

ARCHAEOLOGY BULLETIN

RECOMMENDATIONS FROM THE OREGON STATE HISTORIC PRESERVATION OFFICE

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ARCHAEOLOGICAL SITES ON PRIVATE LANDS

MAY 2012

People have lived in Oregon for at least 14,000 years. Evidence of past human occupation exists, in part, within archaeological sites. Archaeological sites may consist of the remains of a 3,500 year-old village, trail ruts from the Oregon Trail or an early 1900s homestead. All archaeological sites contribute to the physical record of the history of Oregon from the earliest inhabitants to the recent past. The following information is for private landowners, to provide assistance with understanding state laws, what to do if you have an archaeological site on your property, your property rights, and how you can actively preserve and protect archaeological sites on your property.

What is an archaeological site?

In Oregon, an archaeological site is defined as any location with physical remains of past human activity that is at least 75 years old. Physical remains may include artifacts, such as stone tools (arrowheads, pestles, mortars), chipped stone flakes from a tool stone such as obsidian, peeled trees, rock art, shell heaps or middens, wagon ruts, old cans, bottles, bricks, metal debris, domestic debris and foundations from historic Euro-American use, or shipwrecks. The relationship or context of artifacts within an archaeological site can provide significant information on prehistoric or historic activities. The Oregon State Historic Preservation Office (Oregon SHPO) maintains a master record set of archaeological sites in Oregon.

Laws:

Under Oregon State Law (ORS 97.740, ORS 358.905-358.961, ORS 390.235, OAR 736-051-0090) significant archaeological sites are protected on all non-federal public (state, county, city) and private lands. Significance is based on the potential of an archaeological site to be eligible for inclusion on the National Register of Historic Places, which means the site possesses important archaeological information on a local, regional or national level. Archaeological sites are considered significant until their eligibility can be evaluated. Under state law, damage to archaeological sites is a Class B Misdemeanor. Disturbance of Native American human remains or associated funerary objects is considered a Class C Felony with penalties up to a \$10,000 fine.

Significant archaeological sites are protected on all non-federal public (state, county, city) and private lands.

Private Land Rights:

Archaeological sites on private land are owned by the landowner and the land cannot be taken from the owner. The artifacts from a site are also the property of the landowner, except for Native American human remains, burials, associated funerary objects, sacred objects, and objects of cultural patrimony (ORS97.740). No one is allowed on private land without owner consent, regardless of the presence of an archaeological site. Since the site belongs to the landowner, the

landowner is the steward. If located on private land, the state encourages landowners to avoid impacting archaeological sites. Some activities that may already be occurring on your land (i.e. plowing, grazing) and that have had limited impacts to an archaeological site, may continue unless the archaeological site contains human remains, burials, sacred objects, objects of cultural patrimony, and associated funerary objects. In other words, Oregon SHPO does not consider some continued use a violation of state law (ORS 358.905-358.961 or ORS 390.235).

An easy option for protecting archaeological sites on private land is to avoid them altogether.

If an archaeological site is on private land, it should be avoided. If avoidance is not possible and the site will be impacted as a result of a proposed activity (e.g., construction [buildings, access routes, irrigation], dumping, trampling), it will need to be evaluated (recorded and studied by a professional archaeologist) for significance under a state-issued permit before the activity can begin. If the site is determined not significant by a professional archaeologist, with concurrence from the Oregon SHPO, the proposed activity can occur without further archaeological research. If the site is found to be significant, steps will need to be taken to minimize and/or mitigate the damage resulting from the proposed activity. At the conclusion of any archaeological excavation, all artifacts remain the property of the landowner; however, Oregon SHPO strongly recommends the landowner donate the artifacts to the Oregon Museum of Natural and Cultural History in Eugene or to a local museum.

How do I protect archaeological sites on my land?

An easy option for protecting archaeological sites on private land is to avoid them altogether. If ongoing or planned use of your land will not impact the site, the act of avoidance will afford some protection. For long term protection, a Conservation Easement (ORS 271.715-271.795) or Preservation Deed Covenant is an important option for archaeological sites on private land. An easement/covenant is a voluntary agreement that allows a landowner to limit the type or amount of development on their property while retaining private ownership of the land. People grant conservation easements because they want to protect their property from unwanted development while also wishing to retain land ownership. By granting a conservation easement a landowner can be assured that the property will be protected forever, regardless of who owns the land in the future. An additional benefit of granting a conservation easement is that the donation of an easement may provide financial advantage to the donor through an IRS tax deduction. The landowner continues to own the property after executing an easement, therefore they can sell, give or lease the property as before. However, all future owners assume ownership of the property subject to the conditions of the easement. In order to maintain protection (whether avoidance, conservation easement or other measure is adopted), confidentiality of the location and type of site will prevent word from spreading that could result in illegal artifact collection or looting.

SHPO Archaeology Staff
Dennis Griffin, State Archaeologist (503) 986-0674
John Pouley, Assistant State Archaeologist (503) 986-0675
Matt Diederich, Archaeologist (503) 986-0577



ARCHAEOLOGICAL SITES ON PRIVATE LANDS

FREQUENTLY ASKED QUESTIONS

MAY 2012

LAWS:

What laws currently protect archaeological sites in Oregon on private lands?

There are three main laws in the state of Oregon that protect archaeological sites. ORS 97.740 protects all Native American graves and associated artifacts. Under ORS 358.905-358.962, significant archaeological sites are protected on both non-federal public (state, county, city) and private lands. The law also provides definitions for *archaeological objects, sites, significance, sacred objects* and *objects of cultural patrimony*. The process for conducting an archaeological excavation or removal of artifacts from a site is defined in ORS 390.235. A person may not *knowingly or intentionally excavate, injure, destroy or alter an archaeological site* without a permit. The associated administrative rule, OAR 736-051-0000 to 0090 defines the process for applying for a permit on both private and non-federal public lands. Links to the complete text for each of these state laws are available on-line from the Oregon State Historic Preservation Office (SHPO) webpage http://www.oregon.gov/OPRD/HCD/ARCH/arch_laws.shtml.

What are archaeological objects and sites?

Archaeological sites are comprised of archaeological objects or features related to historic or prehistoric activities. In the state of Oregon, 10 archaeological objects or a feature constitutes an archaeological site. Any item manufactured by a person or a by-product of manufacturing activities that is at least 75 years old is an archaeological object. If a person made an arrowhead in the past, the arrowhead itself is an archaeological object as are the waste flakes removed from the stone worked to form the arrowhead. Any tools used to remove waste flakes would additionally constitute archaeological objects. The remnants of the fire hearth used to heat treat the stone used to make the arrowhead would constitute a feature. In this example, each object and feature allows archaeologists to piece together the prehistoric activity that occurred, when it occurred, the technology utilized and where the production materials were procured. Combined, the information may be significant in understanding Oregon's cultural past. Since human occupation in Oregon is known to extend back as far as 14,000 years ago, the range in age of archaeological objects is considerably broad. Often, people not trained in archaeology consider objects that are around 75 years old to be "garbage" (e.g., cans, bottles) when in fact they may be significant for any number of reasons related to Oregon history. Archaeology in and of itself is often viewed as the study of garbage in that archaeologists study items lost or discarded by people of the past.

What does archaeological significance mean?

Archaeological significance means that a site is eligible for inclusion on the National Register of Historic Places (NRHP). For an archaeological site to be significant, a professional archaeologist would need to evaluate the site in terms of its importance based on condition (integrity), type of artifacts and features associated with the site, research potential or similarity to known significant sites. Conversely, a professional archaeologist can assist with recommending an archaeological site as "non-significant". If an archaeological site is determined non-significant with State Historic Preservation Office (SHPO) concurrence, it is not protected under state law. That would not prevent the landowner from protecting the site if they so choose, but it would not be necessary. Significant archaeological sites would require protection or mitigation if a landowner were planning a project with the potential to damage,

injure or destroy the site. Archaeological sites that have not been evaluated are considered significant until proven otherwise.

What is a sacred object or object of cultural patrimony?

For an archaeological object to be considered “sacred” it must be revered by an ethnic group, religious group or Indian tribe. Sacred objects are those generally used for religious or spiritual practices or for traditional native Indian religious practices. Objects of cultural patrimony are archaeological objects considered inalienable to a native Indian group. They include objects having on-going historical, traditional or cultural importance central to a native Indian group or culture. These do not include arrowheads, baskets or stone tools or portions of arrowheads, baskets or stone tools.

What does it mean to knowingly or intentionally excavate, injure, destroy or alter an archaeological site?

An archaeological site does not have to be formally recorded by professional archaeologists but can simply be known by members of a community or an individual landowner. Due to the nature of archaeological sites often being buried, knowingly can also mean at the point of discovery by anyone conducting ground disturbing activities such as excavation. The Oregon SHPO maintains information on recorded archaeological sites within the state and its waters. Site location information is confidential and generally only available to qualified individuals (e.g., professional archaeologists) or landowners/land managers. If you as a landowner wish to know if an archaeological site has been recorded on your property, SHPO will provide you with that information. The SHPO can additionally provide you with information on the likelihood that your property may possess an archaeological site based on several factors relating to historic and prehistoric land use patterns. Oregon SHPO welcomes any information provided by you, the landowner, if you suspect an archaeological site is located on your property.

PROPERTY RIGHTS:

Who owns an archaeological site on private land?

Archaeological sites on private land are owned by the landowner and the presence of such sites cannot be used to take their land away from them. The artifacts from a site are also the property of the land owner, except for Native American human remains, burials, associated funerary objects, sacred objects, and objects of cultural patrimony (ORS97.740). Archaeologists are not allowed on private land without owner consent, regardless of the presence of an archaeological site. Projects that encroach on private land must first get the approval of the landowner to allow the project to go through their property or to conduct an archaeological survey.

If I find something can I keep it? Sell it?

Oregon state law (ORS 358.920[1][b]) permits the collection of **an** arrowhead from the surface of non-federal public or private land as long as the collection can be accomplished without the use of a tool. The law does not permit the systematic collection of artifacts but is meant to remove any penalty from a person accidentally discovering an arrowhead. Artifacts from private land can only legally be collected under a state archaeological permit with all artifacts remaining the property of the landowner to do with as they see fit. While SHPO recommends that landowners donate all artifacts to a museum for long term curation and research the landowner

can dispose of the artifacts in any way they desire (sell, trade, barter, exchange). Any artifacts from private land that are to be sold need to be accompanied by a notarized statement from the landowner as to their original location, the archaeological permit they were obtained under [OAR 736-051-0090], and assurance that the object is not human remains, a funerary object, sacred object, or object of cultural patrimony.

What happens if an archaeological site is on private land?

If an archaeological site is on private land, as with public land, avoidance is recommended. If it is not possible to avoid the site, subsurface testing by a professional archaeologist may be needed to determine if the site is significant. It is important that no ground disturbing activities occur prior to testing the site. It is further recommended that the landowner refrain from drawing attention to the site. Attention can lead to unlawful artifact collection, excavation and trespassing. Report the site to the Oregon SHPO who can assist you in locating an archaeologist to record the site so that information about how your land was used in the past can be compared to regional land use patterns.

If you have an archaeological site on your land can you continue to use the land?

Yes, in many cases you can continue to use your land without having to address potential damage to a site after coordination with Oregon SHPO has occurred. If a field is being used as open pasture for livestock, or is routinely plowed, the field can continue to be used in this same fashion. It is recommended that if possible, limiting livestock access to the site is preferred. When there is a change in how you use your land, however, there may be a need to take measures to ensure that the archaeological site is not further damaged. Coordinate with Oregon SHPO to determine the level of disturbance.

How should I treat an archaeological site on my land if it is in the way of a proposed project I want to complete?

The best protection for a site is avoidance. Keep all ground disturbing activities away from an archaeological site as much as possible. If a site can not be avoided it will need to be evaluated to see if it contains significant information about local and/or regional history. This may mean that the site will need to be tested by a professional archaeologist through archaeological excavations under a state permit (no permit fee). If the site is found to be not significant the project can move forward without delay. If the site is found to be significant, those portions of the site that can not be avoided will need to be addressed by taking steps to minimize damage to the site and/or through mitigation. One way to minimize damage to a significant site is through capping which consists of placing a thick layer of clean fill on top of the site protecting the buried component. Mitigation means that a portion of the site may need to be excavated in order to collect a sample of the significant artifacts and information that would be destroyed by the proposed ground disturbing activity. Other forms of protection and/or interpretation may also be possible so it is important to contact the Oregon SHPO to discuss any questions you may have on minimizing or mitigating damage to known archaeological sites

Who can apply for an archaeological permit and what does it entail?

Only a qualified professional archaeologist can be issued a permit in the state of Oregon. To be qualified, the archaeologist must meet the professional qualifications defined in State Law ORS 390.235(6)(b). Permits allow both collection of archaeological objects and archaeological

excavation. The archaeological permit application process itself is free to individuals meeting the qualifications and the review process can take up to 30 days before the permit is issued.

How should artifacts be properly curated from private land?

If artifacts are found on private land SHPO recommends that they be left in place and the area around the site be avoided from development, if possible. This is because the true value of an artifact is not in the artifact itself but in its context; the soil and placement of the artifact when originally deposited. For artifacts that have been collected under a state archaeological permit, we recommend that all artifacts be curated at a local museum or tribal office so they will be preserved for future research and education of the public.

How do I find out if I have an archaeological site on my property?

Oregon state law protects the sharing of location information for archaeological sites in Oregon [ORS 192.501(11)]. However, a person cannot protect or manage a site on their property if they do not know such a site exists. If a landowner wants to know if an archaeological site is known to exist on their property they can contact the Oregon SHPO. SHPO will need to see evidence of ownership of the property and be given a few basic pieces of information in order to check their statewide database of known sites. This information includes: 1) a complete legal description of the property (township, range & section); 2) a USGS map that clearly depicts the location of the property in relation to the section it lies within; and 3) an address or contact information so that we can respond to your request. Free USGS maps are available on-line at <http://www.topoquest.com/>.

Who do I contact if I want to have an archaeological survey of my land?

The Oregon SHPO maintains a list of qualified archaeological contractors on our web page (<http://egov.oregon.gov/OPRD/HCD/ARCH/docs/archaeologists.pdf>). This list is maintained to assist people who need to hire a professional to conduct an archaeological survey or testing project. Each of the listed firms has a qualified archaeologist able to complete all phases of archaeological research. It is recommended that you contact three (3) or more archaeologists or archaeological firms in order to get a good perspective on the cost and services offered.

What happens if I inadvertently discover archaeological objects or a site on my property?

Once a site has been discovered on your property you, the landowner, become responsible for protecting the site from further damage. It is recommended that you contact the Oregon SHPO so that they can assist you in finding ways to best protect the site while not impacting any proposed projects.

If I found something on my land but don't know if it is an artifact, who should I contact?

Identification of artifacts that you may have found can often be obtained by contacting a professional archaeologist at a local university or federal land managing agency. The US Forest Service and BLM offices all maintain a staff of archaeologists who may be able to assist you. You can also contact the Oregon SHPO archaeological services.



SHPO Archaeology Staff

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Inadvertent Discovery Plan for Cultural Resources

Construction work may uncover previously unidentified archaeological materials. Work must stop and the Inadvertent Discovery Plan must be followed when Cultural Resources are encountered.

Archaeological materials may include (but are not limited to):

- *Flaked stone tools (arrowheads, knives, scrapers, waste flakes)
- *Ground stone tools (mortars, pestles, net weights)
- *Placed/altered rock features (stacked rocks, circular/ovular rock outlines, pictographs)
- *Layers/spots of discolored earth (evidence of fire hearths, rotted post holes, and/or ancient structures)
- *Glass (historic bottles, vessels, windows)
- *Ceramic (historic dinnerware, vessels)
- *Metal (historic nails, cans, tobacco tins, industrial parts)
- *Animal bones with evidence of antiquity and human processing (cut marks, carvings, cooking)
- *Building materials or remains (foundations, bricks, shingles, beams, planks)
- *Marine hardware, pilings, weirs, ships or sea-going vessels (above or below water)
- *Middens (often composed of dense layers of shell and/or black, humic soil)
- *Human remains

Protocol In the Event of an Inadvertent Discovery:

1. STOP. In the event of an inadvertent discovery of possible archaeological materials, all work will stop immediately in the vicinity of the find.
2. SECURE. The area should be secured and protected. This should include avoidance measures, protection from rain (such as a tarp), or any other measures deemed immediately prudent.
3. NOTIFY. The ODFW Archaeologist and project manager will be notified (Contact info is below). The ODFW Archaeologist or project manager will notify the State Historic Preservation Office (SHPO).
4. SUPPORT. No work may resume until ODFW Archaeology staff are able to assess the situation. In the meantime, do not locate, mark, or divulge information about the finds in any way that may alert looters or other non-ODFW and non-essential contact staff.

The ODFW Archaeologist will consult with SHPO and appropriate Tribal Governments and determine an appropriate course of action. This is handled on a case by case basis by the agency Archaeologist in consultation with SHPO and appropriate Tribes.

If possible human remains are encountered; do not disturb them in any way. Do not speak with the media. Secure the location. Do not take photos. ODFW staff will also notify the Oregon State Police, Commission on Indian Services (CIS), SHPO, and Tribes. *Do not call 911.*

<u>ODFW PM:</u>	_____	_____
<u>ODFW Archy:</u>	Daniel Pettit Jr	503-947-6153
<u>Oregon State Police:</u>	Chris Allori	503-708-6461
<u>CIS:</u>	Karen Quigley	503-986-1067
<u>SHPO:</u>	Dennis Griffin	503-986-0674

When in doubt, call it in!

CULTURAL RESOURCE SUPPORT REQUEST FORM

BACKGROUND INFORMATION	
Project Name:	
Project Contact:	
County(ies):	Quadrangles, if known:
Location (TRS Preferred):	
<i>If you do not have Township, Range, and Section, please include GPS coordinates, UTM's, or other address description</i>	
Property Owner(s):	<input type="checkbox"/> Private <input type="checkbox"/> State Gov <input type="checkbox"/> Federal Gov <input type="checkbox"/> Other: _____
<input type="checkbox"/> A Federal Permit is Required for the Project: _____ (Example: USACE/DSL Joint Permit)	
<input type="checkbox"/> PR Funds will be used (FMSB # _____)	<input type="checkbox"/> Other Federal Funds will be used: _____
Cost Code (Fish Div Only):	
PROJECT DESCRIPTION (Continue on multiple pages if necessary)	
Describe the Proposed Work in Detail. Describe Equipment to be Used. Note and Describe Any Proposed Ground Disturbance (Including Extent and Maximum Depth) or Ground Disturbance Minimization techniques:	
Describe the Project Area. What is Its Current Use (Pasture, Wildlife Area)? How Was It Used in the Past? Describe Previous Ground Disturbance, If Any. Describe Known or Suspected Archaeological Materials, If Any.	
Are there one or more buildings, levees, canals, or other structures?	<input type="checkbox"/> YES <input type="checkbox"/> NO
If Yes, What are their Original Construction Date(s):	<input type="checkbox"/> Check box if date is estimated
Describe Any Built Features That Are Older than 45 Years Or Have an Unknown Construction Date (Attach Photos if Possible):	
ATTACH MAP OF THE PROJECT. OUTLINE THE ENTIRE BOUNDARY OF THE PROJECT AREA OR AREAS. If needed, free topo maps can be downloaded at http://www.natgeomaps.com/trail-maps/pdf-quads. SHAPEFILES OF THE PROJECT AREA ARE GREATLY APPRECIATED & CAN BE SENT INSTEAD OF A MAP.	