

EXHIBIT J

UNANTICIPATED DISCOVERIES PLAN
FOR ARCHAEOLOGICAL PROPERTIES INCLUDING HUMAN REMAINS

I. Introduction	1
II. Definitions.....	1
III. Personnel.....	3
IV. Archaeological Resource Identification/Training.....	3
V. Archaeological Feature Discoveries	4
A. Stop Activities.....	4
B. Make Notifications	4
C. Initial Determinations	4
VI. Human Remains Discoveries.....	5
VII. Federal Lands	7
VIII. Applicable Statutes And Regulations.....	7
IX. List of Contacts.....	7

I. INTRODUCTION

The purpose of archaeological surveys during the project design phase is to determine the presence and disposition of potential historic and pre-contact Archaeological Properties within the Project areas of potential effect (APEs). These archaeological studies are conducted pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f), as amended (1976, 1980, 1992, and 1999) and implementing regulations of the Advisory Council on Historic Preservation (36 CFR 800). All work is undertaken pursuant to the Secretary of the Interior Standards for Archaeology and Historic Preservation (48 FR 44716-42 (1983)) and the applicable laws and regulations pertaining to the identification, preservation and protection of Historic Properties in New York City. These procedures are consistent with the relevant federal regulations (36 CFR 800.11).

MTA New York City Transit (MTA NYCT) is committed to the protection and preservation of Historic Properties, in accordance with federal and state legislation. MTA NYCT recognizes that despite the intensive archaeological resource field investigations that are typically performed prior to project construction, it is nonetheless possible that previously unknown archaeological resources could be discovered during the project construction process, particularly during trenching activities. MTA NYCT recognizes the requirement for strict compliance with federal and state regulations and guidelines regarding the treatment of human remains, if any are discovered. The following details the protocol that will be followed in the event that new archaeological resources, including human remains, are discovered during the construction process.

These procedures present the approach that MTA NYCT will use to address unanticipated discoveries of archaeological resources during construction activities along the Second Avenue Subway Project's APEs. The procedures are in accordance with the current Standards for Cultural Resource Investigations and Curation of Archaeological Collections in New York State, New York Archaeological Council (NYAC).

II. DEFINITIONS

Areas of Potential Effect (APEs): These are the areas identified in consultation with SHPO and LPC where project construction has the potential to disturb potential archaeological resources.

Second Avenue Subway Phase 1A Archaeological Assessment (Phase 1A): The Second Avenue Phase 1A Archaeological Assessment (Historical Perspectives, Inc. , March 2003) is the documentary study prepared for the Second Avenue Subway Project that assesses the potential for the Project APEs to contain archaeological resources and the project's potential to affect any such archaeological resources.

Artifact: An artifact may be defined as an object that has been intentionally made or produced for a certain purpose.

Archaeological Feature: An archaeological feature implies the presence of human activity or occupation. Archaeological features may consist of concentrations of artifacts. However, an archaeological feature may not always be tangible in the same way as an artifact, as it may indicate the prior presence of a monument, building, structure, or other use, including truncated

shafts (e.g. wells, cisterns, privies), foundation and cellar remains, and remains from fire hearths, storage pits, wharves, cribbing, and fill-retaining devices. They may also consist of discrete deposits of non-human skeletal remains. Examples of potentially significant features common to the types of archaeological sites that may be encountered within the Second Avenue Subway project APE is attached to this document (Attachment A).

Archaeological Property: An archaeological resource that meets Historic Properties criteria.

Archaeological Resource: An archaeological resource may be composed of archaeological features and/or skeletal and human remains.

Unanticipated Discovery: For purposes of the Second Avenue Subway Project, an unanticipated discovery is a discovery that would require project construction to stop so that an archaeologist may evaluate the nature of the find. Such archaeological evaluation may require a very short period of time if the discovery is easily determined by the professional archaeologist to be of modern origin or to be not significant, or a longer period of time, to be established through the construction documents prepared for the Project, for the archaeologist to determine, as appropriate, the nature and extent of the discovery. An unanticipated discovery may consist of archaeological feature(s), including discrete deposits of non-human skeletal material. An unanticipated discovery may also consist of any human remains located anywhere in the Project APEs that were not previously identified in the Phase 1A. Areas identified in the Phase 1A and addenda as potentially sensitive for human remains would be considered anticipated discoveries, since appropriate protocols for the disinterment and treatment of any human remains if encountered during archaeological testing or construction have been developed in consultation with the appropriate descendant communities as described in Section II.A.3 of the Programmatic Agreement for the Project. Any other skeletal remains encountered during project construction would be considered unanticipated, as they would not have been identified in the Phase 1A.

Cleared Site: A cleared site is a location(s) within the APEs where the Cultural Resource Manager(s) would not be on-site, but on-call, during construction. A site that is determined to be “cleared” is a location where one of the following conditions has been met:

- The site is a location where the project would not affect archaeological resources, e.g., construction through bedrock.
- The area was determined through documentary research conducted for the Phase 1A and subsequent documentation to not possess archaeological sensitivity and SHPO and LPC have concurred with the findings (e.g., the site is a location that contains previously disturbed soils, documentary research and or subsurface conditions indicate a lack of archaeological sensitivity, and/or the site is expected to yield redundant information);
- The site has been previously evaluated through archaeological investigations and was determined to not meet eligibility criteria for listing on the National Register;
- The site was previously determined eligible for listing on the National Register and has undergone a SHPO-approved data recovery program to mitigate project impacts;

Any discovery made during construction in a cleared area would constitute an unanticipated discovery as defined above.

III. PERSONNEL

Cultural Resources Manager: MTA NYCT will appoint a Cultural Resource Manager who will be responsible for the implementation of this plan. The Cultural Resource Manager will be a professional archaeologist who meets the standards of the NYAC and the National Park Service (36 CFR 61) and will be located in the New York City metropolitan area. The Cultural Resource Manager will be supported by a team of archaeologists who will also meet the NYAC and National Park Service standards. The Cultural Resource Manager/archaeological team will be on-site whenever excavation is underway in areas that have not been cleared. They will also be on-call during excavation in areas that have been cleared, as described above under II. Definitions, "Cleared Site." It will be the responsibility of the Cultural Resource Manager, with support from the archaeological team, to determine the nature of any discovery during construction, be it a modern artifact or an isolated artifact, or a feature that may warrant construction to cease for a certain period of time to permit the Cultural Resource Manager and the archaeological team to undertake further archaeological investigations to evaluate the potential extent and significance of the find. In addition the Cultural Resource Manager will arrange for a physical anthropologist in the New York City area to be on-call in the event that the unanticipated discovery is skeletal material.

Resident Engineer: MTA NYCT shall appoint at each construction site a Resident Engineer, who will be responsible for the execution of the given construction job and supervise the contractors. The Resident Engineer, a representative of MTA NYCT, will be responsible for coordinating with the Cultural Resources Manager and contacting other MTA NYCT staff as appropriate in the event of an unanticipated discovery.

State Historic Preservation Office expedited reviewer: It is anticipated that MTA NYCT will provide funding, subject to final MTA/MTA NYCT and SHPO approvals, to the State Historic Preservation Office (SHPO) for expedited review services and that such review services will be fulfilled by a full-time SHPO designee stationed in New York City with full SHPO-delegated review and decision-making authority. The SHPO designee, who shall have appropriate safety training will, with 24-hour notice to the Resident Engineer, make periodic site visits during project construction. The funding and responsibilities of this position will be negotiated as part of a separate Memorandum of Agreement (MOA) between MTA NYCT and SHPO.

IV. ARCHAEOLOGICAL RESOURCE IDENTIFICATION/TRAINING

The identification of archaeological resources requires basic training in order to recognize potential sites. Training will be provided for resident engineers and construction supervisors. The purpose of this training will be to review MTA NYCT's commitments regarding archaeological resource compliance and to provide an overview of the project specific resources along the subway route, so that both construction contractor and project personnel will be aware of the kinds of unanticipated archaeological resources that may be encountered in the field. In addition, the training program will emphasize the exact procedures to be followed, as outlined herein (and depicted in Figure 1), regarding actions to be taken and notification required if an unanticipated discovery is identified during construction.

The training will be designed to ensure that project personnel and construction contractors understand the extent of the archaeological survey program that has been performed for the project and are fully aware of the distinction between sites that have been cleared (i.e have

already undergone data recovery and have previously been cleared for construction by SHPO and/or LPC) and new discoveries during the construction process.

V. ARCHAEOLOGICAL FEATURE DISCOVERIES

Archaeological features (see Attachment A) may be discovered by project or contractor personnel. The following protocols will be adhered to in the event of a discovery of features during construction (see Figure 1).

A. Stop Activities

If features are uncovered during a construction activity, the on-site contractor's construction supervisor will stop all activity within the immediate vicinity of the discovery, unless safety concerns are an issue. Specifically, the construction crew will stop at the spot where the find was uncovered and not resume construction within 20 feet of the find until cleared to proceed by MTA NYCT's Resident Engineer. This is necessary in order to provide the Cultural Resources Manager the opportunity to determine whether the feature(s) represents a potentially significant site.

B. Make Notifications

After construction activity has stopped the contractor's construction supervisor will notify MTA NYCT's Resident Engineer, who will notify immediately the Cultural Resource Manager.

C. Initial Determinations

The Cultural Resource Manager and MTA NYCT's Resident Engineer will determine whether the feature(s) was recorded during a previous archaeological survey.

This will be accomplished by reviewing project maps and other applicable data. If the discovery is determined to be within a previously identified site area where archaeological excavation has taken place and resulted in the area being previously cleared for construction by SHPO and LPC, the MTA NYCT's Resident Engineer will notify the contractor's construction supervisor that construction activities may resume.

If the feature(s) is discovered in an area in which sites were not recorded, the Cultural Resource Manager will review the location and type of discovered material with the appropriate on-site construction personnel. The Cultural Resource Manager will also inform and offer the SHPO representative the opportunity to review the discovery. If the Cultural Resource Manager determines that on-site archaeological investigations are required, the MTA NYCT's Resident Engineer will inform the construction contractor that construction activities must cease. The Cultural Resource Manager will arrange for an archaeological excavation crew to be on the site. These activities will take place as soon as practicably possible.

Construction activities in the area of the discovery, the boundaries of which will be defined based on a review of the resources identified, will not resume until the site has been surveyed and the results reviewed with SHPO. The site will be flagged as being off-limits for work, but will not be identified as an archaeological site per se in order to

protect the resources. In addition, the site will be secured to protect the potential significant resource.

The following activities will take place as quickly as possible in order for construction to continue in a timely manner:

1. The Cultural Resource Manager, with support from the archaeological team, will conduct a physical review and will test the site area as necessary. Since the area may have already been partially disturbed by construction activities, the objective of any archaeological resource investigations will be to recover data quickly in order for an evaluation of the site's significance to be made.
2. The Cultural Resource Manager will determine, based on the features found, their research potential and whether the site is significant or not. The Cultural Resource Manager will contact SHPO immediately by telephone with a recommendation and request a concurrence, if possible, immediately. If the Cultural Resource Manager determines that the site is not potentially significant and SHPO concurs, the Cultural Resource Manager will notify MTA NYCT's Resident Engineer that construction may resume. A letter detailing the results of the archaeological activities, the recommendation, and the concurrence will be sent to FTA, SHPO and MTA NYCT for the project file.
3. If the Cultural Resource Manager recommends the site is a Historic Property and FTA and SHPO concurs, LPC will be notified and data recovery will commence. Every effort will be made to avoid significant Historic Properties during construction or to implement mitigation measures in consultation with FTA and SHPO to avoid adversely affecting any site.
4. If data recovery is required, the Cultural Resource Manager will consult with SHPO immediately under the provisions of 36 CFR 800.11(b)(2)(ii). SHPO will provide comment on an acceptable methodology for data recovery that meets the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (NPS 1983). It is expected that any data recovery may take up to but no more than 96 hours to complete. Construction in the archaeological site area will not recommence until all archaeological survey work is completed. A final technical report will be filed within one year of the completion of fieldwork.

VI. HUMAN REMAINS DISCOVERIES

- A. The treatment of any human remains encountered during construction will be guided by the policy statement adopted by the Advisory Council on Historic Preservation ([Advisory Council]; see Consulting About Archaeology Under Section 106, Advisory Council 1990), and by the relevant state laws and guidelines. The Advisory Council policy statement recommends that, to the extent allowed by law, treatment of human remains should adhere to the following principles:
 1. Human remains and grave goods should not be removed or otherwise disinterred unless required in advance of some kind of disturbance, such as construction;
 2. Disinterment, when necessary, should be done carefully, respectfully, and completely, in accordance with proper archaeological methods;

3. In general, human remains and grave goods should be reburied in consultation with the descendants of the dead;
 4. Prior to reburial, scientific studies should be performed as necessary to try to identify the appropriate descendant community(s) so that such community(s) may be consulted regarding reburial. If a descendant community(s) is identified, they would be consulted and their approval sought prior to the undertaking of any additional analyses/testing which may be sought to address justified research topics;
 5. Scientific studies and reburial should occur according to a definite, agreed-upon schedule.
- B. The procedures that will be followed in the event that potential skeletal material is discovered during construction of the Second Avenue Subway Project are as follows:
1. Stop Activities
If any personnel on the construction site identify potential skeletal remains or indicators of potential skeletal remains such as mortuary monuments such as gravestones, the contractor's on-site construction supervisor will stop all construction work that could affect the integrity of the remains. The remains will not be touched, moved, or further disturbed until assessed by the Cultural Resource Manager.
 2. Make Notifications
If potential skeletal remains are discovered, the construction supervisor will notify the MTA NYCT Resident Engineer, who will in turn notify the Cultural Resource Manager.
 3. Initial Determinations
The Cultural Resource Manager will determine if the skeletal remains are human; this may require consultation with an on-call, local physical anthropologist. If the Cultural Resource Manager determines the skeletal remains to be non-human and no other archaeological features that require evaluation are present, MTA NYCT's Resident Engineer will notify the contractor's construction supervisor that construction may proceed.
If the Cultural Resource Manager, or physical anthropologist, determines the remains to be human, MTA NYCT's Resident Engineer will notify the NYC Medical Examiner, the NYC police department, and the FTA. The Cultural Resource Manager will notify the SHPO and LPC.
 4. Site Protection/Exhumation and Treatment of Human Remains
In consultation with FTA and SHPO, reasonable efforts will be made to avoid adversely affecting the remains. However, where it is not practicable, any human remains will be carefully exhumed, following a protocol to be prepared prior to commencement of Project construction that establishes the appropriate exhumation process and subsequent treatment of skeletal material, including testing to determine, if possible, the appropriate descendant community. In all cases, due care will be taken in the excavation and subsequent transport and storage of the remains. Such protocol will be prepared pursuant to the provisions of 36 CFR 800.11(b)(2)(ii) in consultation with SHPO and FTA. The

protocol will be in place prior to commencement of project construction and shall also be provided to the New York City Medical Examiner's Office.

Construction in the archaeological site area will not recommence until all exhumation work is complete. A management summary will subsequently be prepared for review by SHPO. A final technical report will be filed within one year of the completion of fieldwork.

5. Descendant Groups

Following exhumation of human remains, a physical anthropologist will analyze the remains. If the remains are not modern, MTA NYCT would endeavor to identify and consult with the appropriate descendant group(s) or interested parties regarding the subsequent treatment of the remains and reburial. If no descendant community or interested party may be identified, MTA NYCT shall consult with SHPO and FTA regarding the final disposition of the remains. If the remains are of modern origin, MTA NYCT shall consult with the NYC Medical Examiner's Office and NYC Police Department regarding their final disposition.

VII. FEDERAL LANDS

Unanticipated cultural resource discoveries made on Federal Lands will be addressed in a similar manner as described above. In addition, the appropriate Federal Lands manager will be notified at the same time as FTA and SHPO. The Federal Lands cultural resources representative will participate with FTA, SHPO, and any appropriate Native American Tribes or groups, in the development of mitigation measures and treatment plans as necessary.

VIII. APPLICABLE STATUTES AND REGULATIONS

A. Federal

Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470f)

Native American Graves Protection and Repatriation Act regulations (43 CFR 10) (only on Federal lands)

B. State and City

New York State Historic Preservation Act of 1980 (Chapter 354 of the Laws of 1980)

The Landmarks Law of 1965 (New York City Charter Section 3020; Title 25, Chapter 3 of the New York City Administrative Code)

IX. LIST OF CONTACTS

Federal Transit Administration

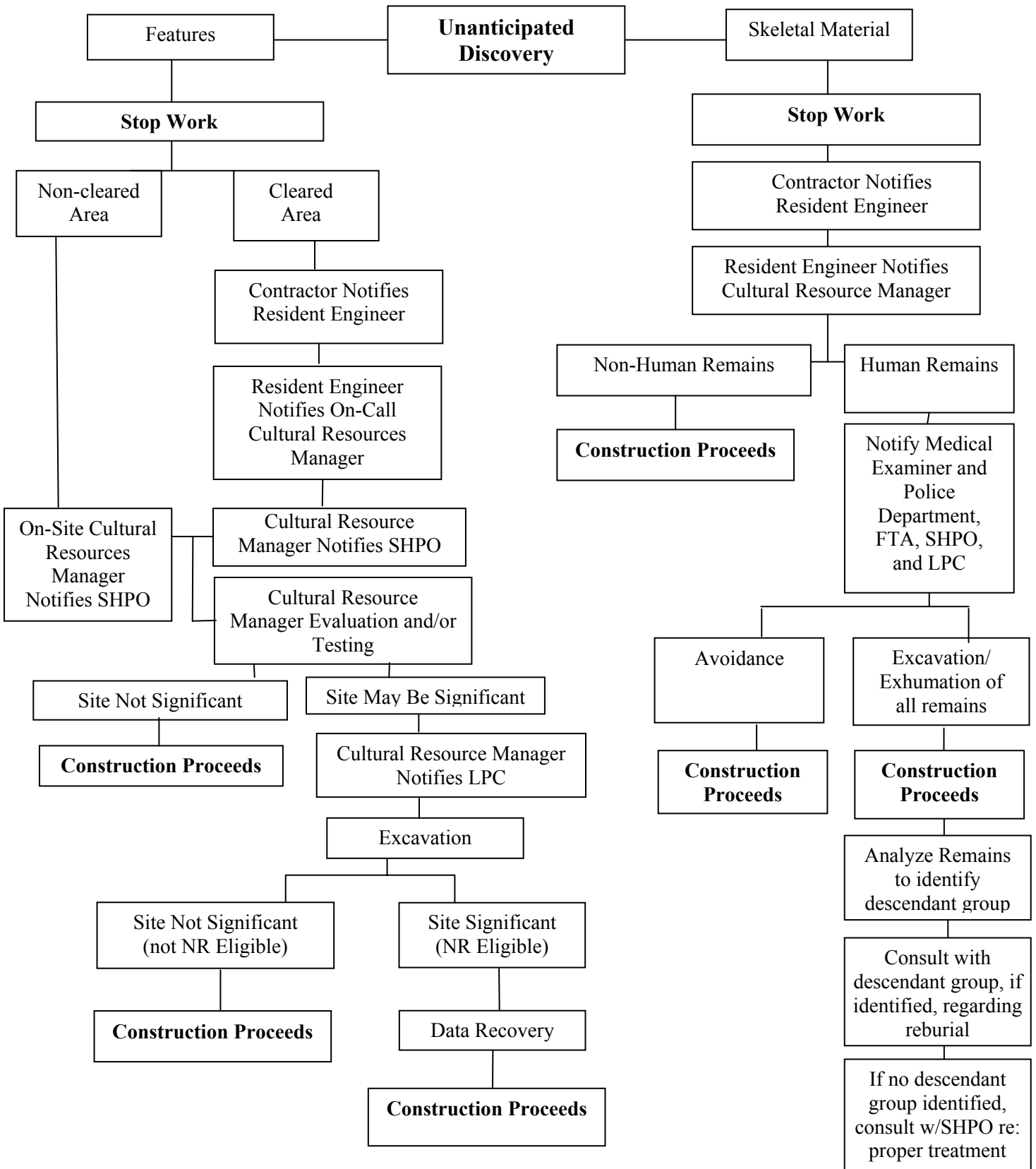
New York State Historic Preservation Officer

New York City Landmarks Preservation Commission

New York City Police Department
New York City Medical Examiner
Cultural Resource Manager

*

Figure 1



**ATTACHMENT A:
EXAMPLES OF POTENTIALLY SIGNIFICANT ARCHAEOLOGICAL
FEATURES COMMON TO DOCUMENTED RESOURCE TYPES, SECOND
AVENUE SUBWAY PROJECT**

**(This Attachment is part of Exhibit J: Unanticipated Discoveries Plan for
Archaeological Properties Including Human Remains)**

Pre-Contact Features

- Large stone implements (e.g., axes, gouges)
- Fire pits/hearths—reddened/burnt stone clusters with charcoal and blackened soil
- Shell middens—dense layers of oyster, clam, scallop, etc.
- Lithic workshops—dense layers of chipping debris
- Burial pits (darkened soil, textile, shell-lined) and/or human remains
- Post molds and post holes, indicative of dwellings

Historic Features

- Wooden pylons, planking, flooring with and without nails, hinges, etc.
- Timber cribbing (possibly representing wharves)
- Stone (fieldstone, cut granite, rubble) walls and flooring - with and without mortar or other adhesive materials
- Brick walls and flooring - with and without mortar or other adhesive materials
- Concrete walls and flooring—verify aggregate and reinforcement materials for age
- Privies, Cisterns, Wells, Trash Pits—dense layers of bottles, dishes, animal bones, and other household items in dark, greasy organic soil, with or without stone/brick/concrete lining
- Large iron or other metal objects, including farm implements (e.g., hoes, rakes, plows, sleigh parts).
- Transportation-related objects—wheels, tracks, trolley supports
- Ship and boat hulls and hardware
- Gravestones, marked granite, slate pieces, coffin remnants and hardware
- Canons, canon balls, ordnance
- Non-human Skeletal Features – discrete deposits/concentrations of non-human skeletal material that is indicative of human occupation, i.e., trash deposits of food waste, etc.
- Human Remains *