

ARCHAEOLOGICAL SITES ON PUBLIC LANDS

FREQUENTLY ASKED QUESTIONS

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LAWS:

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

There are three main laws in the state of Oregon that protect archaeological sites. Each of these laws protects sites on both public and private land. ORS 97.740 protects all Native American graves and associated artifacts. Under ORS 358.905-358.961, significant archaeological sites are protected and this law 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. In addition, on public lands in Oregon, a person may not make an exploratory excavation to determine the presence of an archaeological site without first obtaining a state archaeology permit. The associated administrative rule, OAR 736-051-0000 to 0080 defines the process for applying for a permit on 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 sites that have been abandoned for at least 50 years (for federal projects) or 75 years (non-federal projects) and are comprised of archaeological objects or features related to historic or prehistoric activities. In the state of Oregon, ten 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 over 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 and 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; used in connection with the religious or spiritual service or worship of a deity or spirit power; or was or is needed by traditional native Indian religious leaders for the practice of traditional native Indian religion. 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 to be considered a known site but can simply be known by members of a community or an agency. 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 a public agency wishes to know if an archaeological site has been recorded on property they manage, SHPO will provide your agency some assistance. 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 land managers regarding any known or suspected archaeological sites.

PROPERTY MANAGEMENT:

Who owns an archaeological site on public land?

The State of Oregon recognizes that archaeological sites are finite, irreplaceable and nonrenewable cultural resources and that they remain an important part of Oregon’s heritage. As such, all archaeological sites on non-federal public land remain under the stewardship of the people of Oregon to be protected and managed in perpetuity by the state as a public trust. Public agencies are obligated to avoid impacts to historic properties for which they are responsible (ORS 358.653), while a site itself and its associated artifacts, remain under state stewardship.

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 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 public land can only legally be collected under a state archaeological permit with all artifacts remaining under the

stewardship of the state to be curated at UOMNCH. Such artifacts remain under the stewardship of the state and cannot be sold.

What happens if an archaeological site is on public land?

If an archaeological site is on public land, avoidance is recommended. If it is not possible to avoid the site, background research and subsurface testing by a professional archaeologist may be needed to determine if the site is significant. It is important that no project-related ground disturbing activities occur prior to archaeological testing of the site. It is further recommended that the agency with jurisdiction over the property refrain from drawing attention to the archaeological 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 an archaeological site is known or identified on public land can the land still be used in the same way?

Yes, in many cases public land managers can continue to use the land without having to address potential damage to a site after coordination with Oregon SHPO has occurred. If a field is being leased 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 the land is used, however, there may be a need to take measures to ensure that the archaeological site is not damaged as a result of the change. Coordinate with Oregon SHPO to determine the level of disturbance.

How should an archaeological site on public land be treated if it is in the way of a proposed project?

The best protection for a site is avoidance. Keep all ground disturbing activities away from an archaeological site. If a site can not be avoided it will need to be evaluated (if unevaluated) 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. Mitigation may involve additional excavation, called data recovery, to collect as much information as possible that would otherwise be lost from damaging the site through project implementation. . Other forms of mitigation involve protection (e.g., capping with fill) or public interpretation (kiosk or sign). It is important to contact the Oregon SHPO to discuss any minimizing or mitigation of damage to known archaeological sites

When is an archaeological permit needed on public land?

A state archaeological permit is needed before making an exploratory excavation to determine the presence of an archaeological site, for any excavation within a known archaeological site or for the removal of any archaeological objects from a site.

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) and have their status on file at the Oregon SHPO. 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 public land?

If artifacts are removed from public lands through a state-permitted archaeological excavation, collection or following an inadvertent discovery, all artifacts are curated at the UOMNCH except for Native American human remains, burials, associated funerary objects, sacred objects, and objects of cultural patrimony (ORS97.740). These items remain the property of the appropriate tribe(s) and need to be repatriated under the provisions of ORS 97.740-750. The Oregon SHPO is authorized under state law (ORS 358.945) to assist with the repatriation to tribes of such items. Projects that encroach on private land must first get the approval of the landowner to allow a project to go through their property or to conduct any archaeological investigation [ORS 390.235(1)(c)].

What information is needed by SHPO to determine if a project will potentially damage, alter or destroy an archaeological site?

Oregon state law protects the sharing of location information for archaeological sites [ORS 192.501(11)]. As such, if SHPO is provided with: 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, they would have enough information to respond to determine if an archaeologist is needed to assist with project implementation. Free USGS maps are available on-line at <http://www.topoquest.com/>.

Is there a directory of Oregon qualified archaeologists?

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 agencies and the general public 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. Contacting at least three archaeologists or firms is recommended in order to get a good perspective on the cost and services offered. The Oregon SHPO is not able to endorse a particular firm and we provide the list only as a courtesy to agencies seeking professional archaeological services.

What happens if archaeological objects or a site are inadvertently discovered on public land?

Once a site has been discovered, the land managing agency, becomes responsible for protecting the site from further damage or until it has been evaluated and found to be not significant. Contacting the Oregon SHPO is recommended to assist with identifying methods to best protect the site or for questions regarding future evaluation of a site's significance. If a project has already been cleared by SHPO and an archaeological site or object is inadvertently discovered

during project implementation, state law dictates that an expedited archaeological permit (48 hour review) to assess the find is warranted. Projects that have not involved SHPO consultation would necessitate a non-expedited archaeological permit, which would require up to a 30-day review prior to issuance.

If any person finds an item on public land, but is unsure if it is an artifact, who should be contacted?

Inspection of items that are found on public land can be accomplished by contacting a professional archaeologist. State agencies that have professional archaeologists on staff include Oregon State Parks and Recreation Department, Department of Transportation and the Division of State Lands (Bend office). Other professional archaeologists can be found at many cultural resource management firms, local universities, and federal land managing agencies. 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

Dennis Griffin, State Archaeologist (503) 986-0674

Dennis.Griffin@oregon.gov

John Pouley, Assistant State Archaeologist (503) 986-0675

John.Pouley@oregon.gov

Matt Diederich, Archaeologist (503) 986-0577

Matthew.Diederich@oregon.gov