

## Appendix 6. Protections - Historic and Cultural Resources

### Historic and Cultural Protections

Opportunities to explore historic and cultural resources draws visits from local Vermonters and those from abroad. The State of Vermont recognizes that preserving historic resources is vital, and has many programs in place to ensure the continued protection of these resources through review and support from the Vermont Division of Historic Preservation under the Vermont Department of Economic, Housing and Community Development. The following are the current Federal, State and local protections for historical and cultural resources.

#### Federal Historic and Cultural Protections

##### *The National Register of Historic Places*

The National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.<sup>1</sup> Historic sites may be entered in the National Historic Register after nominations are submitted by historians and/or archaeologists, usually employed by the property owner. In Vermont, the nominations are generally prepared cooperatively with the State Division for Historic Preservation. In the towns where nominations are being prepared, planning commissions and property owners are given the opportunity to support or reject listing in the National Register. Nominations are reviewed by the Vermont Advisory Council on Historic Preservation before they are submitted to the National Park Service, which oversees the National Registry and makes the final determination regarding the site's inclusion in the National Register. For more on the National Register application process, see: [http://www.cr.nps.gov/nr/national\\_register\\_fundamentals.htm](http://www.cr.nps.gov/nr/national_register_fundamentals.htm).

Designation of a site or building on the National Historic Register, though an honor of recognition, does not qualify the site for special protections from development or alteration, nor does it impose any legal requirements on the property owner. Owners of the registered site or building are free to alter the property as they wish using private funds. However, designation does regulate the use of federal money for projects that may affect the site. Designation of a site on the National Historic Registry protects the site from any federally assisted, licensed, or permitted projects that may adversely affect the site or its surroundings. For example, a federally-funded road improvement project may not lawfully impact an historic site or its surroundings.

A historic district is a group of buildings that are related architecturally and/or historically and are listed together in the National Register. The downtown area of Richford, on Main and River Streets, is an example of a historic district in the upper Missisquoi and Trout Rivers Study area. The same rules for sites apply to individual buildings in a historic district; the owner of a building in a historic district is free to alter the building using private funds.

The National Register of Historic Places is the most relevant, current federal protection regarding the historic resources in the upper Missisquoi and Trout Rivers Wild & Scenic Study Area. However, there are many national laws and acts that have led to and affected the National Register which are listed below. A full discussion of these acts is available here: <http://www.nps.gov/archeology/public/publicLaw.htm>.

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The first national preservation policy signed into law was the [Antiquities Act of 1906](#),<sup>2</sup> which authorized the President to set aside historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest on lands controlled by the federal government as national monuments. This Act created penalties for the unauthorized disturbance or collection of historic or prehistoric ruins or monuments on federal lands. The [Historic Sites Act of 1935](#)<sup>3</sup> declared the preservation of historic sites, buildings, and objects to be a national policy, and created the National Park Service Advisory Council on Historic Sites.

The National Register of Historic Places was created through the [National Historic Preservation Act of 1966](#)<sup>4</sup> (NHPA). The Register of Historic Places includes properties of State and local significance, National Historic Landmarks (NHLs), and historic units of the National Park System. The Act allowed for historic preservation grants to assist the preservation of properties listed in the National Register. National Historic Landmarks are also eligible for these preservation grants. **Section 106 of the NHPA requires federal agencies to consider properties included in or eligible for the National Register during federal project planning and allows the Advisory Council on Historic Preservation an opportunity to comment before funding, licensing, or assisting projects that would affect them.**<sup>5</sup> [Emphasis added by Management Plan author.]

The also NHPA allows for contemporary archaeological investigations to be performed as part of the environmental review process. Importantly, the act also enables archeological sites to be listed on the National Register of Historic Places. The [Archaeological Resources Protection Act of 1979](#)<sup>6</sup> and the [Native American Graves Repatriation Act of 1990](#)<sup>7</sup> place further protections on historically significant locations and their artifacts.

### **State Historic and Cultural Protections**

#### *State Register of Historic Places*

There is no digital list in Vermont of the State Register of Historic Places. One may have access to the paper archives at the Vermont Division for Historic Preservation in the National Life Building, 2nd Floor, Montpelier, VT. Some information may also be found on the Division for Historic Preservation websites (<http://historicsites.vermont.gov/>; and [http://accd.vermont.gov/strong\\_communities/preservation](http://accd.vermont.gov/strong_communities/preservation)).

The State of Vermont intends that municipalities, regional planning commissions and State agencies continue to identify, protect and preserve important natural and historic features of the Vermont landscape, including important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas ([24A V.S.A. § 4412](#)). The placement of wireless telecommunication towers is also restricted when the facility may adversely impact an historic site ([24 V.S.A. § 2291](#)).

The Vermont Division for Historic Preservation reviews and comments on projects involving State funding, licenses or permits under The Vermont Historic Preservation Act (22 V.S.A. Chapter 14). This review looks at possible negative impacts on historic resources including those sites listed on the Vermont Register of Historic Places and any potentially historically, architecturally, archeologically or culturally significant sites.

The Vermont State Archaeologist has the authority to designate a site as a “State Archaeological Landmark” if the site is determined to be of significance to scientific study or represents the state’s historical, pre-historical or aboriginal past. This designation allows the State to restrict access and field investigation privileges on State lands in order to preserve and protect historical resources that may be present there ([22 V.S.A. § 762](#)). All

State agencies managing public lands that hold these sites must cooperate to insure the protection of these landmarks. **State Archaeological Landmarks on private lands will not be designated without the written consent of the landowner** ([22 V.S.A. § 763](#)). [Emphasis added by Management Plan author.] Information regarding the location of these Landmark sites will remain confidential, but the State archaeologist may share the information with qualified individuals or organizations for scientific research or preservation and planning purposes ([22 V.S.A. § 761](#)). It is against State law to dig, collect or disturb archaeological resources or burial grounds on any public land or under State waters ([22 V.S.A. § 762](#), [764](#), [782](#)). On private land, archaeological sites and the artifacts there belong to the landowner. Burial sites, however, are protected from disturbance on both public and private lands ([13 V.S.A. § 3761](#), [3764](#); [18 V.S.A. § 5212](#)).

The Vermont Division of Historic Preservation is authorized to take steps for the preservation of Historic Bridges, nine of which exist over sections of the Study rivers. The Division may accept transfer of bridges from the Agency of Transportation that have been deemed appropriate for preservation by the Secretaries of the Agency of Transportation (AOT) and the Agency of Commerce and Community Development (ACCD). After ownership of the bridge is transferred, a right-of-way is maintained so that public use of the bridge may continue. The Division of Historic Preservation is further authorized to maintain, preserve, protect and control the use of historic bridges, bridge sites and bridge approaches. The Division is also authorized to remove the bridge to an off-site location for repairs ([19 V.S.A. § 317](#)), as is the current situation of the Hectorville Covered Bridge in Montgomery.

### *Act 250*

Environmental Criterion 8 of Act 250 (10 V.S.A. Chapter 151) is of particular note to the historic and cultural resources in the Wild & Scenic Study towns. The Vermont Division for Historic Preservation reviews and comments on projects involving State funding, licenses or permits under Criterion 8. This review looks at possible negative impacts on historic resources when considering the issuance of an Act 250 permit. All sites on the National or Vermont State Register of Historic Places are considered “historic sites” under Act 250. Projects requiring a Certificate of Public Good under Section 248 of Title 30 from the Public Service Board are also evaluated using the ten Criteria of Act 250.

Act 250 imparts a 3-tier approach to protecting historic, archeological, and paleontological resources. Act 250 first asks “Is a historic or archeological site present?” If so, it then determines if a project’s impact is “adverse”, and, if in the affirmative, are the project’s impacts “undue”?

If a site is not currently listed as an archeological site but evidence suggests that the site was occupied by Pre-Europeans, Act 250 can require that an archeological investigation be conducted at the site previous to any land development and granting of an Act 250 permit.

For more information on Act 250, please see the Act 250 chapter in Appendix 9, or contact your local District Coordinator.

### *The Downtown Development Act*

Downtowns, including villages, may be designated and become eligible for funds for revitalization efforts. Enosburg Falls, Montgomery Center and Village and Richford are so designated, and thus eligible to receive

priority for grant funds. Landowners in designated areas are also eligible to receive tax credits for renovation and revitalization projects.

### *Regional Plans (Non-regulatory)*

The Northwest Regional Planning Commission's (NRPC) Regional Plan for 2007-2012 states that "Historic structures, community facilities, and other buildings should be preserved and adapted for re-use." They also suggest utilizing federal, state, and local programs for developing or preserving local cultural and historic assets."

The Northeastern Vermont Development Association's (NVDA) Regional Plan (2006) suggests a 200 foot buffer to protect archeologically significant areas found along the Missisquoi and Trout Rivers. Goals in this Plan include preserving important historical structures and mapping potential archeological sites.

### **Towns and Villages (Local Historic and Cultural Protections)**

All of the Study towns reference the importance of maintaining and preserving historical and/or archaeological sites in their respective town plans. However, only five of the ten towns and villages (those in Franklin County) have provisions in their zoning bylaws that offer regulatory protection to these cultural resources. Lowell, Westfield, Jay and Troy and North Troy (which share a Town Plan and Zoning Bylaws) have no zoning bylaws protecting historic resources. Montgomery and Richford have provisions regarding the placement of wireless telecommunication towers and facilities; specifically, that the facility may not have an adverse aesthetic impact on historic sites, including the view from those areas. Berkshire's Bylaws state that all roads and planned unit developments must be laid out in such a way that natural areas and historic sites are preserved and protected. Enosburgh prohibits any development from having an adverse impact on historic, cultural, and archaeological areas. Enosburg Falls is explicit in its provisions for the preservation of historic places, including a specification that "adaptive reuse" of historical buildings may be employed "to continue the viability, reuse, restoration and rehabilitation of historically, culturally or architecturally significant structures within the Village of Enosburg Falls."

### *Berkshire*

The following information is listed in Berkshire's Town Zoning Bylaws:

**Section 8.6 ROADS AND PEDESTRIAN ACCESS:** Roads shall, to the extent feasible, be designed and laid out to: avoid adverse impacts to natural, historic, cultural and scenic resources

**Section 9.5 OPEN SPACE AND COMMON LAND:** A) Intent. Planned Unit Developments shall be designed to preserve open space and/or common land for parks, recreation, critical areas as identified in the Berkshire Comprehensive Town Plan, agricultural land, scenic views, and/or historic site protection.

The Berkshire Town Plan (adopted 4/26/10) also sets forth the goal to protect in good quality the abundant natural and historic resources in Berkshire.

*Enosburg Falls, Village of*

The following information is listed in the Village of Enosburg Falls' Town Zoning Bylaws:

**SECTION 8.11 HISTORIC STRUCTURES AND SITES:** A) Subdivision and development plans shall be designed to protect existing historic resources of all classes. The protection of an existing historic resource shall include the conservation of the landscape immediately associated with and significant to that resource, to preserve its historic context. Where, in the opinion of the Development Review Board, a plan will have an impact upon a historic resource, the developer shall mitigate that impact to the satisfaction of the Development Review Board by modifying the design, relocating proposed lot lines, providing landscape buffers, or other approved means. See also Section 5.2 Adaptive Reuse of Historic Structures.

**SECTION 5.2 ADAPTIVE REUSE OF HISTORIC STRUCTURES:** A) Adaptive reuse is intended to encourage the continued viability, reuse, restoration and rehabilitation of historically, culturally or architecturally significant structures within the Village of Enosburg Falls. The adaptive reuse of such a structure is allowed in certain zoning districts as provided in Table 2.1 and is subject to conditional use review under Section 3.2, site plan review under Section 3.3, and the provisions below.

**Telecommunications Facilities: E) Additional Conditional Use Criteria.** In addition to the Conditional Use Standards in Section 3.3 and the construction standards in (E) above, the Development Review Board shall approve an application for a Wireless Telecommunications Facility when it finds that the application does not impose more than a de minimus impact on the following criteria:

1. The Facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
2. The Facility will not have an undue adverse aesthetic impact. In determining this, the Development Review Board shall consider the following factors:
  - i. Any significant disruption of a viewshed that provides context to an important historic or scenic resource.

**Section 6. Planned Unit Development; SECTION 6.3 GENERAL STANDARDS:** A) The following shall be met in order for the Development Review Board to approve the application:

1. The project shall be consistent with the Enosburg Falls Municipal Plan.
6. The development shall be an effective and unified treatment of the project site, and make appropriate provision for preservation of streams, stream banks, visual and physical access to the Missisquoi River, slopes greater than 25%, wetlands, soils, *historic sites*, natural areas, wildlife habitat, flood plain, and views.

**SECTION 8.3 SITE PRESERVATION AND EROSION CONTROL (GRADING, EXCAVATION, AND DEVELOPMENT ON STEEP SLOPES): A) Existing Features.** Site amenities including trees, surface waters, historic sites, farmland, ridgelines, unique geologic features, archaeological resources or any other unusual features, which the Development Review Board determines are assets to the site and/or the community shall be preserved.

The Enosburg Falls Village Plan (adopted by the Trustees 8/26/08) also sets forth the goals to consider historic/scenic character in decisions regarding paving, widening of streets, installation of sidewalks, and development

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permits; and support the efforts of the Enosburg Historical Society in protecting the historic character and buildings of the Village and in informing the public about local history.

### *Enosburgh*

The following information is listed in the Village of Enosburg Falls' Town Zoning Bylaws:

**SECTION 460 REVIEW OF CONDITIONAL USES and SECTION 455 INITIATION OF CONSTRUCTION: (E) Conditional Use Specific Review Standards** - In order to find that the development will satisfy the above criteria, the Development Review Board shall specifically find, where applicable, that the proposed project will: **(5)** not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, or cultural and historic sites; or important environmental resources, wildlife habitat, wetlands, streams, rivers and ponds, or rare or irreplaceable natural areas identified in the Enosburgh Town Plan (approved by the Selectboard 9/9/08);

**Article VI, Section 640:** (F) In the design of developments, significant natural and fragile areas including critical wildlife and plant habitat; water resources such as lakes, rivers, aquifers, and wetlands; historic, cultural, and archaeological areas; significant scenic roads and views; unfragmented forest and woodlands; and significant landforms shall be preserved in accordance with the standards set out in this bylaw or the Subdivision Regulations, whichever is applicable.

**SECTION 765 PLANNED UNIT DEVELOPMENTS:** (1) Open space land shall provide for the protection of resources on the site including agricultural land, productive woodland, wildlife habitat, natural areas, aquifer protection areas, wetlands, views and vistas, streams, stream banks, bodies of water, and historic sites.

The Enosburgh Town Plan also sets forth the goal to protect and preserve the archaeological, historic and scenic features in Enosburgh for future generations.

### *Jay*

The Town of Jay does not have Zoning Bylaws directly related to protecting historical and cultural resources.

Policy #4 in the Town of Jay's Town Plan (adopted by the Selectboard 12/20/10) states that Jay should provide for the preservation of the history of the town.

### *Lowell*

The Town of Lowell does not have Zoning Bylaws directly related to protecting historical and cultural resources.

The Lowell Town Plan (re-adopted 4/14/09) states that the revision of the Lowell Zoning Bylaw should also include provisions that will protect Lowell's natural, scenic, and historic resources for the future benefit and enjoyment of all of Lowell's residents, both human and otherwise.

### *Montgomery*

The following information is listed in the Town of Montgomery's Town Zoning Bylaws:

**With regard to telecommunication tower placement:** 6.6.3 Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation may not be located in any of the following locations: 6.6.3.3 Within 500 ft. horizontally from any Historic District or property eligible to be listed on the Federal Historic Register. 6.6.3.7 Within 1 ~ x height horizontally of any known archeological site. 6.12 **Tower and Antenna Design Requirements:** Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.

The Montgomery Town Plan (amended and updated 8/2010) also sets forth the goal to recognize the role of Montgomery's archeological, historic, and scenic resources in shaping the town's present quality of life and future opportunities.

#### *Richford*

The following information is listed in the Town of Richford's Town Zoning Bylaws:

**With regard to telecommunication tower/facility placement: E) Additional Conditional Use Criteria:** 4) The [Telecommunications] Facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. 5) The Facility will not have an undue adverse aesthetic impact. In determining this, the Development Review Board shall consider the following factors: i. Any significant disruption of a viewshed that provides context to an important historic or scenic resource.

The Richford Town Plan (2007) also sets forth the goal to recognize the role of Richford's archeological and historic resources in shaping the town's present quality of life and future opportunities.

#### *Troy/North Troy*

The Town of Troy and the Village of North Troy have a combined Town Plan (adopted 3/20/08) and Zoning Bylaws.

The Town of Troy does not have Zoning Bylaws directly related to protecting historical and cultural resources.

The Troy Town Plan specifically mentions the archeological potential and rich history of the Town and Village. The Plan specifically lists the two known archeological sites, the River Road Covered Bridge and the North Troy Border Station as historical and pre-contact resources.

#### *Westfield*

The Town of Westfield does not have Zoning Bylaws directly related to protecting historical and cultural resources.

The Westfield Town Plan (adopted 11/16/09) specifically lists the Hitchcock Museum and Library as Westfield's most important community/historic landmark, and states that the Missisquoi River through Westfield is a corridor of "expected archeological sensitivity."

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**Table A6.1.** Presence of protections in town zoning regulations. Please see the *Protections* section of this Management and the town plans for more information.

| Town           | Number of Sites in National Register of Historic Places | Protection of Historical/ Archaeological features referenced in Town Plan? | Historical/Archaeological protections in Zoning Bylaws?<br><i>(with relevant sections of Bylaws)</i>   |
|----------------|---|--|--|
| Berkshire      | 0   | Yes  | <ul style="list-style-type: none"> <li>Roads shall be designed and laid out to avoid adverse impacts to historical, cultural and scenic resources (<i>Section 8.6</i>)</li> <li>Planned Unit Developments shall be designed to preserve open space and/or common land for historic site protection. (<i>Section 9.5</i>)</li> </ul>  |
| Enosburg Falls | 1   | Yes  | <ul style="list-style-type: none"> <li>Subdivision and development plans shall be designed to protect existing historic resources of all classes. The protection of an existing historic resource shall include the conservation of the landscape immediately associated with and significant to that resource, to preserve its historic context. (<i>Section 8.11</i>)</li> <li>Adaptive reuse shall be used to continue the viability, reuse, restoration and rehabilitation of historically, culturally or architecturally significant structures within the Village of Enosburg Falls. (<i>Section 5.2</i>)</li> <li>No telecommunications facility may unreasonably interfere with the view from any historic building or district, as determined by the DRB. (<i>Section 5.13</i>)</li> <li>All new development shall make appropriate provisions for preservation of historic sites. (<i>Section 6.3</i>)</li> <li>Site Preservation - Existing site amenities, including archaeological resources, which the DRB determines are assets to the site and/or the community, shall be preserved. (<i>Section 8.3</i>)</li> </ul> |
| Enosburgh      | 5   | Yes  | <ul style="list-style-type: none"> <li>Development must not have an undue adverse effect on the scenic or natural beauty of significant natural and fragile areas, which include historic, cultural, and archaeological areas. (<i>Sections 455, 460, 640 and 765</i>)</li> </ul>  |
| Montgomery     | 8   | Yes  | <ul style="list-style-type: none"> <li>Telecommunication towers may not be placed within 500 ft. of any Historic District or property eligible to be listed on the Federal Historic Register, or within 1x the height of any known archaeological site. Telecommunication facilities must also not interfere with the view from any of these areas. (<i>Sections 6.6 and 6.12</i>)</li> </ul>  |
| Richford       | 5   | Yes  | <ul style="list-style-type: none"> <li>Telecommunication facilities must not interfere with the view from any natural area including historic buildings and major view corridors. The facility cannot have an adverse aesthetic impact, as determined by the DRB. (<i>Section 5.9</i>)</li> </ul>  |
| Jay            | 0   | Yes  | No   |
| Lowell         | 0   | Yes  | No   |
| Westfield      | 0   | Yes  | No   |
| Troy           | 1   | Yes  | No   |



### Potential Gaps in Protections:

- Federal and State laws prohibit the disturbance of historic and archaeological sites on public lands. Since there is very little public land in the Study area, many sites in the area have little if any protection from disturbance.
- Only sites in the National Register of Historic Places have protection from Federally funded projects, other historic sites do not. Privately funded projects on private lands are allowed even if they impact historic places in the National Register.
- Vermont laws state that archeological sites and their artifacts on private land belong to the landowner. This is especially relevant in the “Areas of Archaeological Sensitivity” that have been identified along the Study rivers throughout most of the Study area. Many of these areas have not had thorough archaeological investigations, and remain in the hands of private landowners.
- Lowell, Westfield, Jay, Troy and North Troy do not have township-level bylaws about the protection or preservation of historical or archaeological sites, even though sites likely exist in all of these towns.
- Montgomery’s and Richford’s bylaws regarding the protection of historical and archaeological sites are limited to regulating the location of new telecommunication towers. With Montgomery’s abundance of covered bridges (which are all in the National Register of Historic Places), more explicit provisions regarding the protection and preservation of sites may be important.

### *Endnotes*

1. <http://www.cr.nps.gov/nr/index.htm>
2. [http://www.cr.nps.gov/local-law/FHPL\\_AntiAct.pdf](http://www.cr.nps.gov/local-law/FHPL_AntiAct.pdf)
3. [http://www.cr.nps.gov/local-law/FHPL\\_HistSites.pdf](http://www.cr.nps.gov/local-law/FHPL_HistSites.pdf)
4. [http://www.cr.nps.gov/local-law/FHPL\\_HistPrsvt.pdf](http://www.cr.nps.gov/local-law/FHPL_HistPrsvt.pdf)
5. National Historic Landmarks: <http://www.cr.nps.gov/nr/publications/bulletins/nhl/nhlpt2.htm>
6. [http://www.cr.nps.gov/local-law/FHPL\\_ArchRsrcsProt.pdf](http://www.cr.nps.gov/local-law/FHPL_ArchRsrcsProt.pdf)
7. [http://www.cr.nps.gov/local-law/FHPL\\_NAGPRA.pdf](http://www.cr.nps.gov/local-law/FHPL_NAGPRA.pdf)