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State Files Proposed Archeology Rule Changes

Revised Rule Clarifies Protection Of Archeological Sites and Historic Resources

MONTPELIER, Vt. – The state has officially filed a proposed revised rule for protecting archeological and historical sites during development, beginning the formal process of review.

Officials with the Agency of Commerce and Community Developments' Division for Historic Preservation said the changes reflected the feedback received during five public meetings this summer around the state.

“The public meetings to get informal feed-back on the proposed changes were very well attended. We heard from a broad spectrum of the archeology and applicant communities about the proposed rule changes,” said Giovanna Peebles, the State Historic Preservation Officer and head of the Division for Historic Preservation. “Based on that, we have further revised our original suggested changes to clarify all aspects of the original rule, including the roles of the participants in the Act 250 process.”

Under Act 250, the state's environmental protection and development review law, the Division for Historic Preservation makes recommendations to the district environmental commissions on whether a proposed development would impact “historic sites,” including archeological sites.

The proposed rule revisions clarify that District Commissions, not the Division, have the final decision-making authority about such questions as whether to require additional field studies, and whether a site is historically significant enough to warrant protecting it.

“We don't issue permits,” Peebles said. “The Division provides testimony to the District Commission about historic and archeological resources, on whether or not a project will adversely affect an ‘historic site,’ and on how much field study should be done to determine whether an area is historically significant and should be protected if a permit is issued. The District Commission makes those decisions.”

One concern raised by the archeology community is that undiscovered “potential” sites must continue to be considered and protected where possible. Peebles, who is also the State Archeologist, says that the revised rule clearly provides for this within the ability of existing state law.

Peebles said that the revised rules clarify that the definition of “historic site” includes archeological sites that have not yet been discovered, and encourages applicants to work with the Division as early as possible in the planning process to identify and protect sites, even well before an Act 250 application is submitted.

“Based on several steps during project review, Division staff can identify an area as historically significant and recommend to the District Commission that an archeological investigation be

conducted by the applicant to ensure no undue adverse effect to significant archeological sites,” Peebles said. “The applicant still has the opportunity to present evidence to the commission disputing that.”

The proposed revised rule also sets additional time limits for reviews to make the process more predictable for permit applicants, with exceptions for winter months when the ground may be frozen and archeological field assessments impossible.

After review by the Interagency Committee on Administrative Rules, the proposed rule revisions will be submitted to the Secretary of State’s Office. The formal rules adoption process includes a public hearing.

After that the rule must be reviewed by the joint Legislative Committee on Administrative Rules before it can be put in place.

Additional details and the draft guidelines are available at www.HistoricVermont.org