsible heritage resources authority—

(a) carry out an investigation for the purpose of obtaining information on whether or not such grave is protected in terms of this Act or is of significance to any community; and

(b) if such grave is protected or is of significance, assist any person who or community which is a direct descendant to make arrangements for the exhumation and re-interment of the contents of such grave or, in the absence of such person or community, make any such arrangements as it deems fit.

(7) (a) SAHRA must, over a period of five years from the commencement of this Act, submit to the Minister for his or her approval lists of graves and burial grounds of persons connected with the liberation struggle and who died in exile or as a result of the action of State security forces or agents provocateur and which, after a process of public consultation, it believes should be included among those protected under this section.

(b) The Minister must publish such lists as he or she approves in the Gazette.

(8) Subject to section 56(2), SAHRA has the power, with respect to the graves of victims of conflict outside the Republic, to perform any function of a provincial heritage resources authority in terms of this section.

(9) SAHRA must assist other State Departments in identifying graves in a foreign country of victims of conflict connected with the liberation struggle and, following negotiations with the next of kin, or relevant authorities, it may re-inter the remains of that person in a prominent place in the capital of the Republic.

General policy

47. (1) SAHRA and a provincial heritage resources authority—

(a) must, within three years after the commencement of this Act, adopt statements of general policy for the management of all heritage resources owned or controlled by it or vested in it; and

(b) may from time to time amend such statements so that they are adapted to changing circumstances or in accordance with increased knowledge; and

(c) must review any such statement within 10 years after its adoption.

(2) Each heritage resources authority must adopt for any place which is protected in terms of this Act and is owned or controlled by it or vested in it, a plan for the management of such place in accordance with the best environmental, heritage conservation, scientific and educational principles that can reasonably be applied taking

into account the location, size and nature of the place and the resources of the authority concerned, and may from time to time review any such plan.

(3) A conservation management plan may at the discretion of the heritage resources authority concerned and for a period not exceeding 10 years, be operated either solely by the heritage resources authority or in conjunction with an environmental or tourism authority or under contractual arrangements, on such terms and conditions as the heritage resources authority may determine.

(4) Regulations by the heritage resources authority concerned must provide for a process whereby, prior to the adoption or amendment of any statement of general policy or any conservation management plan, the public and interested organisations are notified of the availability of a draft statement or plan for inspection, and comment is invited and considered by the heritage resources authority concerned.

(5) A heritage resources authority may not act in any manner inconsistent with any statement of general policy or conservation management plan.

(6) All current statements of general policy and conservation management plans adopted by a heritage resources authority must be available for public inspection on request.