

## 18. Criterion 8 (Historic Sites - Archeology)

### I. Requirements for Issuance of a Land Use Permit

With respect to “historic sites” and specifically those “historic sites” that have been determined to exist as a result of archeological sensitivity, Criterion 8 requires that, before granting a permit, the Commission shall find that the proposed project “[w]ill not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, **historic sites** or rare and irreplaceable natural areas.” 10 V.S.A. § 6086(a)(8).

### II. Burden of Proof

The burden of proof is on any opponent (typically the Division of Historic Preservation or the Advisory Council on Historic Preservation) under Criterion 8, 10 V.S.A. § 6088(b), but the applicants must provide sufficient information for the district commission to make affirmative findings.<sup>1</sup> **Essentially, the applicant must provide evidence that the project tract is not listed on the State or National Registers of Historic Places. Then the burden is on the Advisory Council to establish through testimony to the district commission that the site is “historically significant.” This is a threshold determination for the district commission before reviewing any potential impacts as outlined below.**

### III. Analysis - Historic Sites (Archeology)

#### Three Part Test

The district commissions use a three-part test to determine whether a project satisfies Criterion 8 (historic sites). **First, it must determine whether the project is or contains an “historic site.”** Second, it determines whether the project will have an adverse effect on any identified historic site. Third, it determines whether the adverse effect, if any, will be undue.<sup>2</sup>

#### Historic Site

In Act 250, “historic site” is defined as “**any site**, structure, district or **archeological landmark** which has been officially included in the National Register of Historic Places and/or the State Register of Historic Places **or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.**” See 10 V.S.A. § 6001(9).

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<sup>1</sup> See, e.g., Re: Black River Valley Rod & Gun Club, Inc., #2S1019-EB, Findings of Fact, Conclusions of Law, and Order (Altered) at 19 (June 12, 1997) [EB #651R] and cases cited therein.

<sup>2</sup> See Re: Manchester Commons Associates, #8B0500-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Sept. 29, 1995) [E.B. #631].

Archeological landmark may be designated by the State Historic Preservation Officer (SHPO) pursuant to 10 V.S.A. Section 763 and must be placed on the state or national registers to receive protection.<sup>3</sup>

### **National and State Register Listing**

Listing on the national and state registers is a question of fact and ***there is no discretion to be exercised by the commission.*** Manchester Commons, supra, at 19.

### **Testimony of Advisory Council**

Even if the site has not been listed on the national or state registers, 10 V.S.A. § 6001(9) allows the district commissions to declare it to be an "historic site" if it is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant. ***The district commission must examine the testimony of the Advisory Council to determine whether such testimony establishes a site as historically significant. The district commissions are not bound by the opinion provided by the Council. Instead, as with any witness, the district commissions may believe all of the Council's testimony, none of it, or some of it.***<sup>4</sup>

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<sup>3</sup> 22 V.S.A. § 763. Designation of archeological sites

*The state archeologist, with the approval of the state historic preservation officer, may publicly designate an archeological site of significance to the scientific study or public representation of the state's historical, prehistorical or aboriginal past as a "state archeological landmark." All state agencies administering state-owned lands containing state archeological landmarks shall cooperate to insure the protection of these landmarks. State archeological landmarks located on privately-owned land shall not be designated without the written consent of the owner. Upon designation of an archeological site the private owner or affected state agency shall be given written notice of the designation by the state archeologist. Once so designated, no person may conduct field activities without first securing a permit from the state historic preservation officer and complying with the provisions of section 762 of this title. (Added 1975, No. 109, § 4; amended 1995, No. 46, § 46.)*

<sup>4</sup> **Rules of the Division of Historic Preservation**

#### **4.7 Archeological Sites Not Listed in the State or National Register.**

***Project areas may contain significant archeological sites that have not yet been discovered. Identifying such resources often requires research and field investigation. It is noted that the applicant has the responsibility of producing sufficient information so that the District Commission [or Environmental Board] can render a finding of fact and conclusion of law with respect to 10 V.S.A. § 6086(a)(8). Division for Historic Preservation staff may gather initial information, as outlined in 4.7.1.1.1 through 4.7.1.1.3 below, or the applicant may, at its option, retain a qualified archeological professional to gather initial information. If, after evaluation of such initial information, the Division staff determines that an archeological field investigation is warranted, the SHPO may recommend to the District Commission [and the commission may require] that the applicant retain a qualified archeological professional to conduct the studies as outlined at Rule 4.7.1.2. All archeological studies must meet the SHPO's Guidelines for Conducting Archeological Studies in Vermont.***

The SHPO relies on the standards for eligibility to the State or National Registers of Historic Sites in order to provide testimony to the district commission that the site is “historically significant.” Essentially, the SHPO has the burden of proving that the site has “yielded or may be likely to yield, information important in history or prehistory” and thus is eligible for nomination to the State or National Register.<sup>5</sup>

Under federal guidelines, Criterion D has two requirements, which must both be met for a property to qualify:

- *The property must have, or have had, information to contribute to our understanding of human history or prehistory, and*
- *The information must be considered important.*
- *“Under the second requirement, the information must be carefully evaluated within an appropriate context to determine its importance. Information is considered ‘important’ when it is shown to have a **significant bearing** on a research design that addresses such areas as: **1) current data gaps or alternative theories that challenge existing ones or 2) priority areas identified under a State or Federal agency management plan.**”*

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<sup>5</sup> ***U.S. Department of the Interior, National Park Service  
National Register, History and Education***

***II. NATIONAL REGISTER CRITERIA FOR EVALUATION***

***Criteria for Evaluation [for National Register eligibility]***

*The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:*

***A. That are associated with events that have made a significant contribution to the broad patterns of our history; or***

***B. That are associated with the lives of significant persons in or past; or***

***C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or***

***D. That have yielded or may be likely to yield, information important in history or prehistory. See Appendix A for Guidelines on Applying Criterion D.***

***From Appendix A – Federal Guidelines.***

**Adverse Affect**

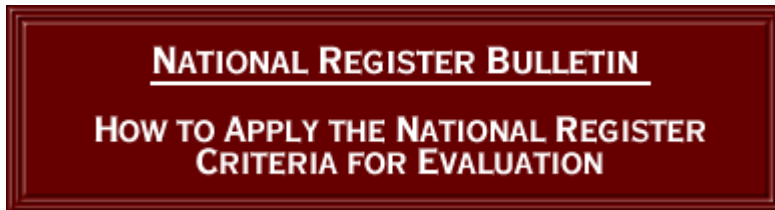
Once an “historic site” has been determined to exist as noted above, the district commission must then determine whether the project will result in an “adverse effect” on the “site”.

The district commissions are not bound in determining “adverse effect” by a state or federal register listing and are not required to base any findings and conclusions on the testimony of the Advisory Council. ***Instead, the determination of “adverse effect” is solely within the province of the district commission, based on the evidence presented.***

**Undue Adverse Impact**

Similar to the determination of “adverse effect,” the determination of “undue” is solely within the province of the board or district commission, based on the evidence presented. If such a determination is made, then the project either must be denied or appropriate conditions must be placed in the land use permit to be issued by the district commission. Common permit conditions include avoidance of the site or recovery of the artifacts located within the site through Phase I, II or III surveys.

**U.S. Department of the Interior, National Park Service  
National Register, History and Education**



**CRITERION D: INFORMATION POTENTIAL**

**Properties may be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history.**

***Understanding Criterion D: Information Potential***

Certain important research questions about human history can only be answered by the actual physical material of cultural resources. Criterion D encompasses the properties that have the potential to answer, in whole or in part, those types of research questions. The most common type of property nominated under this Criterion is the archeological site (or a district comprised of archeological sites). Buildings, objects, and structures (or districts comprised of these property types), however, can also be eligible for their information potential.

***Criterion D has two requirements, which must both be met for a property to qualify:***

***The property must have, or have had, information to contribute to our understanding of human history or prehistory, and***

***The information must be considered important.***

Under the first of these requirements, a property is eligible if it has been used as a source of data and contains more, as yet unretrieved data. A property is also eligible if it has not yet yielded information but, through testing or research, is determined a likely source of data.

***Under the second requirement, the information must be carefully evaluated within an appropriate context to determine its importance. Information is considered "important" when it is shown to have a significant bearing on a research design that addresses such areas as: 1) current data gaps or alternative theories that challenge existing ones or 2) priority areas identified under a State or Federal agency management plan.***

***Applying Criterion D: Information Potential***

### ***Archeological Sites***

***Criterion D most commonly applies to properties that contain or are likely to contain information bearing on an important archeological research question. The property must have characteristics suggesting the likelihood that it possesses configurations of artifacts, soil strata, structural remains, or other natural or cultural features that make it possible to do the following:***

- ***Test a hypothesis or hypotheses about events, groups, or processes in the past that bear on important research questions in the social or natural sciences or the humanities; or***
- ***Corroborate or amplify currently available information suggesting that a hypothesis is either true or false; or***
- ***Reconstruct the sequence of archeological cultures for the purpose of identifying and explaining continuities and discontinuities in the archeological record for a particular area.***

### **Buildings, Structures, and Objects**

While most often applied to archeological districts and sites, Criterion D can also apply to buildings, structures, and objects that contain important information. In order for these types of properties to be eligible under Criterion D, they themselves must be, or must have been, the principal source of the important information.

#### ***Eligible***

- A building exhibiting a local variation on a standard design or construction technique can be eligible if study could yield important information, such as how local availability of materials or construction expertise affected the evolution of local building development.

#### ***Not Eligible***

- The ruins of a hacienda once contained murals that have since been destroyed. Historical documentation, however, indicates that the murals were significant for their highly unusual design. The ruins can not be eligible under Criterion D for the importance of the destroyed murals if the information is contained only in the documentation.

### **Association with Human Activity**

***A property must be associated with human activity and be critical for understanding a site's historic environment in order to be eligible under Criterion D.*** A property can be linked to human activity through events, processes, institutions,

design, construction, settlement, migration, ideals, beliefs, lifeways, and other facets of the development or maintenance of cultural systems.

The natural environment associated with the properties was often very different from that of the present and strongly influenced cultural development. Aspects of the environment that are pertinent to human activities should be considered when evaluating properties under Criterion D.

***Natural features and paleontological (floral and faunal) sites are not usually eligible under Criterion D in and of themselves. They can be eligible, however, if they are either directly related to human activity or critical to understanding a site's historic environment. In a few cases, a natural feature or site unmarked by cultural materials, that is primarily eligible under Criterion A, may also be eligible under Criterion D, if study of the feature, or its location, setting, etc. (usually in the context of data gained from other sources), will yield important information about the event or period with which it is associated.***

### **Establishing a Historic Context**

The information that a property yields, or will yield, must be evaluated within an appropriate historic context. This will entail consulting the body of information already collected from similar properties or other pertinent sources, including modern and historic written records. The researcher must be able to anticipate if and how the potential information will affect the definition of the context. The information likely to be obtained from a particular property must confirm, refute, or supplement in an important way existing information.

***A property is not eligible if it cannot be related to a particular time period or cultural group and, as a result, lacks any historic context within which to evaluate the importance of the information to be gained.***

### **Developing Research Questions**

Having established the importance of the information that may be recovered, it is necessary to be explicit in demonstrating the connection between the important information and a specific property. One approach is to determine if specific important research questions can be answered by the data contained in the property. Research questions can be related to property-specific issues, to broader questions about a large geographic area, or to theoretical issues independent of any particular geographic location. These questions may be derived from the academic community or from preservation programs at the local, regional, State, or national level. Research questions are usually developed as part of a "research design," which specifies not only the questions to be asked, but also the types of data needed to supply the answers, and often the techniques needed to recover the data.



### **Eligible**

- ***When a site consisting of a village occupation with midden deposits, hearths, ceramics, and stratified evidence of several occupations is being evaluated, three possible research topics could be: 1) the question of whether the site occupants were indigenous to the area prior to the time of occupation or recent arrivals, 2) the investigation of the settlement-subsistence pattern of the occupants, 3) the question of whether the region was a center for the domestication of plants. Specific questions could include: A) Do the deposits show a sequential development or sudden introduction of Ceramic Type X? B) Do the dates of the occupations fit our expectations based on the current model for the reoccupation behavior of slash-and-burn agriculturalists? C) Can any genetic changes in the food plant remains be detected?***

### **Not Eligible**

- ***A property is not eligible if so little can be understood about it that it is not possible to determine if specific important research questions can be answered by data contained in the property.***

### **Establishing the Presence of Adequate Data**

To support the assertion that a property has the data necessary to provide the important information, the property should be investigated with techniques sufficient to establish the presence of relevant data categories. What constitutes appropriate investigation techniques would depend upon specific circumstances including the property's location, condition, and the research questions being addressed, and could range from surface survey (or photographic survey for buildings), to the application of remote sensing techniques or intensive subsurface testing. Justification of the research potential of a property may be based on analogy to another better known property if sufficient similarities exist to establish the appropriateness of the analogy.

### **Eligible**

- ***Data requirements depend on the specific research topics and questions to be addressed. To continue the example in "Developing Research Questions" above, we might want to ascertain the following with reference to questions A, B, and C: A) The site contains Ceramic Type X in one or more occupation levels and we expect to be able to document the local evaluation of the type or its intrusive nature. B) The hearths contain datable carbon deposits and are associated with more than one occupation. C) The midden deposits show good floral/faunal preservation, and we know enough about the physical evolution of food plants to interpret signs that suggest domestication.***



### ***Not Eligible***

- ***Generally, if the applicable research design requires clearly stratified deposits, then subsurface investigation techniques must be applied. A site composed only of surface materials can not be eligible for its potential to yield information that could only be found in stratified deposits.***

### **Integrity**

The assessment of integrity for properties considered for information potential depends on the data requirements of the applicable research design. A property possessing information potential does not need to recall *visually* an event, person, process, or construction technique. It is important that the significant data contained in the property remain sufficiently intact to yield the expected important information, if the appropriate study techniques are employed.

### ***Eligible***

- ***An irrigation system significant for the information it will yield on early engineering practices can still be eligible even though it is now filled in and no longer retains the appearance of an open canal.***

### ***Not Eligible***

- ***A plowed archeological site contains several superimposed components that have been mixed to the extent that artifact assemblages cannot be reconstructed. The site cannot be eligible if the data requirements of the research design call for the study of artifacts specific to one component.***

### **Partly Excavated or Disturbed Properties**

The current existence of appropriate physical remains must be ascertained in considering a property's ability to yield important information. Properties that have been partly excavated or otherwise disturbed and that are being considered for their potential to yield additional important information must be shown to retain that potential in their remaining portions.

### ***Eligible***

- ***A site that has been partially excavated but still retains substantial intact deposits (or a site in which the remaining deposits are small but contain critical information on a topic that is not well known) is eligible.***

### ***Not Eligible***

- ***A totally collected surface site or a completely excavated buried site is not eligible since the physical remains capable of yielding important information no longer exist at the site. (See Completely Excavated Sites, below, for exception.) Likewise, a site that has been looted or otherwise disturbed to the extent that the remaining cultural materials have lost their important depositional context (horizontal or vertical location of deposits) is not eligible.***
- ***A reconstructed mound or other reconstructed site will generally not be considered eligible, because original cultural materials or context or both have been lost.***

### **Completely Excavated Sites**

Properties that have yielded important information in the past and that no longer retain additional research potential (such as completely excavated archeological sites) must be assessed essentially as historic sites under Criterion A. Such sites must be significant for associative values related to: 1) the importance of the data gained or 2) the impact of the property's role in the history of the development of anthropology/archeology or other relevant disciplines. Like other historic properties, the site must retain the ability to convey its association as the former repository of important information, the location of historic events, or the representative of important trends.

### ***Eligible***

- ***A property that has been excavated is eligible if the data recovered was of such importance that it influenced the direction of research in the discipline, as in a site that clearly established the antiquity of the human occupation of the New World.***

### ***Not Eligible***

- ***A totally excavated site that at one time yielded important information but that no longer can convey either its historic/prehistoric utilization or significant modern investigation is.***

## Appendix B

### U.S. Department of the Interior, National Park Service National Register, History and Education

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**NATIONAL REGISTER BULLETIN**  
**GUIDELINES FOR EVALUATING AND**  
**REGISTERING ARCHEOLOGICAL PROPERTIES**

#### III. HOW ARE ARCHEOLOGICAL PROPERTIES IDENTIFIED?

Proper identification of a historic property serves as the foundation for evaluation, a sound National Register nomination, and for subsequent planning protection, and management of the resource. ***When considering a property for listing in the National Register, the nomination preparer needs to be able to answer questions about the history of the property and its physical setting, the characteristics of the site's archeological record, and the boundaries of the property.***

***The identification of archeological properties generally involves background research, field survey, archeological testing and analysis, and evaluation of the results. Archeologists use a variety of information sources to reconstruct the history of a property including written documents, oral testimony, the presence and condition of surviving buildings, structures, landscapes, and objects, and the archeological record.*** Where the archeological record is well-known, the locations and types of sites may serve as the basis for predictive models for further site identification. Written documentary resources, oral history, and traditional knowledge may provide information about the people and activities that occurred at a site, and can enumerate aspects of the archeological property's use, abandonment and subsequent alteration. Extant buildings, structures, landscape features, and objects can provide important temporal and functional information upon which to base additional research.

Generally background research should be completed prior to the field studies. ***This research may involve: examining primary sources of historical information (e.g., deeds and wills), secondary sources (e.g., local histories and genealogies), and historic cartographic sources; reviewing previous archeological research in similar areas, models that predict site distribution, and archeological, architectural, and historical site inventory files; and conducting informant interviews.***

Information obtained only through archeological survey or test excavations may be needed for many archeological properties before a nomination can be prepared. The

identification of archeological properties is discussed more thoroughly in the National Register bulletin [Guidelines for Local Surveys: A Basis for Preservation Planning](#), especially Chapter 11, "[Conducting the Survey](#)," and Appendix 1, "[Archeological Surveys](#)." Also see The Secretary of Interior's Standards and Guidelines for Identification. Individual states or localities may have specific guidelines or permit requirements for archeological investigations. Contact your SHPO, THPO, or the FPO prior to beginning any archeological research project.

***In order to identify the presence and location of a site, an archeologist generally begins by inspecting the ground surface or probing below the surface using soil cores or shovel tests. Artifacts and features are the most common indicators of archeological properties. Artifacts in the plow-disturbed soils of active and former agricultural fields can also demonstrate the location of archeological properties.*** Non-native plant species or spatial patterning of plants (such as clusters of daffodils, lilac bushes, or groupings of cedar trees) may signal the presence of an archeological property.

Archeologists usually identify the presence and extent of a site through excavation of randomly, systematically, or judgmentally placed test units. Test units are used to show the presence or absence of artifacts and features below the present ground surface. ***The fieldwork to determine the National Register eligibility of an archeological property should follow logically from the historic context used. For example, the context should provide important research questions and the data needed for an eligibility determination. Such data may include the horizontal and vertical extent of a site, chronology or periods of occupation/use, site type, site function, and internal configuration.***

Increasingly, archeologists are using scientific instruments to identify subsurface archeological features. Remote sensing techniques, that include ground-penetrating radar (GPR), soil resistivity, and soil chemistry surveys, are often applied in conjunction with test excavations that confirm the presence of subsurface cultural remains (Thomas 1987). Such prospecting techniques are non-destructive and can provide rapid three-dimensional reconnaissance of a site, but the results are often ambiguous unless they are checked in the field. For further information see, for example, Heimmer and Devore (1995) and Bevan (1998).

After the field studies are complete, the archeologist identifies and documents the artifacts, features, and ecofacts that make up the property. For the purpose of comparison with other properties, these data are quantified. Special attention is given to describing and analyzing temporally, functionally, and culturally diagnostic artifacts, features, or ecofacts. Generally, one must complete the laboratory analysis phase of a project before determining the potential significance of an archeological property.

Among American archeologists, specific test strategies-that is, the number, shape, placement, and method of test excavations-are as diverse as the characteristics of the

archeological record. Because of the impact on the quality of information recovered, the archeological field methods used are an important part of the description of any archeological research project.

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