

## **H. 25 - an act relating to natural burial grounds testimony summary**

### **Jess Robinson, State Archaeologist, Division for Historic Preservation**

The mission of the Division is to identify, preserve, and interpret Vermont's historic resources, and part of that history we are charged with protecting is our shared human past. Given that humans have been dwelling in Vermont for over 12,000 years, this history is quite ancient indeed. A central component of the human experience is death, and the rituals associated with it, including underground burial. Although we typically conceptualize human burials in Vermont as those placed in marked and platted cemetery spaces, formal cemeteries such as that are actually a relatively recent phenomenon. Moreover, even when formal cemeteries were established in previous centuries, the records, headstones, and other markers have in many cases gone missing or were destroyed through various processes, leaving them essentially invisible.

In my fifteen years working for the University of Vermont Consulting Archaeology Program and the Anthropology Department prior to my employment at the Division, I was directly involved with various inadvertently discovered cemeteries or burials, including:

- a 3,000 year-old Native American cemetery disturbed by the excavation of a house foundation
- a very early historic Native American cemetery also disturbed by the excavation of a house foundation
- Native American burials identified during gravel pit excavation
- Native American human remains eroding out of river banks
- an entire early historic cemetery discovered underneath and immediately surrounding the Caledonia courthouse in St. Johnsbury
- 20 War of 1812 soldiers' burials discovered during the North St. redevelopment project in Burlington
- An undocumented burial related to the Elmwood cemetery in Burlington
- and, 19<sup>th</sup> century cadavers once utilized by the Burlington hospital

The Division has in the past taken a central role in the consultation and remediation of many of these accidental disturbances or discoveries, and sought respectful resolution with the relevant stakeholders. Indeed, the periodic and repeated discovery of these unmarked human remains led my predecessor, Giovanna Peebles, and the Division to champion and shepherd through unmarked burial legislation (18 VSA § 5212b), which establishes a fund and related procedures to document, protect, preserve and/or relocate unmarked burial sites and human remains.

As such, we have some concerns about the proposed legislation in its current form:

- The biggest concern is the proposed repeal of § 5369 relating to the removal and relocation of cemeteries or burials within them. Given that the definition of a natural burial ground in §5302 (10) is so broad, encompassing any (single) burial that is not in a platted cemetery space with a marker, seemingly regardless of age, the bill in its current form restricts the Division's oversight

of the respectful removal of ancient and early historic burials from situations of impending destruction or development. This would include those burials in Swanton of Native Americans and the War of 1812 soldiers in downtown Burlington.

- Moreover, repealing § 5369 will create a potential conflict with 18 V.S.A. §5212, especially subsection b, relating to unmarked burial sites and the procedures involved with their respectful identification and potential removal, and §5217, related to the removal of marked historic cemeteries or burials within them.
- Given that these unmarked cemeteries or individual burials are often discovered in the process of development activities, one of our concerns is that if procedures for their respectful removal are not available, developers or construction workers will be tempted to simply destroy or not report them, for fear of holding up or completely cancelling a development project.
  - Or that burials found in the backyards or basements of private residences in Burlington, for example, will have to remain in place, to the chagrin of some landowners.
- We are also concerned with the proposed language in §5323 that makes markers within the cemetery space optional, and potentially the exemption from platting proposed in §5310, and §5364 and §5365 related to the establishment and maintenance of a fence.
  - Having seen numerous instances of once prominent landmarks like soldiers' cemeteries and town cemeteries be almost entirely forgotten over the span of a century, we see the value and utility in record keeping, and physical demarcations of burials and cemeteries so that they do not become unaccounted for and inadvertently rediscovered in the future.
- We would be glad to work to find a solution to the concerns and issues we have raised.
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