

DRAFT – FOR DISCUSSION PURPOSES ONLY

[PROPOSED CHAPTER N.1]

**PROCEDURE FOR THE PRESERVATION OF
ARCHAEOLOGICALLY SIGNIFICANT RESOURCES**

Section 1. Intent and Purpose

This bylaw is adopted for the purpose of preserving and protecting archaeologically significant resources and remains within the Town, to avoid, minimize or mitigate possible harm to such resources and remains, and to encourage owners and developers of property within the Town to consider less disruptive alternatives when developing or redeveloping property in archaeologically sensitive areas.

Archaeologically significant resources and remains are fragile and non-renewable features that embody the significant cultural heritage of the Town and provide a material record to understand and explain the Town's history, and thereby enrich and enhance the Town's quality of life. Therefore, to achieve the above stated purposes, the Acton Historical Commission is empowered to advise the Building Commissioner, Planning Board and Board of Health with respect to the issuance of permits required for the development or construction of new improvements on certain properties located in sensitive areas as specified in the [Archaeological Survey of the Town of Acton, sheets 1 and 2], and the Building Commissioner, Planning Board and Board of Health will issue such permits for properties situated within specified archaeologically sensitive areas in accordance with this bylaw.

Section 2. Definitions

2.1 "Alter" or "Alteration" – Any activity that modifies the natural or existing topography and conditions of real property in such a manner that it may adversely affect any Archaeological Resources located on, at or under such property. These activities may include, but are not limited to: removal (excavation or grading) or placement (filling) of soil, sand, gravel, stone or other earth materials; removal of ground cover vegetation or trees; dredging or filling of wetlands; the construction, modification, or expansion of subsurface utilities (e.g., septic systems, telephone, television, electrical, gas, security services, or water supply), roadways, or parking areas; and the development, construction, modification or expansion of proposed or existing buildings, structures or any other improvements on any Undeveloped Land.

2.2 "Archaeologically Sensitive Zone(s)" – Areas within the Town known to contain, or that may contain, Archaeological Resources determined on the basis of environmental attributes such as soils, proximity to wetlands or other water sources, documentary or cartographic evidence, written or oral

tradition, and discoveries of historic and archaeological resources, shown on and identified as a "Moderate" or "High" Sensitivity Zone in the Survey.

2.3 "Archaeological Resource(s)" – *Any location, structure or site used for prehistoric or historic period occupation, subsistence, industry, trade/commerce, transportation, agriculture, burial and other cultural purposes, containing material remains of human activity.*

2.4 "Commission" – *The Acton Historical Commission.*

2.5 "Permit" – *Any permit, order, license, approval or entitlement from a Permit Granting Authority that is required in connection with the Alteration of any Undeveloped Land.*

2.6 "Permit Granting Authority" – *Any of the Building Commissioner, Planning Board or Board of Health that is the designated governmental authority for the granting of any permit required for the development or construction of new improvements that will or may Alter any Undeveloped Property located in an Archaeologically Sensitive Zone.*

2.7 "Survey" – *The ["Archaeological Survey of the Town of Acton", sheets 1 and 2, prepared by _____, dated _____]. The Survey (and any subsequent amendment(s)) is incorporated into this Bylaw by reference, and is available for review by the public at the Town Clerk's office or online at _____. **[Need precise name/details of the 2 maps]***

2.8 "Threatened Archaeological Resource(s)" – *Any Archaeological Resource that is likely to be adversely impacted, as determined by Commission, by any Alteration of Undeveloped Land for which a Permit is sought.*

2.9 "Undeveloped Land" – *Any parcel(s) of land located partly or wholly within the Town, upon which there is no existing building, structure or other vertical improvements. For purposes of this Bylaw, "Undeveloped Land" (1) shall include any property in which more than 75% of a previously existing structure (not including outbuildings to primary structures or improvements that remain standing) has been demolished or removed in connection with the planned Alteration for which a Permit is sought, but (2) shall not include any single lot of land that is zoned for single-family residential use and is currently occupied by a residential structure, except to the extent that such lot is part of a new subdivision or condominium in connection with the planned Alteration for which a Permit is sought.*

Section 3. Procedure

3.1 Any owner or developer proposing or pursuing an Alteration on any Undeveloped Land shall submit each of the following items with its application to any Permit Granting Authority for the first Permit required in connection with such Alteration: (1) a statement indicating whether the subject Undeveloped Land is located in an Archaeologically Sensitive Zone, and if so, which zone; and (2) a brief narrative summary of the planned or proposed Alteration. In addition, if the Undeveloped Land for which a Permit is sought lies within an Archaeologically Sensitive Zone designated as:

(a) ["Highly Sensitive"] then the Permit applicant must also submit a copy of its site plan for the Alteration and a copy of an archaeological survey of the subject Undeveloped Land, commissioned by the applicant;

(b) ["Moderately Sensitive"] and the Alteration, taken as a whole, is equal to or greater than 50,000 square feet in area or will result in five (5) or more residential units, then the Permit applicant must also submit a copy of its site plan for the Alteration and a copy of an archaeological survey of the subject Undeveloped Land, commissioned by the applicant; or

(c) ["Moderately Sensitive"] but the Alteration, taken as a whole, is less than the size or units specified in (b) above, then the Permit applicant must also submit a copy of its site plan for the Alteration.

3.2 Within ten (10) days of receipt of a Permit application for an Alteration on any Undeveloped Land, the Permit Granting Authority in receipt of such application shall confirm whether the subject Undeveloped Land is located in an Archaeologically Sensitive Zone, and if so, it shall forward a copy of such Permit application (with pertinent attachments) to the Commission. The Permit Granting Authority shall also notify the Commission (by e-mail or similarly expedient means) when such a Permit has been sent to the Commission for consideration. No Permit requiring review by the Commission shall be issued at that time, but the Permit Granting Authority may continue its review of the application. The Commission shall promptly supply the Massachusetts Historical Commission with a copy of any such Permit application and associated materials so received from the Permit Granting Authority.

3.3 Within forty-five (45) days after receipt of the Permit application from the Permit Granting Authority, the Commission shall conduct a public hearing and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen (14) days before said hearing and also, within seven (7) days of said hearing, mail a copy of said notice to the Permit applicant (and the owner of the subject Undeveloped Land, if not the applicant). The Commission and Permit applicant may, by mutual agreement, extend the date for such hearing.

- 3.4** *In order to assist in its consideration of the Permit application, the Commission at any time may, but is not obligated to, conduct any of the following activities: (1) request access from the applicant (or owner of the subject Undeveloped Land, if not the applicant) to physically observe the presence of any Archaeological Resources on the subject Undeveloped Land, (2) commission its own archaeological survey or other consultant review of the subject Undeveloped Land to determine the presence of any Archaeological Resources and the impact that the applicant's proposed Alteration may have on any such Archaeological Resources, or (3) seek comments from the Massachusetts Historical Commission or the State Archaeologist.*
- 3.5** *If, after such hearing, the Commission determines that the Alteration for which the Permit is sought will not adversely impact any existing Archaeological Resource at the subject Undeveloped Land (including by reason of measures adopted by the applicant to avoid, minimize or mitigate possible harm to such Archaeological Resource), the Commission shall so notify the Permit Granting Authority within twenty one (21) days of such determination. Upon receipt of such notification, or after the expiration of twenty one (21) days from the date of the conduct of the hearing if he has not received notification from the Commission, the Permit Granting Authority may, subject to the requirements of any other applicable laws, bylaws, rules and regulations, issue the Permit.*
- 3.6** *If the Commission determines that the Alteration for which the Permit is sought will adversely impact any existing Archaeological Resource at the subject Undeveloped Land, the Commission shall so advise the applicant and the Permit Granting Authority within twenty one (21) days of said hearing, and the Undeveloped Land shall be deemed to contain a Threatened Archaeological Resource. Upon a determination by the Commission that Undeveloped Land for which a Permit is sought contains one or more Threatened Archaeological Resources, the Permit applicant (and the owner of the subject Undeveloped Land, if not the applicant) shall be responsible for properly securing such Archaeological Resources to the satisfaction of the Massachusetts Historical Commission.*
- 3.7** *Neither the requested Permit nor any other Permit that would Alter the same Undeveloped Land may be issued until at least eighteen (18) months after the date of such Threatened Archaeological Resource determination by the Commission. Notwithstanding the preceding sentence, the Permit Granting Authority may issue the requested Permit (or any other Permit that would Alter the same Undeveloped Land) at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that the Permit applicant (or owner of the subject Undeveloped Land, if not the applicant) has undertaken or is undertaking bona fide and reasonable measures to avoid, minimize or mitigate possible harm to any Archaeological Resource(s) located on the subject Undeveloped Land.*

Section 4. Enforcement and Remedies

- 4.1** *The Permit applicant (or owner of the subject Undeveloped Land, if not the applicant) may appeal any Threatened Archaeological Resource determination by the Commission to the [Board of Selectmen] within twenty-one (21) days from the date of the issuance of such determination. **[Note: Is the BOS the proper body for an appeal here?]***
- 4.2** *The Commission and Permit Granting Authorities are each authorized to institute any and all proceedings in law or equity as it deems necessary and appropriate to obtain compliance with the requirements of this bylaw, or to prevent a violation thereof.*
- 4.3** *For any Undeveloped Land upon which a Threatened Archaeological Resource has been voluntarily Altered in violation of this bylaw No Permit shall be issued by a Permit Granting Authority for a period of four (4) years after the date of the completion of such Alteration. For purposes of this Section 4.3, the term Threatened Archaeological Resource shall include any Archaeological Resource that the Commission would reasonably likely have determined to be a Threatened Archaeological Resource that was voluntarily Altered before such determination could be issued.*
- 4.4** *Should the Permit applicant (and the owner of the subject Undeveloped Land, if not the applicant) fail to secure any Threatened Archaeological Resource as required under this Bylaw, the loss of such Threatened Archaeological Resources through fire or other cause shall be considered voluntarily Altered for the purposes of Section 4.3.*

Section 5. Miscellaneous

- 5.1** *No provision of this bylaw shall apply to buildings owned or operated by the Town of Acton or the Acton Water District.*
- 5.2** *The sections, paragraphs, sentences, clauses and phrases of this bylaw are severable, and if any phrase, clause, sentence, paragraph or section of this bylaw shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrase, clauses, sentences, paragraphs and sections of this bylaw.*