



## Memorandum of Understanding Between the Penobscot Nation and the University of Maine System, University of Maine (Orono)

The purpose of this Memorandum of Understanding (MOU) is to formalize the various informal sets of practices that the Penobscot Nation and the University of Maine have been collaboratively developing for the management of Penobscot cultural heritage over the last ten years. This agreement indicates a commitment to extend and elaborate upon these for the mutual benefit of the Penobscot Nation and the University of Maine (Orono).

The Penobscot Nation recognizes that the University of Maine is a land-grant university whose mission encompasses efforts to reach out and deliver quality education and research and improve the quality of life of all citizens of the State of Maine. The University of Maine recognizes that the Penobscot Nation is a distinct, sovereign, legal and political entity with its own powers of self-governance and self-determination, and recognizes its place on Marsh Island in Penobscot Nation traditional territory.

The purpose of this MOU is to clarify Penobscot Nation and University of Maine (Orono) expectations with regards to the following discrete areas:

1. University and Penobscot Nation Institutional Research Boards.
2. Care and management of Penobscot collections and cultural heritage items held at the Hudson Museum.
3. Care and management of Penobscot collections and cultural heritage items held at the Fogler Library (Special Collections).
4. Publication of Penobscot Nation cultural heritage material through the University of Maine Press.
5. Cataloguing and care of Penobscot collections in the Anthropology Department.

What follows below are the terms for how the Penobscot Nation and the University of Maine intend to conduct their collaborative efforts. Each 'Whereas' clause is intended to provide background information for commitments which follow in the 'Therefore' clauses. The accompanying Appendices to this MOU have been developed collaboratively to give clearer practical details of process in each instance.

**Whereas** the Penobscot Nation is committed to developing a new model of collaboration with universities that hold and care for collections considered important and vital to the present and future cultural life of the Penobscot Nation.

**Therefore**, the Penobscot Nation will work with the University of Maine to integrate Penobscot voice and perspectives into University research processes and collections that involve Penobscot people and cultural heritage.

**Therefore**, the University of Maine will work with the Penobscot Nation through the *Penobscot Tribal Rights and Resources Protection Board* to begin the process of integrating and implementing the new Penobscot TK (Traditional Knowledge) Labels, which will assist in educating

University staff and students about the respectful and appropriate use and sharing of Penobscot cultural heritage.

**Whereas** the Penobscot Nation and the University of Maine have been working together to establish a new ethical, equitable and collaborative relationship in how research is conducted with the Penobscot Nation and on Penobscot traditional territories.

**Therefore**, the Penobscot Nation is developing its own institutional review board mechanism, the *Penobscot Tribal Rights and Resources Protection Board*, through which the University of Maine (Orono) will be able to forward research that engages with Penobscot people as human subjects.

**Therefore**, to help the Penobscot Nation build its IRB as a complimentary mechanism to the University IRB, the University IRB will assist the Penobscot Nation through permitting one Penobscot tribal member to observe the IRB board but not be an official voting member, for a period of two years.

**Whereas**, the Hudson Museum at the University of Maine holds collections important to the Penobscot Nation and has developed integrated formal and informal policies for managing these with consultation from Penobscot Nation representatives.

**Therefore**, the Hudson Museum will continue this commitment by providing a permanent Wabanaki seat on the Hudson Museum's Board of Directors with preference for a Penobscot tribal member.

**Therefore**, the Hudson Museum and the Penobscot Nation will continue to collaborate around the documentation, cataloguing and digital sharing of Penobscot collections and items of cultural heritage.

**Whereas**, the Raymond H. Fogler Library Special Collections holds collections important to the Penobscot Nation and is committed to developing a collaborative model of co-curation over these materials.

**Therefore**, the Penobscot Nation will work with the Raymond H. Fogler Library to produce guidelines for inclusive decision-making to assist in building a collaborative model for permissions over use and circulation of Penobscot cultural materials.

**Therefore**, the Raymond H. Fogler Library will work with the Penobscot Nation to implement the Penobscot TK (Traditional Knowledge) Labels.

**Therefore**, the Raymond H. Fogler Library and the Penobscot Nation will collaborate in devising a means for the Penobscot Nation to have an affiliated status in order to have remote access to online Library research databases including but not limited to Jstor and Hathi Trust.

**Whereas**, the University of Maine Press has developed a mutually beneficial relationship regarding the publication of Penobscot cultural heritage materials.

**Therefore**, the University of Maine Press will notify the Penobscot Nation through the *Penobscot Tribal Rights and Resources Protection Board* in relation to any planned publications, including those in the public domain seeking re-publication that include Penobscot cultural heritage.

**Therefore**, in instances where the Penobscot Nation is the 'author' of a publication with the University of Maine Press, the Penobscot Nation will hold the copyright in that publication and enter into an agreed license agreement with the Press.

**Whereas**, the Anthropology Department holds collections of Penobscot archaeological heritage.

**Therefore**, the Anthropology Department will initiate a cataloguing process for these collections, including the identification of culturally significant and culturally sensitive materials and the Penobscot Nation will be involved in this process.

**Therefore**, the Penobscot Nation will collaborate with the Anthropology Department in the development of any collections management policy for these collections, including any digital data sharing policy as needed.

By signing below, both the Penobscot Nation and the University of Maine willingly agree to be bound by the terms of this Memorandum of Understanding.

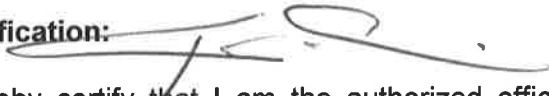
**Authorized Penobscot Nation Official**

Print Name: *Kierk Francis, Chief*

Print Title: *Chief*

Date: *5-10-18*

Certification:



I hereby certify that I am the authorized official of the Penobscot Nation with authority to sign this Memorandum and bind the Penobscot Nation to its terms.

**Authorized University of Maine Official**

Print Name: *Susan J. Hunter*

Print Title: *President*

Date: *10 May 2018*

Certification:



I hereby certify that I am the authorized official of the University of Maine with authority to sign this Memorandum and bind the University of Maine to its terms.

## **Appendix A**

### **Standard Practice for Research and the Penobscot Nation IRB**

Research on and with Penobscot people has not always been conducted ethically or with appropriate consent. However, there have been significant steps taken to address the protection of human subjects in research, largely through research vetting processes such as the Institutional Review Board. As a sovereign nation, the Penobscot Nation reserves its right to make assessments about research involving Penobscot people. Through the development of their own IRB, the Penobscot Nation will retain authority over how research involving Penobscot human subjects is conducted into the future.

The Penobscot Nation has been working to develop their own IRB that meets the requirements of federal wide assurance, namely 45 Code of Federal Regulations, part 46. The Penobscot Nation understands that this will be a complimentary IRB to the University of Maine IRB. The goal of the Penobscot IRB is to assess human subjects research involving Penobscot people. Further, another goal is to work closely with the University IRB to maintain consistency in research conducted involving human subjects.

To this end, the *Penobscot Tribal Rights and Resources Protection Board* will work with the University of Maine IRB to establish a seat for a Penobscot representative on the University IRB for a period of at least 2 years. Following the final development of the Penobscot IRB, a new Appendix detailing the exact processes will be added to this MOU.

#### **Collaborative Process to Develop Penobscot IRB:**

- Provide one seat for a representative from *Penobscot Tribal Rights and Resources Protection Board* to observe the IRB Board but not be an official voting member, for a period of two years;
- Seek appointment from Penobscot Tribal Council to fill that seat;
- Representative will report back to the *Penobscot Tribal Rights and Resources Protection Board* on cases involving Penobscot human subjects;
- *Penobscot Tribal Rights and Resources Protection Board* will conduct research and begin development of Penobscot IRB that meets the federal guidelines;
- Secure federal wide assurance (45 CFR part 46) for the Penobscot IRB;
- Develop a clear process for sharing cases involving Penobscot human subjects and maintaining consistency between University IRB and Penobscot IRB.

## **Appendix B Standard Practice for Hudson Museum**

The Hudson Museum and the Penobscot Nation have developed a mutually complimentary relationship. This is based on respectful engagement, a recognition of Penobscot sovereign interests that are retained in Penobscot cultural heritage, as well as the great care that the Hudson Museum has taken in including Penobscot voice in exhibitions and collection management.

The Hudson Museum has a range of formal and informal policies relating to their care of Penobscot cultural heritage. The Director of the Museum currently makes all final decisions regarding Penobscot cultural heritage items in the Hudson Museum either as part of the Permanent Collection or under loan agreements. The Director consults regularly with the Director of the Penobscot Nation's Department of Cultural and Historic Preservation and also the Executive Director of the Maine Indian Basketmakers Alliance (MIBA). The Director also relies upon advice from the Hudson Museum Advisory Board as well as the Cooperating Curators Committee. The Board and the Cooperating Curators Committee both include Penobscot representatives. The Hudson Museum holds tangible (objects) and intangible (photographs and other archival) materials that the Penobscot Nation has interests in because they constitute Penobscot cultural heritage. All Penobscot material dates post 1840. The tangible collections are largely items that were originally made for sale.

In collaboration with the Advisory Board and the Cooperating Curators Committee, a new addition to the Collections Management Policy that addresses complications in relation to the management of Penobscot collections will be written. This will include formalizing current informal designations for categories of Penobscot tangible collections, including function and use of object, how it was acquired, when it was made, attribution, NAGRPA status, and cultural sensitivity. It will also include the conditions for when to contact the Penobscot Nation for consultation and permissions. These additions will be shared with, and reviewed by, the Penobscot Nation within 6 months of executing the MOU.

The Hudson Museum has a current policy of not conducting adult basketmaking workshops. Any change in this policy needs to be made in consultation with the Penobscot Nation and MIBA.

The Hudson Museum will provide a permanent Wabanaki seat on the Hudson Museum's Advisory Board with preference for a Penobscot tribal member. The *Penobscot Tribal Rights and Resources Protection Board* will be responsible for selecting this representative.

The Hudson Museum will work with the *Penobscot Tribal Rights and Resources Protection Board* to help determine the implementation program for integrating the Penobscot TK Labels into the *Past Perfect* catalogue system.

## Appendix C Standard Practice for Raymond H. Fogler Library Special Collections

The Raymond H. Fogler Library Special Collections contains collections that are vital and important to the ongoing cultural life of the Penobscot Nation. These collections include, for instance, language materials (including those from the Siebert collection), oral histories, letters, diaries, historical Penobscot publications, documents regarding the administration of the Tribe, documents relating to the land claims settlements, maps, Indian Agent reports, and ethnographic materials. The Raymond H. Fogler Library Special Collections also now includes audio and other materials formally at the Maine Folklife Center.

The Raymond H. Fogler Library Special Collections agrees to notify and collaborate with the Penobscot Nation in instances of third party donations that include material with Penobscot content. The Penobscot Nation, through the *Penobscot Tribal Rights and Resources Protection Board*, will assist in identifying any privacy, confidentiality, tribal proprietary and other culturally sensitive information within these materials.

The Raymond H. Library Special Collections will work through the *Penobscot Tribal Rights and Resources Protection Board* to develop a model for holding materials owned by the Penobscot Nation. Any such model will have an accompanying agreement in relation to duration and terms.

The Penobscot Nation is committed to working with the Raymond H. Fogler Library to develop a model of co-curation over these collections. Specifically, the *Penobscot Tribal Rights and Resources Protection Board* will:

- Assist in the identification of culturally sensitive materials and develop guidelines for their use and circulation;
- Add the Penobscot Nation TK Labels to the Raymond H. Fogler Library catalogue, as well as other agreed upon metadata from the Penobscot Nation, at a collection and where appropriate, item level. The Penobscot TK Labels have already been developed and offer an opportunity to assist Fogler staff and the public users of the Library better understand the respectful and appropriate means for attributing and acknowledging Penobscot Nation expectations regarding the use of these materials.

In order to facilitate a new communicative framework for undertaking this work, the Penobscot Nation will create a special closed “community group” on its new Penobscot Collections platform (<http://www.penobscot-collections.com/>) which runs on the Mukurtu CMS software. Using this platform, Raymond H. Fogler Library staff will be able to directly and safely upload content for discussion with the Penobscot Nation. The group will be composed of Raymond H. Fogler Library staff and members of the *Penobscot Tribal Rights and Resources Protection Board*. This group will be a restricted access listserv, with Raymond H. Fogler staff being selected by the Director of Special Collections. The group will meet virtually to initiate discussion around curation and negotiate any disagreements over management of the collections that might arise. With the execution of this MOU, the Raymond H. Fogler Library Dean and/or Special Collections Department Head will identify the appropriate staff to serve in this group and provide their email addresses to the Penobscot Nation. Alongside establishing the group, the *Penobscot Tribal Rights and Resources Protection Board* will hold an informational session on using the platform for the Raymond H. Fogler Library staff serving as part of this collaborative curation group.

Developing the process for implementing the TK Labels requires patience and flexibility. The process needs to be fluid, and all parties need to recognize it is time-consuming for the Penobscot Nation. Nevertheless, the Penobscot Nation understands this opportunity to add the TK Labels to the Raymond H. Fogler Library system - Innovative Interfaces ILC – as an important means for bringing Penobscot voices and perspectives into the library and archive and to correct mistakes in the historical record.

The current process for implementing the Penobscot TK Labels into the Raymond H. Fogler Library Innovative Interfaces ILC system is generally as follows:

1. Identify more clearly collections and items of cultural heritage that the Penobscot Nation has interests in;
2. Share in csv batches the catalogue record with the Penobscot Nation for upload into the Penobscot Collections platform (running on Mukurtu CMS). This is a closed, non-public CMS for Penobscot Nation purposes;
3. To the extent possible, the Penobscot Nation through the *Penobscot Tribal Rights and Resources Protection Board* will comment on and add additional information, metadata and the Penobscot TK Labels;
4. The Penobscot Nation will do a csv export back to the Library of the enhanced catalogue records, with the Penobscot TK Labels and additional metadata as decided by the Penobscot Nation.
5. The Raymond H. Fogler Library will be able to follow the Implementation Guide for the TK Labels developed in collaboration with the Library of Congress so it is consistent with emerging national Library standards.

**Appendix D**  
**Standard Practice for University of Maine Press**

The University of Maine Press will notify with the Penobscot Nation through the *Penobscot Tribal Rights and Resources Protection Board* on any publications that involve Penobscot cultural heritage. This includes manuscripts that are submitted on Penobscot life and culture as well as the republication of texts that are considered to be in the public domain. The Press will ensure that consultation on the publication with the Penobscot Nation has been done by the author/s early in the Press' editorial process and prior to the Press' final approval of the completed manuscript for publication. The Press will add several sentences about this requirement for author consultation with the Penobscot Nation to its current 'Author Guidelines'.

In the instance where the Press agrees to publish a manuscript that is authored by the Penobscot Nation, the Penobscot Nation will retain copyright and provide a license to the Press for use including where appropriate digital distribution and circulation.



## Appendix E Standard Practice for the Department of Anthropology

The Department of Anthropology (the department) agrees that the Penobscot Nation and the department would both benefit from a shared approach to management of archaeological collections that are vital to the identity of Penobscot people. The department also acknowledges the value of instituting educational pedagogies that highlight shared management practices between descendent communities and the institutional caretakers of archaeological collections. To that end, the department agrees to initiate efforts to develop a shared management pedagogy within coursework related to the management of archaeological collections.

Additionally, the department agrees to identify management tasks associated with record keeping and cataloging of archaeological collections that are the cultural patrimony of the Penobscot Nation. The department agrees to institute a plan and process for accomplishing these tasks. These tasks include, but are not limited to:

1. Cataloging and conducting condition assessments on all relevant archaeological collections under the care of the department;
2. Identifying sites/areas of cultural significance to the Penobscot Nation and other tribes in Maine;
3. Identifying materials that may be culturally sensitive to the Penobscot Nation;
4. Developing a policy for how the collections will be used/loaned with regard to culturally significant and culturally sensitive materials. This policy will be independent from, but consistent with, any new policy developed by the Hudson Museum;
5. Developing a collections management consultation procedure with Penobscot Nation representatives through the *Penobscot Tribal Rights and Resources Protection Board*;
6. Developing a digital data sharing policy with the Penobscot Nation;
7. Evaluating and implementing best practices for the preservation and protection of collections into the future.

The Department of Anthropology agrees to provide Penobscot Nation with written biennial progress reports as well as verbal progress reports when requested.

For the purpose of this Appendix, **culturally significant materials** are defined by the Penobscot Nation as materials that remain vital to the identity of the Penobscot Nation and which the Penobscot Nation remains the cultural authority.

For the purpose of this Appendix, **culturally sensitive materials** are defined by the Penobscot Nation as material whose treatment or use is a matter of profound concern to the Penobscot Nation. This may include

- “human remains and their associated funerary objects” which means objects that, as a part of the death rite or ceremony, are reasonably believed to have been placed with individual human remains (ancestors) either at the time of death or later;
- “sacred objects” which means specific items which are needed by traditional religious leaders for the practice of an ongoing religion by present-day adherents;
- photographs, art works, and other depictions of human remains or religious objects, and sacred or religious events; and,
- ethnographic records, including notes, unpublished manuscripts, drawings, and photographic and other images relating to such culturally sensitive materials, objects, and remains.