

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.

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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).

What happens when an archaeological site is on private land?

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

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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.

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