

Vermont Housing and Conservation Board  
**PROPOSED POLICY ON ARCHAEOLOGICAL RESOURCES**<sup>1</sup>

**GOALS OF ARCHAEOLOGICAL SITE CONSERVATION:**

- to incorporate protection of significant archaeological sites into VHCB's conservation programs
- to assist conservation or preservation non-profits, municipalities, and state agencies to conserve important archaeological sites of statewide or regional significance through conservation easements or fee purchase.
- to increase land owners' awareness and stewardship of archaeological sites on their property.
- to establish a meaningful site assessment and stewardship program.
- to maintain a balance between meaningful protection of mapped archaeological sites and agricultural and forestry practices

**POLICY:**

In accordance with its statutory authorities, VHCB incorporates conservation of archaeological sites into its farmland and conservation programs. Archaeological sites include prehistoric Native American sites and sites from the historic period (1600 to present). Archaeological sites may be of local, statewide, multi-state, or national importance. Sites of statewide and regional significance may be listed on or eligible for the State or National Register of Historic Places.

This policy distinguishes among several types of archaeological resources: sites of local significance ("Local"); sites of statewide significance ("Statewide"); and sites of regional significance ("Regional").

Under this policy and related protocols, all farm projects shall undergo an archaeology desk review conducted by VHCB staff in consultation with a qualified archaeologist or the Vermont Division for Historic Preservation (the "Division"). This review will ensure that protection of important archaeological values is considered during project development and may result in a field visit by a consulting archaeologist. Any farmland preservation project shall be considered a multi-goal project if the property contains an archaeological site(s) of statewide or regional significance protected by legal use restrictions. VHCB staff will also conduct an archaeology desk review for non-farm conservation projects.

Though this policy is more specific on how to evaluate, protect and steward archaeological resources on farms in active agricultural production through the use of conservation easements,

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<sup>1</sup>In June 2002, the Board authorized staff to contract with a qualified professional archaeologist and accepted the staff recommendation that protection of archaeological resources be governed by this draft policy. Between 1999 and 2001, VHCB conservation staff used an Interim Policy on Archaeological Resources adopted in November 1998 and later suspended. This working policy states the current VHCB approach to archaeological resources but has not been adopted by the Board.

the funding criteria would also apply to conservation projects containing archaeological sites where the applicant seeks to purchase property in fee.

## I. GENERAL FUNDING CRITERIA FOR ARCHAEOLOGICAL SITES

The Board may provide funds to protect archaeological resources on sites significant to the State of Vermont, northern New England or the continent of North America because of the site's archaeological or cultural features, its condition, or the importance of its former inhabitant(s) only if the Board determines that the archaeological site meets all of the following criteria:

- A. Based on the recommendation of a qualified professional, VHCB staff has concluded that the site is (1) one of statewide or regional significance, and (2) on or eligible for listing in the State or National Register of Historic Places; and
- B. A legal interest in the site will be owned by a qualified nonprofit corporation with tax exempt status under §501(c) of the Internal Revenue Code, the State of Vermont or a municipality; and
- C. The applicant demonstrates to VHCB satisfaction that it has sufficient resources to develop and sustain meaningful stewardship responsibilities in accordance with the VHCB Stewardship Policy for Conservation Projects and guidelines established by the Land Trust Alliance, including, but not limited to, *The Standards and Practices Guidebook* (1993), *The Conservation Easement Stewardship Guide* (1991) and *The Conservation Easement Handbook* (1988) as amended in 1996.

VHCB project funds will be awarded exclusively for the cost of acquisition of an interest in real estate, documentation of archaeological resources and stewardship. VHCB funds will not be awarded for research, retrieval, streambank stabilization, testing or educational efforts and other post-closing expenses related to the archaeological sites protected. Where applicants propose to protect archaeological resources through easements, they shall discuss whether it is an option to purchase the property in fee and compare and contrast the effectiveness of the two approaches.

Legal use restrictions on archaeological resources located on lands conserved with VHCB funds shall be limited to identified and mapped sites of Statewide and Regional Significance which are eligible for or listed on the State or National Register.

## II. DEFINITIONS

For purposes of this policy, VHCB shall use these definitions:

**Sites of Local Significance** means sites which are important to understanding the history/prehistory of a local watershed, locality or community and listed on or eligible for the State or National Registers. However, a collection of locally significant sites that form an archaeological district of statewide significance may be treated as a statewide site.

**Sites of Statewide Significance** means sites that are important to understanding the history/prehistory of broad regions of the state or to the state overall and listed on or eligible for the State or National Register.

**Sites of Regional Significance** means sites of statewide significance that have exceptional integrity, interpretative characteristics, research potential, and educational potential and sites important to understanding the history/prehistory of northern New England or broader region and listed on or eligible for the State or National Register.

**State or National Register Eligible** means that an archaeological site is “significant” under National Register criteria and guidelines, especially that the site is likely to yield important information which contributes to our understanding of human history or prehistory and that a site possess integrity of location, design, setting, materials, workmanship, feeling and association.

[See National Register Bulletin “How to Apply the National Register Criteria for Evaluation” and Bulletin #36 “Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts” published by the U.S. Department of the Interior.]

### III. PROCESS FOR FARMLAND PROTECTION PROGRAM

#### A. Desk Reviews: Approved Farm Pre-Applications:

Prior to informing applicants whether a farm project has been approved by the Agricultural Advisory Committee, VHCB staff shall complete an archaeological desk review for each approved farm projects and notify applicants whether VHCB staff will recommend further investigation of archaeological resources on the farm. Where the desk review shows recorded sites on the farm, VHCB staff shall consult with the Division or a qualified archaeologist and advise the parties in writing that VHCB intends to make one of the following recommendations to the Board:

1. For **Sites of Local Significance**, include summary information on sensitive lands and archaeological sites in the VHCB Farm Pre-Application file and provide copies to the landowner and the applicant. VHCB shall conduct no further investigation of these sites.
2. For **Sites of Statewide or Regional Significance that are listed on or eligible for the State or National Register**, schedule a field assessment by a consulting archaeologist to achieve the goals listed in Section III(B) of this Policy, recommend special easement language and help the Easement Holders prepare the BDR, map and Statement of Archaeological Significance.
3. For **Sites of Statewide or Regional Significance that need further investigation** before VHCB can determine whether they are eligible for the State or National Register, schedule a field assessment by a consulting archaeologist.

4. For **Sites of Local, Statewide or Regional Significance** lacking sufficient information to determine their eligibility for the State or National Register (and no field assessment is conducted), no further investigation will be done by VHCB and archaeological resources will not be considered by the Board.

VHCB shall recommend a field assessment only if VHCB staff determine that the potential to locate and protect important archaeological resources outweighs the time and financial expense associated with a field assessment and that a qualified archaeologist can conclude the field assessment within a reasonable time [45 days]. The State Historic Preservation Office (“SHPO”) may allow Division staff to conduct field assessments and/or desk reviews. If Division staff are not available to assist VHCB with these tasks on a timely basis, VHCB shall make every reasonable effort to hire a consulting archaeologist to conduct field assessments and assist VHCB staff complete desk reviews. VHCB may limit the number of field assessments actually conducted based on funding, staff or organizational factors.

#### **B. Field assessments:**

The goals of a field assessment conducted by a professional archaeologist are to:

- assess the importance, integrity and current condition of the site in the field.
- identify sites within the sensitive land or delineate and characterize the most sensitive land for purpose of the BDR.
- provide accurate and professionally documented information for VHCB review
- identify which agricultural and forest management practices may adversely impact the archaeological resources
- identify and discuss with owner most appropriate options for protecting the archaeological resources
- obtain archaeological site documentation for the BDR
- educate the farmer about archaeology

If the field assessment does not identify or confirm a site of Statewide or Regional significance which is eligible for listing on the State or National Register, then the project will be treated like one of Local Significance.

### **IV. PROCESS FOR OTHER VHCB CONSERVATION PROJECTS**

- A. Non-Farm Conservation Projects Owned in Fee by Nonprofit, Municipality or State of Vermont.** VHCB staff conduct a desk review on conservation lands be owned in fee by a qualified nonprofit corporation, a municipality or the State of Vermont. However, the applicant may delay any field assessment until after purchase of the conservation lands provided that all recorded archaeological sites are included in the management planning process and, prior to any ground-disturbing activity, the owner includes in the management plan reasonable measures to protect archaeological resources.

**B. Local Farm Projects.** If a local farm project is not reviewed by the Agricultural Advisory Committee, VHCB staff will conduct a desk review.

**C. Local Conservation Projects.** Notwithstanding Section I, above, the Board may provide an award for purchase of a legal interest in an archaeological site on or eligible for listing in the State Register of Historic Places, provided that the project has significant local archaeological significance, includes at least one other conservation value (i.e., outdoor public recreation, natural area protection, agriculture) and complies with the VHCB Policy on Funding of Local Conservation Projects. The Board shall not require an easement on Local sites but these projects should comply with any applicable VHCB policies including Section I, subsections B and C, of this policy. If a Local conservation project contains Statewide or Regional archaeological resources, the applicant shall contact the Division and discuss the advisability of a field assessment and appropriate easement protections.

## **V. LEGAL USE RESTRICTIONS TO PROTECT ARCHAEOLOGICAL SITES**

**National Register-Eligible Sites of Statewide or Regional Significance** merit a higher level of protection through additional protection in the standard farm easement, a separate archaeological protection easement, or through fee purchase.

### **A. Whether to Protect Archaeological Sites with Easements Containing Restrictions on Agricultural and Forestry Activities**

Conservation easements on farms shall include restrictions for mapped archaeological sites of Statewide or Regional Significance only if such restrictions do not materially and significantly interfere with reasonable agricultural or forestry practices on the protected property. In performing a site assessment, the field archaeologist shall identify specific (1) use restrictions necessary to preserve the integrity of an identified site and (2) recommended activities which would enhance site preservation but are not necessary to preserve site integrity.

If the applicant and VHCB determine that proposed special use restrictions would materially and significantly interfere with reasonable agricultural or forestry practices, VHCB funding will not include any conditions with respect to the preservation of archaeological resources but the applicant may include in the BDR a “Statement of Archaeological Significance”. The Division and the applicant may seek landowner consent to legal mechanisms which would enhance site preservation. In contrast, if the applicant and VHCB determine that proposed special use restrictions would not materially and significantly interfere with reasonable agricultural or forestry practices, VHCB funding shall require specific use restrictions.

The following principles shall govern the application of special use restrictions:

1. use restrictions shall protect the integrity of the archaeological site;
2. use restrictions shall be meaningful, enforceable and sustainable from a stewardship perspective; and

3. where feasible, use restrictions shall permit continued use of land on or near the archaeological site for reasonable agricultural or forestry activities.

## **B. Archaeological Sites - Listed in Purposes/Standard Easement Provisions**

If the standard farm easement is used, the owner of conserved farmland containing archaeological sites must obtain VHCB's prior written consent before conducting the following activities:

1. clear-cut forest land to establish fields, orchards or pastures;
2. subdivide or conveyed the farm in separate parcels;
3. construct driveways, roads, utility lines or other rights of way;
4. construct ponds or reservoirs;
5. construct agricultural buildings or structures (outside farmstead);
6. engage in accessory uses or home occupations of the farm;
7. harvest timber without an approved forest management plan;
8. permit operation of motorized vehicles for recreational purposes.

If the recorded archaeological sites are depicted on the Farm Plan and described in a Statement of Archaeological Significance in the BDR, those sites would affect these agricultural or forestry practices, at least in terms of location.

## **C. Special Easement Paragraphs to Further Protect Recorded Archaeological Sites**

As a condition of VHCB funding or with the consent of the landowner, easements may also include provisions which:

1. provide reasonable access to archaeologists to conduct future research or investigation of the archaeological sites;
2. permit VHCB or the Division to seek state or national landmark status for the archaeological sites from the Secretary of the Interior, provided that there is no cost to the landowner;
3. further restrict agricultural or forestry use of the archaeological sites to ground-disturbing activities or practices approved by VHCB, Natural Resource Conservation Service or another qualified professional;
4. other reasonable recommendations of a qualified archaeologist which reflect the principles listed in section III(a) of this policy;
5. no plowing, tilling, ditching, or any other ground disturbing activities or improvements (grazing zone); and
6. prohibit removal of artifacts, pottery, objects or other items of historical or archaeological significance.

#### **D. Permitted Agricultural and Forestry Activities**

Notwithstanding the standard and special provisions listed above, VHCB farm easements generally permit the landowner to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures together with the right to construct, maintain and repair fences and access roads for these purposes, all in accordance with sound agricultural practices and sound husbandry principles. Subject to limitations in the easement, VHCB generally permits activities which are consistent with the definition of “farming” set forth in Vermont law, 10 VSA § 6001 (Act 250)\* and Section 2.06 of the Accepted Agricultural Practice Rules of the Vermont Department of Agriculture, Food and Markets.

Under 10 VSA §6001, “farming” means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
- (b) the raising, feeding or management of livestock, poultry, equines, fish or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or
- (f) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

#### **VI. Baseline Documentation and Stewardship Expenses**

VHCB awards will normally be grants for purchase of interests in land containing archaeological sites of statewide or regional significance which are listed on or eligible for the State or National Register of Historic Places . VHCB may award grants to a qualified conservation or preservation organization for the reasonable costs of a preparing a Baseline Documentation Report on the salient features of the archaeological resources and for a stewardship endowment fund. The qualified conservation or preservation organization shall usually co-hold the conservation/preservation easement and have primary responsibility to monitor and enforce archaeological preservation restrictions in accordance with a Stewardship Memorandum of Understanding with VHCB . The documentation report shall comply with guidelines developed by VHCB staff. This MOU shall be reviewed every five (5) years.

#### **VII. Future Protection of Archaeological Resources by Nonprofit Partners**

VHCB staff shall encourage applicants and landowners to explore the use of additional mechanisms to protect sensitive lands or recorded archaeological sites, including, but not limited to, Farm or Forest Management Plans, Contracts, Notice Provisions which provide access by the The Preservation Trust of Vermont (“Trust”), The Archaeological Conservancy (“Conservancy”), the Vermont Archaeological Society (“Society”) or other qualified conservation or preservation organizations for investigation of such lands and sites with the landowner’s consent and nomination of a site as a State Archaeological Landmark. Furthermore, if future investigation yields new information about important archaeological sites on protected lands, VHCB shall consider reasonable requests that special clauses be added to supplement standard restrictions contained in VHCB farm easements.