

Indigenous Archaeological Heritage Conservation in the Municipal Planning Process

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Defining Archaeological Resources

Archaeological sites are the physical remains of the 13,000-year settlement history of southern Ontario and represent a fragile and non-renewable cultural heritage resource that must be conserved and protected. Effectiveness in incorporating archaeological resources within the overall planning and development process requires a clear understanding of their physical nature, the variety of forms they may assume, and their overall significance and value to society.

Individual archaeological sites are distributed in a variety of locational settings across the landscape, being locations or places that are associated with past human activities, endeavours, or events. These sites may occur on or below the modern land surface or may be submerged under water. The physical forms that these archaeological sites may take include surface scatters of artifacts; subsurface strata which are of human origin or incorporate cultural deposits; the remains of structural features; or a combination of these attributes.

The *Provincial Policy Statement* (PPS 2020), which is issued under the authority of Section 3 of the *Planning Act*, defines archaeological resources (Section 6.0, Definitions) as including "artifacts, archaeological sites, and marine archaeological sites," as defined under the *Ontario Heritage Act*.

The *Ontario Heritage Act* (Ontario Regulation 170/04) provides the following definitions:

- "archaeological site" is "any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest;"
- "artifact" is "any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest;"
- "marine archaeological site" is "an archeological site that is fully or partially submerged or that lies below or partially below the high-water mark of any body of water;" and
- Archaeological fieldwork is "any activity carried out on, above or under land or water for the purpose of obtaining and documenting data, recovering artifacts and remains or altering an archaeological site and includes monitoring, assessing, exploring, surveying, recovering, and excavating."

Threats to Archaeological Resources

Protecting archaeological sites has become especially important in southern Ontario where landscape change has been occurring at an ever-increasing rate since 1950, resulting in substantial losses to non-renewable archaeological resources.

The scale of the threats facing the finite and non-renewable archaeological record of southern Ontario was considered in a study in which rates of demographic and agricultural change were examined over the last century for south-central Ontario, and estimates generated of the number of archaeological sites that have been destroyed (Coleman and Williamson 1994). The period of initial disturbance to sites was from 1826 to 1921 when large tracts of land were deforested and cultivated for the first time. During this period, disturbance typically resulted in only partial destruction of archaeological data as most subsurface deposits remained intact.

Unprecedented population growth in the post-World War I period, however, resulted in large amounts of cultivated land being consumed by urban growth, significantly threatening Ontario's archaeological resources. It is possible that more than 10,000 sites were destroyed in the period between 1951 and 1991. Of these, 25% represented significant archaeological features, many of them of Indigenous origin, that would have merited some degree of archaeological investigation since they could have contributed meaningfully to an understanding of the past (Coleman and Williamson 1994: Tables 2 and 3).

There has been a marked reduction in the rate of archaeological site destruction since provincial planning regulations were strengthened in the 1990s and almost all municipalities in the Greater Toronto Area have carried out archaeological management plans and adopted more progressive planning policies concerning archaeological site conservation.

Planning for Archaeological Resource Conservation

In Ontario, the conservation of cultural heritage resources is an objective of planning activity, as it is in many other provinces and countries. As Section 2 of the *Ontario Planning Act* (1990) states, “the conservation of features of significant architectural, cultural, historical, archaeological, or scientific interest” is a matter of provincial interest. This is echoed in the PPS (2020):

The Province’s natural heritage resources, water resources, including the Great Lakes, agricultural lands, mineral resources, and cultural heritage and archaeological resources provide important environmental, economic, and social benefits. The wise use and management of these resources over the long term is a key provincial interest. The Province must ensure that its resources are managed in a sustainable way to conserve biodiversity, protect essential processes and public health and safety, provide for the production of food and fibre, minimize environmental and social impacts, and meet its long-term needs (PPS, Ministry of Municipal Affairs and Housing 2020:6).

This provincially mandated planning requirement provides a key mechanism for protecting archaeological resources to ensure that future development (e.g., residential, industrial, recreational and infrastructure construction) clearly respects and follows provincial policy. In response to this provincial direction, the conservation of archaeological resources should be addressed in most municipal Official Plans, which set the goals and priorities to shape the future growth, conservation, and evolution of those jurisdictions.

Provincial Legislative Framework for Archaeological Site Conservation

The specific provincial legislation governing planning decisions is complex but provides for several opportunities for the integration of archaeological conservation at the municipal level. The two principal pieces of legislation pertaining to archaeological resource assessment are the *Planning Act* (1990) and the *Environmental Assessment Act* (1997), while the *Ontario Heritage Act* (1990) regulates archaeological practice and conservation and protection of cultural heritage resources. However, many other pieces of legislation, such as the Greater Growth Plan for the Golden Horseshoe and the Greenbelt Plan, address archaeology either directly or indirectly. Further, municipalities also have the opportunity for establishing their own tailor-made cultural heritage conservation policies within their Official Plans, the tools for which are provided in the *Planning Act* and the PPS (2020). Approximately 500 to 800 archaeological sites have been documented annually in southern Ontario since 1990 because of municipalities implementing this provincial legislation.

Planning Act & Provincial Policy Statement (2020)

Archaeology is identified as a matter of provincial interest under Section 2 of the *Planning Act*. This is reinforced through the PPS (2020), which is issued under Section 3 of the *Planning Act*. Section 3(1) of the *Planning Act* also lays out municipal responsibilities in regard to the PPS:

a decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, "shall be consistent" with this policy statement.

Thus, all decisions made during the land development process, regardless of the nature of the proposed development or site alteration should address known or potential impacts to archaeological resources. The statements in the *Planning Act* make it clear that archaeological resources must be conserved on public or private lands prior to the approval of a planning or development application.

The *Planning Act* states that an archaeological assessment must be completed and submitted with an application for approval of a plan of subdivision. Section 51 (17) of the *Planning Act*, Part VI (Subdivision of Land), delineates under Schedule 1 the information and material to be provided by an applicant for approval of a plan of subdivision (O. Reg. 544/06, s. 2). This section states the applicant shall provide the approval authority with the following prescribed information and material:

23. Whether the subject land contains any areas of archaeological potential.

24. If the plan would permit development on land that contains known archaeological resources or areas of archaeological potential,

a) an archaeological assessment prepared by a person who holds a license that is effective with respect to the subject land, issued under Part VI (Conservation of Resources of Archaeological Value) of the *Ontario Heritage Act*; and

b) a conservation plan for any archaeological resources identified in the assessment.

The PPS (2020) states that all development and site alteration must be consistent with the PPS. This vision and policy statement now guide all provincial and local planning authorities in their decisions. With respect to archaeological resources, the PPS (2020) states that:

Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved... [Conservation] “means the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment that has been approved, accepted, or adopted by the relevant planning authority and/or decision maker. Mitigative measures and/or alternative development approaches can be included in these plans and assessments (PPS, Ontario Ministry of Municipal Affairs and Housing, 2020:31, 41-42).

For this policy statement, significant archaeological resources are defined as those “that have cultural heritage value or interest.” Processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the *Ontario Heritage Act* (PPS, Ontario Ministry of Municipal Affairs and Housing, 2020:51). The identification and evaluation of such resources are based on archaeological fieldwork and determined by a consultant archaeologist.

The PPS (PPS, Ontario Ministry of Municipal Affairs and Housing, 2020:5) also recognizes Indigenous interests in the land use planning and development process:

The Province's rich cultural diversity is one of its distinctive and defining features. Indigenous communities have a unique relationship with the land and its resources, which continues to shape the history and economy of the Province today. Ontario recognizes the unique role Indigenous communities have in land use planning and development, and the contribution of Indigenous communities' perspectives and traditional knowledge to land use planning decisions. The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their section 35 Aboriginal or treaty rights. Planning authorities are encouraged to build constructive, cooperative relationships through meaningful engagement with Indigenous communities to facilitate knowledge-sharing in land use planning processes and inform decision-making.

Environmental Assessment Act

The *Environmental Assessment Act* (1997) as recently amended by Bill 197, the *Covid Economic Recovery Act*, applies to public sector projects and designated private sector projects. Private sector projects that are designated by the Province as subject to the Environmental Assessment Act are usually major projects such as landfills that are high-impact ones. The purpose of the *Environmental Assessment Act* is "the betterment of the people ... by providing for the protection, conservation and wise management in Ontario of the environment" (Section 2).

Environment is very broadly defined to include "the social, economic and cultural conditions that influence the life of man or a community" [Section 1(c) (iii)] and "any building, structure, machine or other device or thing made by humans" [Section 1(d) (iv)]. Within this definition, archaeological artifacts are included in the "things" made by humans, and archaeological remains of residential structures, for example, fall within the "buildings" and "structures" made by humans.

The *Environmental Assessment Act* requires the preparation of an environmental assessment document, containing inventories, alternatives, evaluations, and mitigation. It is subject to formal government review and public scrutiny and, potentially, to a tribunal hearing. In Section 6.1 (2), it is noted that "the environmental assessment must consist of ," among other things, "(i) a description of the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly; (ii) the effects that will be caused or that might reasonably

be expected to be caused to the environment, and (iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment." Studies of archaeological resources, as well as built heritage resources and cultural landscapes, are therefore necessary to address the requirements of the *Environmental Assessment Act*.

Various provincial ministries have established protocols related to activities subject to the environmental assessment process in order to ensure that cultural heritage resource conservation in their respective jurisdictions is addressed. The Ontario Ministry of Transportation's *Environmental Reference for Highway Design (2006)*, for example, ensures that archaeological assessments are undertaken in advance of all new road construction to ensure that no archaeological sites will be unknowingly damaged or destroyed. Similarly, the Ontario Ministry of Natural Resources and Forestry prepared the *Forest Management Guide for Cultural Heritage Values (2014)* to help protect archaeological sites, archaeological potential areas, cultural heritage landscapes, historical Indigenous values, and cemeteries during forest operations.

Covid Economic Recovery Act (CERA) changes to the Environmental Assessment Act

"Schedule 6 amends the *Environmental Assessment Act* in order to modernize environmental assessment requirements under the Act. The amendments in the Schedule will come into force in three phases in order to transition gradually to a more modern approach to environmental assessments." (CERA 2020). Some of the most significant amendments are outlined below as taken from the Act:

Currently the Act applies to enterprises and activities and proposals, plans and programs in respect of those enterprises and activities, both public and private, that are set out in section 3 and referred to in the Act as undertakings. This approach has required that many undertakings be exempted from the Act by regulation, by order or otherwise under the Act. The amendments remove references to undertakings from the Act and give the Lieutenant Governor in Council the power to make regulations designating enterprises and activities, and proposals, plans and programs in respect of enterprises and activities, as projects to which the Act applies. Environmental assessments will only be required for projects that are designated. The projects could be designated as Part II.3 projects or Part II.4 projects.

The amendments under Bill 197, repeal Parts II and II.1 of the Act and replace them with Parts II.3 and II.4. Currently, Part II of the Act requires persons to obtain the approval of the Minister or of the Tribunal before proceeding with an undertaking. The Part outlines the environmental assessment process that the person must complete in order to obtain the approval. The new Part II.3 continues the requirements and environmental assessment process that applied to undertakings under Part II so that they apply, with some modifications, to Part II.3 projects. An undertaking that was approved by the Minister under Part II is deemed to be a Part II.3 project when that Part comes into force.

The existing Part II.1 allows a person to obtain the approval of the Minister or the Tribunal for a class environmental assessment in respect of a class of undertakings. The proponents of undertakings under an approved class environmental assessment are entitled to follow an environmental assessment process described in the approval that is less onerous than the Part II process. As of the day the Bill receives Royal Assent, no further class environmental assessments will be approved. When Part II.4 is eventually proclaimed into force, it will replace the approved class environmental assessments under Part II.1 with a streamlined environmental assessment process that will be set out in the regulations. The streamlined environmental assessments will apply to projects that are designated as Part II.4 projects. The 10 approved class environmental assessments that currently exist shall continue to apply to undertakings in each class until all 10 are revoked and replaced, where appropriate, by regulations designating Part II.4 projects and setting out the prescribed requirements, including the streamlined environmental assessment, for those projects.

Section 16 of Part II.1 currently allows the Minister to make orders with respect to undertakings under an approved class environmental assessment to require the proponents of such undertakings to comply with the environmental assessment process in Part II instead of following the approved class environmental assessment. The Minister may also, by order, impose conditions on such undertakings. The amendments limit the Minister's authority to make orders on the Minister's own initiative to a time period determined in accordance with new section 16.1. This new time limit will take effect when the Bill receives Royal Assent.

When Part II.4 comes into force, new section 17.31 will give the Minister the power to make orders with respect to Part II.4 projects that are similar to orders made under section 16 with respect to undertakings in approved class

environmental assessments. Under section 17.31, the Minister may make an order declaring Part II.4 projects to be Part II.3 projects and thus requiring proponents of Part II.4 projects to comply with the environmental assessment process in Part II.3 instead of the streamlined environmental assessment set out in the regulations. The Minister will also have the ability to make orders imposing requirements on Part II.4 projects. The Minister's power to make orders under section 17.31 on his or her own initiative will be subject to time limits set out in the regulations.

An important amendment includes a new section 2.1, which is a non-derogation provision to preserve existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*.

Ontario Heritage Act

The *Ontario Heritage Act* governs the general practice of archaeology in the province to maintain a professional standard of archaeological research and consultation.

The Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) is charged under Section 2 of the *Ontario Heritage Act* with the responsibility to "determine policies, priorities and programs for the conservation, protection and preservation of the heritage of Ontario" and so fills the lead provincial government role in terms of directing the conservation and protection of cultural heritage resources. The Minister is responsible for determining policies, priorities, and programs for the conservation, protection, and preservation of the cultural heritage of Ontario. These goals are generally accomplished through other legislated processes, such as those required by the *Planning Act* and *Environmental Assessment Act*, rather than directly through the *Ontario Heritage Act* itself, which is enabling legislation and not prescriptive.

The Program and Services Branch, Culture Division of the MHSTCI has the primary administrative responsibility under the *Planning Act* and *Ontario Heritage Act* for matters relating to cultural heritage resource conservation. The Archaeology Programs Unit is responsible for archaeological resource identification and mitigation in advance of land development.

The Minister is responsible for issuing licenses to qualified individuals. All consultant archaeologists who undertake Stage 1 to 4 archaeological assessments must be licensed by MHSTCI. All work conducted by the consultant archaeologist must conform to the standards

set forth in the most current *Standards and Guidelines for Consulting Archaeologists* (2011) authorized by the MHSTCI and a number of accompanying bulletins including *Engaging Aboriginal Communities in Archaeology: A Draft Technical Bulletin for Consultant Archaeologists in Ontario* (2011).

MHSTCI also has numerous fact sheets and memoranda on its website for explaining the process of consulting archaeology in the Province.

Under Section 48 (1) of the *Ontario Heritage Act*, no person shall carry out archaeological fieldwork or knowing that a site is a marine or other archaeological site, within the meaning of the regulations, alter the site or remove an artifact or any other physical evidence of past human use or activity from the site unless the person applies to the Minister and is issued a licence that allows the person to carry out the activity in question.

In changes to the *Ontario Heritage Act*, outlined in the *Government Efficiency Act* (2002), it became illegal for any person or agency to alter an archaeological site (see Section 1.1 for definition) without a license. This, in effect, offers automatic protection to all archaeological sites. Accordingly, any municipality should exercise due diligence in all planning contexts to ensure that archaeological features are protected from disturbance of any nature.

The Act also contains significant penalties for altering an archaeological site without a permit. Under Section 69 (1) of the *Ontario Heritage Act*, anyone who disturbs or alters an archaeological site or removes an artifact from a site without a licence can be fined or imprisoned. A person or a director of a corporation found in violation of the act or its regulations can face a fine of up to \$50,000 or imprisonment for up to one year or both. A corporation found in violation of the act or the regulations can face a fine of up to \$250,000.

While the filing of charges is at the discretion of the Ontario Provincial Police, Section 62 (1) of the *Ontario Heritage Act*, empowers the Minister, should they and the Ontario Heritage Trust be of the opinion that property is of archaeological or historical significance and is likely to be altered, damaged, or destroyed by reason of commercial, industrial, agricultural, residential or other development, to issue a stop order directed to the person responsible for such commercial, industrial, agricultural, residential or other development and prohibit any work on the property for a period of no longer than 180 days. Within that period the Minister or any person authorized by the Minister in writing may examine the property and remove or salvage artifacts from the property.

All archaeological assessment reports are submitted to the MHSTCI as a condition of an archaeological license and are reviewed by MHSTCI staff to ensure that the activities

conducted under a license meet current technical guidelines, resource conservation standards, and the regulations of the Ontario Heritage Act.

Renewable Energy Approvals Regulation

The Renewable Energy Approvals (REA) regulation (O. Reg. 359/09), issued under the *Environmental Protection Act* (2009), sets out the cultural heritage resource identification and mitigation requirements for obtaining approval to proceed with a renewable energy project. The regulation provides a streamlined approvals process, while simultaneously ensuring that the proposed project considers and avoids or mitigates impacts to the environment, including the cultural environment. O. Reg. 359/09 separates cultural heritage resources into "archaeological resources" and "heritage resources" (including both built heritage and cultural heritage landscapes) and addresses each separately (Sections 19 through 23 of O. Reg. 359/09). MHSTCI has also issued a bulletin entitled *Cultural Heritage Resources: An Information Bulletin for Projects Subject to Ontario Regulation 359/09 – Renewable Energy Approvals* (2013).

The REA regulation requires the development proponent to conduct archaeological and heritage assessments that identify and consider potential impacts to cultural heritage resources and propose strategies for mitigation of those impacts. Applicants may choose to undertake a self-assessment if there is reason to believe that there is low likelihood for archaeological and heritage resources to be present at the project location. The "self-assessment" is undertaken using MHSTCI checklists to determine if there is potential for archaeological resources present, although use of a municipality's archaeological management plan and completion of a Stage 1 archaeological resource assessment is preferable.

Aggregate Resources Act

The Ministry of Natural Resources and Forestry, which administers the *Aggregate Resources Act*, recognizes the potential impact quarrying activities may have on cultural heritage resources such as archaeological sites. Furthermore, the development of a pit or quarry will often require an Official Plan Amendment (OPA) or Zoning By-law Amendment (ZBA), and thus would require involvement by the municipality. Under the *Aggregate Resources Act*, the process for addressing archaeological concerns is similar to that outlined for Planning Act related projects. A background study, field survey and detailed archaeological investigations are all identified as required Technical Reports under Part 2.2 of the Provincial Standards for Bill 53 under the *Aggregate Resources Act*.

Funeral, Burial and Cremation Services Act

The *Funeral, Burials and Cremation Services Act* (formerly the Cemeteries Act, which was repealed in 2012) addresses the need to protect human burials, both marked and unmarked, which are yet another valuable link to the past. Burial locations uncovered on archaeological sites constitute “unregistered cemeteries” that are, in essence, in violation of the *Funeral, Burial and Cremation Services Act*. The discovery of such burials will require further investigation in order to define the extent and number of interments, and either the registration of the burial location as a cemetery, or the removal of the remains for re-interment in an established cemetery. The actual workings of this process are complex and vary depending upon whether the burial(s) are an isolated occurrence, or part of a more formal cemetery, and whether the remains in question are pre-contact Indigenous or historical (Euro-Canadian). In all cases, the success of the process is dependent upon the co-operation of the property owner, the next of kin (whether biological or prescribed), and the Registrar of Burial Sites, War Graves, Abandoned Cemeteries and Cemetery Closures in the Ministry of Government and Consumer Services. The role of the MHSTCI is to assist in co-ordinating contact and negotiation between the various parties and ensuring that archaeological investigations of such burial sites meet provincial standards.

In the case of Indigenous burials, it should not be assumed that the appropriate First Nation is always the geographically closest First Nation. It is commonly held that Indigenous burials will remain in place.

Regional Conservation Authorities (e.g., TRCA)

The Toronto Region Conservation Authority (TRCA) has developed its own pre-contact Indigenous archaeological potential model for their planners to use prior to approving any land alteration activities or projects undertaken on lands within their jurisdictions. Similar to other municipalities, the TRCA pre-contact Indigenous archaeological potential model uses a variety of environmental and cultural data to determine potential, including: all known pre-contact Indigenous archaeological sites within one kilometre of TRCA’s jurisdictional boundaries; hydrographic data representing distance to water by order; various edaphic variables related to soil texture, type, and drainage; and topographic variables such as slope and terrain relief. The resulting model classifies all Authority-owned lands into three nominal categories representing high, medium, and low archaeological potential. Importantly, this model does not consider impacts due to previous development and thus differs from all other municipal models, which define lands as either having or not having archaeological potential.

Municipal Policy

Official Plans

An OP's general objective policies should include ones that recognise the interest of Indigenous communities in the municipality's lands, obligate the municipality to identify and designate archaeological sites in accordance with the *Ontario Heritage Act*, interpret the municipality's cultural heritage, and adhere to provincial legislation regarding the conservation of archaeological resources, including consulting with the relevant Indigenous communities. It should also include an appropriate land acknowledgement and require the notification and involvement of all such communities in the land development process.

In keeping with the PPS (2020), a municipal OP should require the creation and/or maintenance of an Archaeological Management Plan that identifies known archaeological resources and areas of archaeological potential and provides direction and requirements for the identification, evaluation, conservation and management of archaeological resources in accordance with the *Ontario Heritage Act*. The Archaeological Management Plan may be subject to review and shall be updated in conjunction with a comprehensive review of the Official Plan.

All municipal Official Plans should have policies that state that "Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved. Preservation of the archaeological resources on site is the preferred method, but in some cases, conservation can occur by removal and documentation. Where significant archaeological resources must be preserved in situ, only development and site alteration that maintains the heritage integrity of the site may be permitted."

An archaeological assessment should be required as part of a complete application for any development or site alteration application, including municipal projects, if it is determined that any part of a subject area possesses archaeological resource potential or known archaeological resources. That determination is best made through a municipal Archaeological Management Plan (AMP) (see below). All archaeological assessments should involve engagement with the appropriate Indigenous community(s). The following explains the stages of the archaeological assessment process.

THE ARCHAEOLOGICAL ASSESSMENT PROCESS

A **Stage 1** assessment consists of background research concerning registered sites on the subject lands or within close proximity, as well as the environmental character of the property and its land use history.

A **Stage 2** assessment consists of field survey to document any sites that may be present on a property. It should be noted that completion of an archaeological field assessment of a particular development property, no matter how rigorous, does not fully guarantee that all significant archaeological resources on that property will be identified prior to land disturbance. This is particularly the case in areas where processes such as filling, flooding or erosion have resulted in the burial of original ground surfaces, or with respect to isolated human burials that are typically small features that can escape detection.

Stage 3 investigations are designed to secure a detailed understanding of the nature and extent of a site and may involve complete or partial systematic surface collection and test excavation.

Stage 4 undertakings comprise extensive excavation; comparative analysis and interpretation of content and contextual information.

Indigenous Engagement in Archaeological Assessment and Development Review Processes

Section 17 of the *Planning Act* requires that the Chief of every First Nation Council on a Reserve within one kilometer of proposed official plan or official plan amendments is circulated on notices for those applications, as part of the public notice process (O. Reg. 543/06, s. 3 (9); O. Reg. 467/09, ss. 2, 3).

Planning authorities in Ontario are further encouraged to engage with Indigenous groups having interest in a municipality in the planning approvals process. This is affirmed in the PPS (2020), which states that:

Planning authorities shall engage with Indigenous communities and consider their interests when identifying, protecting, and managing cultural heritage and archaeological resources.

The Indigenous consultation/engagement process should be distinct and separate from the general public engagement process. While Indigenous communities may be invited to the public engagement meetings, First Nations deserve to discuss these matters on a government-to-government basis.

Every municipality should, therefore, adopt administrative processes for engagement with the relevant Indigenous communities for Official Plan reviews as well as Secondary Plans (also Area Specific Policies), Plans of Subdivision, Site Plan Applications and Zoning By-law Amendments undertaken in greenfield contexts as well as any others where an Indigenous archaeological site is or has been identified and site mitigation is contemplated. These applications have the greatest potential for major effects on the eventual use of the land and provide the potential for input to influence the development of plans which protect ecologically sensitive lands, significant archaeological sites, and other important areas, and to develop plans for interpretation opportunities.

Also, the MHSTCI's bulletin entitled *Engaging Aboriginal Communities in Archaeology: a Draft Technical Bulletin for Consultant Archaeologists* includes standards (Section 1.1) stating that "engagement" must take place:

- In Stage 3, when assessing the cultural heritage value or interest of an Indigenous archaeological site that is known to have or appears to have sacred or spiritual

importance or is associated with traditional land uses or geographic features of cultural heritage interest or is the subject of Indigenous oral histories;

- At the end of Stage 3, when formulating a strategy to mitigate the impacts on the following types of Indigenous archaeological sites through avoidance and protection or excavation;
- When investigating rare Indigenous archaeological sites;
- When dealing with sites identified as sacred or known to contain human remains;
- When working with Woodland period Indigenous sites;
- When working with Indigenous archaeological sites where topsoil stripping is contemplated;
- When working with undisturbed Indigenous sites; and,
- When working with sites previously identified as of interest to an Indigenous community.

It should be noted that many Indigenous communities would like to assign monitors to Stage 2 archaeological fieldwork as well.

It is often assumed that the Indigenous community that is geographically closest to a given project is the most suitable group with whom to consult. However, the complex histories of the Indigenous peoples of southern Ontario, both before and after European contact and colonial settlement, means that such assumptions can be simplistic and detrimental to the success of the entire engagement/consultation process. Under these circumstances there should be an effort to identify all groups that are appropriate (on culture-historical grounds and treaty history) to act as the designated descendants of those who occupied the region in the past, and who are willing to participate. This identification process is best achieved through negotiation with a variety of communities in order that they may arrive at the final decision. In this way, ancient sites may be represented by several communities together.

It should be noted that there is a presumption in favour of protection and preservation of any Indigenous site that has not been disturbed by ploughing or other modern land uses. It should also be noted that the indicators for cultural heritage value that Indigenous peoples have for sites are not based in any way on provincial criteria but that in their view, any Indigenous site should be deemed to be of significant cultural heritage value. All Official Plan archaeological policies must encourage protection as the preferred option to mitigate the impacts of proposed development on any Indigenous archaeological feature.

The Archaeological Assessment and Development Review Processes

Role of Province

The Archaeology Programs Unit of the MHSTCI has the primary administrative responsibility under the *Planning Act* for matters relating to cultural heritage including archaeological resources.

While a checklist has been prepared by MHSTCI entitled *Criteria for Evaluating Archaeological Potential: A Checklist for the Non-Specialist* (2015), which provides generic criteria for municipal planners to use to assess archaeological potential, those municipalities that have undertaken detailed archaeological potential studies or archaeological management plans (see below), have access to much more detailed information specific to their jurisdictions. Such plans provide more effective and accurate means of determining archaeological potential and whether or not archaeological assessments should be required.

Most approval authorities also rely on MHSTCI review of archaeological assessment reports when deciding whether or not concerns for archaeological sites have been addressed by a development proponent. After reviewing an archaeological assessment report, MHSTCI staff will provide the consultant archaeologist who completed the assessment with a compliance letter. If the archaeological assessment report complies with the *Ontario Heritage Act*, specifically the terms and conditions for archaeological licences and MHSTCI requirements for archaeological fieldwork and reporting, the letter will inform the consultant archaeologist that the archaeological assessment report has been accepted and entered into the Ontario Public Register of Archaeology Reports. The letter, in conjunction with the archaeological assessment report, can be used by municipalities to verify that concerns for archaeological sites have been addressed for the property that was assessed or that further work is required.

The MHSTCI have committed to copy the approval authority and development proponent of their review. MHSTCI are also ultimately responsible for all matters related to the management of the resources documented, mitigation strategies proposed, and any disputes arising from the conservation of archaeological resources under the land use planning and development process.

Role of Consultant Archaeologists

As part of the land use planning and development process, development proponents rely on consultant archaeologists who hold a professional license issued by the MHSTCI. Consultant

archaeologists carry out archaeological assessments to ensure that requirements for archaeological sites have been addressed and that previously unknown archaeological sites are identified. They also provide technical advice on appropriate measures for the conservation of archaeological sites.

Only consultant archaeologists and Indigenous communities together may determine significance of archaeological sites or define the extent to which archaeological potential has been affected by land use on a parcel of land. Only consultant archeologists have the skills to evaluate land disturbance and remaining integrity.

Role of the Development Proponent

Conservation planning and management is generally concerned with ensuring that valued cultural heritage resources are conserved and protected in a sound and prudent manner in the continuing and unavoidable process of change in the environment. A key issue is that the role of custodian and steward of these resources generally falls to the private property owner, as it is neither possible nor desirable that all resources be brought into public ownership. Therefore, conservation management is undertaken by a variety of actors, and it is necessary, through legislation and education, to bring all of these actors together in pursuit of a common goal. In many instances, it is traditional planning mechanisms that seek to ensure that cultural heritage resources are conserved and/or maintained within the process of land use change.

When an archaeological assessment is required by a municipality for planning or development applications, it is the responsibility of the development proponent to retain a consultant archaeologist to carry out the requisite archaeological work. Development proponents should note that consultant archaeologists must follow the *MHSTCI Standards and Guidelines for Consultant Archaeologists* when undertaking their work.

Should an archaeological resource be found during the initial field assessment in Stage 2, it must be subject to Stage 3 investigations prior to its protection or mitigative excavation. If an archaeological resource is found during a Stage 2 archaeological assessment, a Stage 3 assessment of that resource is not required should the development proponent decide to not proceed with the development that triggered the Stage 2 assessment. The archaeological resource will be protected from disturbance by Section 48(1) of the *Ontario Heritage Act*.

Role of Approval Authority

An approval authority "is any public body (municipality, conservation authority, provincial agency, and ministry) that has the authority to regulate and approve development projects that fall under its mandate and jurisdiction (*Standards and Guidelines for Consultant Archaeologists*: 162)." It approves those applications where development proponents have met all local by-laws, other legislated requirements, and public concerns such as whether land to be developed may contain archaeological sites that merit an archaeological assessment. For most municipalities, the Municipal Council is the Approval Authority.

Site specific development applications will be reviewed, using an AMP if available or the generic list of criteria of MHSTCI, by municipal planning staff to determine if archaeological resources may be present or if the application includes areas of archaeological potential. If a planner determines that a property has archaeological potential, it will advise the development proponent to retain a consultant archaeologist to carry out an archaeological assessment before any soil disturbance, development, and/or site alteration occurs.

The municipality should receive copies of all archaeological assessment reports and MHSTCI letters of compliance prior to soil disturbance, development, and/or site alteration. This is best undertaken by the consultant archaeologist immediately upon their receipt of the MHSTCI letter(s) of compliance.

Most municipal departments (e.g., Parks, Engineering, Roads, etc.) that are involved in soil disturbance, development, and/or site alteration activities associated with project work in an area of archaeological potential should also retain a consultant archaeologist to carry out an archaeological assessment before any soil disturbance occurs.

Archaeological Management Plans

Introduction

Archaeological Management Plans (AMP), which are recommended undertakings in the *Provincial Policy Statement (PPS 2020)*, have been undertaken by 25 municipalities and First Nations in Ontario. They present best practices in archaeological resource management and help municipalities more easily identify where archaeological assessments should be required and manage archaeological resources within their jurisdictions.

Once an AMP is in place, the risk of unfortunate surprises occurring (such as disturbing an Indigenous burial site) is further reduced, and public awareness of archaeological resources is considerably enhanced. Municipal officials, along with property owners, developers, and prospective land buyers, are made aware of whether archaeological investigations are necessary prior to land disturbing activities. Citizens will know their community's history better; careful planning for the conservation and interpretation of archaeological resources offer opportunities for improving local quality of life through knowledge mobilisation.

AMPs typically have three major objectives:

- the compilation of detailed, reliable inventories of registered and unregistered archaeological sites;
- the development of an archaeological site potential model, based on known site locations, past and present land uses, environmental and cultural-historical data, and assessment of the likelihood for survival of archaeological resources in various contexts; and,
- the provision of recommendations concerning the preparation of archaeological resource conservation and management guidelines for a specific municipality.

The development of the archaeological site potential model is undertaken based on both an inductive and deductive approach to predicting where additional pre-contact Indigenous sites are most likely situated and detailed historical research to map historical archaeological potential.

The role of the municipality in the conservation of cultural heritage resources is crucial. Although a matter of provincial interest, planning and land use control are predominantly municipal responsibilities and the impact of municipal land use decisions on archaeological resources is substantial. This is particularly the case since municipally approved developments constitute most land disturbing activities in the Province.

The design of AMPs typically also benefits from engagement with Indigenous communities.

Archaeological Potential

Archaeological potential is defined in the *Provincial Policy Statement (PPS 2020)* as:

...areas with the likelihood to contain archaeological resources. Methods to identify archaeological potential are established by the Province, but municipal approaches which achieve the same objectives may also be used.

Most models in AMPs are undertaken on a Geographic Information Systems (GIS) platform in order to best manipulate and analyse site location attribute data. The result is a digital map of archaeological potential, which can be used by municipal staff to determine the need for archaeological assessment in advance of soil disturbance.

Most models involve the creation of multiple layers of geo-referenced data specific to the municipality in question that have been integrated into a single and final archaeological potential layer.

Indigenous Archaeological Site Potential Layer

In most municipalities, limited locational data exist for pre-contact Indigenous archaeological sites. While access to distributional information for all sites would be a significant advantage to land-use planners and heritage resource managers, the undertaking of comprehensive archaeological surveys of all lands within municipalities to compile complete inventories is clearly not feasible. As an alternative, therefore, planners and managers must depend on a model which predicts how sites are likely to be distributed throughout the municipality.

Archaeological site potential modelling can trace its origins to a variety of sources, including human geography, settlement archaeology, ecological archaeology, and paleoecology. The basic assumption is that pre-contact Indigenous land use was constrained by ecological and socio-cultural parameters. If these parameters can be discovered, through archaeology and paleoecology, pre-contact Indigenous land-use patterns can be reconstructed.

Two basic approaches to predictive modelling are used, one which employs known site locations, derived from either extant inventories or through sample surveys, as a guide for predicting additional site locations and the second, a more deductive approach, which predicts site locations based on expected patterns as identified from ethnographic, historical,

geographical, ecological, and archaeological analogues. While data requirements or availability tend to influence the orientation of studies, every modelling exercise will incorporate both elements.

For pre-contact Indigenous sites, the proximity of lakes, ponds, and waterways is also considered to have always been a critical factor influencing land-use patterns for not only potable water but also for travel.

Further discrimination of the Indigenous potential modeling is achieved using digital soils data. The objective is to identify those soils where pre-contact Indigenous settlement would have been unlikely to have occurred. Thus, water buffers are only applied where they cross well- or imperfectly drained soils.

Using digital elevation models, areas of slope exceeding 20 degrees are similarly excluded from the Indigenous archaeological potential zone since such areas are considered unsuitable for settlement.

Historical Archaeological Site Potential Layer

This layer is typically created primarily from historical mapping, detailed historical thematic research, and the application of buffers to some features of historical interest rather than from the kind of deductive and inductive modelling employed to create the Indigenous Archaeological Site Layer.

All cemeteries on the historical mapping and the Ontario Genealogical Society and municipal databases are added to the historical archaeological site potential layer.

Integrity Layer

An archaeological integrity layer is compiled based on a review of present land uses within municipalities gained from Google Maps Satellite View and the municipality's property parcel data. The objective of this task is to distinguish between those lands upon which modern development activities have likely destroyed any archaeological resources and those lands where resources potentially remain wholly or primarily undisturbed, such as parking lots, schoolyards, parks, and golf courses. Settlement centres and registered archaeological sites that have not been completely excavated are considered to retain integrity.

Areas deemed to have no remaining archaeological integrity are subsequently excluded from the zone of archaeological potential.

Final Archaeological Potential Layer

The final archaeological potential layer will be the one that municipal planners employ when assessing a planning application or municipal infrastructure project for archaeological potential. This layer is the composite archaeological potential layer minus areas that have previously been subject to archaeological assessments and require no further work. Areas that have been assessed but require further work are mapped on this layer and should be updated annually.

The layer is used by planners to require archaeological assessments the following application types if any portion of the property is within the archaeological potential planning layer:

- Official Plan Amendments (including Secondary Plans/ Secondary Plan Amendments) (as per *Planning Act* Part III);
- Municipal Infrastructure Works (as per *Planning Act* Part III, Section 24);
- Zoning By-law Amendments (as per *Planning Act* Part V);
- Site Plan (as per *Planning Act* Part V);
- Plans of Subdivision (including Plans of Condominium) (as per *Planning Act* Part VI); and
- Consents or Minor Variance applications (where there is soil disturbance) (as per *Planning Act* Part VI).

At a minimum, a Stage 1 archaeological assessment is required for the above. Only a consultant archaeologist, undertaking a Stage 1 assessment, can demonstrate that no archaeological potential survives within an area identified within the archaeological potential planning layer. In some cases where archaeological potential is absolutely clear, it is recommended that the development proponent has a consultant archaeologist undertake a Stage 1-2 archaeological assessment.

It should be noted that some First Nations have required that 100% of land to be developed within their traditional territory should be subject to archaeological assessment in advance of land disturbance. In those cases, potential models might be limited to creating existing Indigenous site inventories and mapping and historical site potential modeling. There is advantage, however, to full modelling of Indigenous potential in advancing an understanding of why settlements are located where they are rather than only documenting their locations. For example, some of the earliest sites in Ontario are located on inland beach ridges of former glacial lakes, which may only be explained through careful environmental analyses.

Archaeological Review Processes

The general sequence of actions for a municipality is as follows:

1. As part of the pre-application consultation process, planners will determine if an archaeological assessment is required by means of review of the Final Archaeological Potential Planning Layer or the MHSTCI general criteria for determining potential. Should any portion of the property fall within that layer, a Stage 1 or Stage 1-2 archaeological assessment of the entire property should be required. The archaeological assessment would be undertaken by the consultant archaeologist for the development proponent and submitted as part of the complete planning or development application. If required, the municipality will recommend that the completion of an archaeological assessment be made a condition of approval.
2. Provincial regulations require that the development proponent must retain a licensed consultant archaeologist. The consultant archaeologist will conduct a Stage 1 or Stage 1-2 archaeological assessment of the entire subject property, not simply the portion(s) that falls within the archaeological potential planning layer.
3. All work conducted by the consultant archaeologist must conform to the standards set forth in the most current *Standards and Guidelines for Consultant Archaeologists* and associated Bulletins issued by MHSTCI.
4. Once a Stage 1-2 archaeological assessment, consisting of background research and a field survey, has been completed, the consultant archaeologist will submit a report to the Archaeology Programs Unit of the MHSTCI. The staff of the Archaeology Programs Unit of the MHSTCI will review the report to determine if the assessment has met current licensing and technical standards. If this is not the case, MHSTCI will require the consultant archaeologist to carry out additional field work, and/or provide more extensive documentation.
5. If the archaeological assessment complies with licensing and technical standards and did not result in the identification of any intact archaeological potential within the property (in the case of a Stage 1 assessment) or did not result in the documentation of any significant archaeological resources (in the case of a Stage 1-2 assessment), the staff of the Archaeology Programs Unit of the MHSTCI will provide a compliance letter to the consultant archaeologist and the municipality in its capacity as Approval Authority (or Upper Tier municipality/MMAH), which will serve to notify them that all provincial concerns with respect to archaeological resource conservation and

archaeological licensing have been met. Upon receipt of this notification of MHSTCI approval and copies of the archaeological assessment report(s), the approval authority may then clear the subject property/site of any further archaeological concern.

If the Stage 1-2 assessment resulted in the documentation of one or more significant archaeological resources as determined by the consultant archaeologist, appropriate mitigation and/or preservation options must be recommended by the consultant archaeologist and approved by MHSTCI. Upon completion of the mitigation, the consultant archaeologist must provide a report detailing this work and its results to MHSTCI, which will review the work and provide the consultant archaeologist with a compliance letter that there are no further archaeological concerns, or that additional mitigations be undertaken.

It should be noted, in this regard, that once Stage 3 assessments have been completed on the archaeological sites requiring further investigation, it is generally possible to secure partial clearance for the property, in that the archaeological requirement may be removed from the balance of the subject lands not encompassed by the archaeological site(s) and the protective buffer zones surrounding it/them, which are defined in the *Standards and Guidelines for Consultant Archaeologists*. Similarly, although the final report of a comprehensive Stage 4 archaeological excavation may take many months to complete, final clearance for the property may be available upon the consultant archaeologist completing the fieldwork and submitting a preliminary report to MHSTCI.

Avoidance and protection of archaeological sites is the preferred form of mitigation. There are both short- and long-term components to the process of site protection, as outlined in the *Standards and Guidelines for Consultant Archaeologists*.

In cases in which the avoidance and protection option is pursued, the limits of the site must have been fully defined through completion of Stage 3 archaeological assessment. The avoidance and protection area defined for the site must include the entire archaeological site and a minimum 20 metre buffer zone in the case of Late Woodland village sites or a minimum 10 metre buffer zone for all other site types. The buffer zone may be reduced in areas where pre-existing, permanent physical constraints to the extent of the site are present.

To ensure there are no impacts to the avoidance and protection area in the short term, during development of contiguous lands, the limits of the avoidance and protection area must be fenced (snow fencing or similar type) by the development proponent under the supervision of a consultant archaeologist prior to any soil disturbance, development,

and/or site alteration. The protective fencing must remain in place for the duration of any development work resulting in land disturbance and instructions issued to all on-site contractors that there are to be no impacts of any sort within avoidance and protection area. It is a “no go” area. The avoidance and protection area must also to be identified on all project mapping. Written confirmation from the development proponent regarding their commitment to implement this strategy and confirmation that any ground alterations will avoid the avoidance and protection area must be submitted to MHSTCI prior to initiation of any such work and copied to the municipality and/or the approval authority.

The maintenance and efficacy of the fencing must be confirmed through monitoring on the part of a consultant archaeologist and a report documenting this process must be submitted to MHSTCI and the municipality/approval authority.

In terms of long-term protection, the most effective mechanisms are a restrictive covenant on title or a zoning by-law amendment, and preferably, transfer of ownership to a public landholder. The allowable uses of the protected area, under the terms of the covenant or by-law amendment, must not include any activities that would result in even minor soil disturbances or alterations, such as tree removal, minor landscaping, and installation of utilities. Should transfer of ownership be part of the long-term protection strategy, the new property owner must provide documentation to MHSTCI demonstrating that they are aware of their obligations with respect to the archaeological site and its protection and their ability to fulfil those obligations. It is also often recommended that this documentation include a proviso acknowledging that any future alterations or soil disturbances that may ultimately be proposed within the protection zone must be preceded by further Stage 3 archaeological assessment and Stage 4 mitigation of impacts in accordance with the MHSTCI *Standards and Guidelines for Consultant Archaeologists*.

6. Upon receipt of the archaeological review compliance letter from the MHSTCI that archaeological conservation and licensing concerns have been addressed, and receipt of the necessary copies of archaeological assessment reports from the consultant archaeologist, the approval authority will clear the planning application of further archaeological concern.

Should the development proponent choose not to proceed with all necessary Stage 3 and Stage 4 assessments prior to submitting a planning and development application, the completion of these activities to the satisfaction of MHSTCI must be made a holding provision and/or a condition of approval (e.g., draft plan condition of approval for a Plan of Subdivision).

It should be noted that completion of an archaeological assessment of a particular development property, no matter how rigorous, does not fully guarantee that all significant archaeological resources on that property will be identified prior to land disturbance. This is particularly the case in areas where natural processes, such as flooding or erosion, have resulted in the burial of original ground surfaces, or with respect to isolated human burials that are typically small features that can escape detection.

Therefore, every archaeological assessment report should contain the statement that should deeply buried archaeological remains be found on a property during construction activities, the MHSTCI should be notified immediately. It should further specify that if human remains are encountered during construction, the development proponent must immediately contact the police, MHSTCI, and the Registrar of Burial Sites, War Graves, Abandoned Cemeteries and Cemetery Closures, Ministry of Government and Consumer Services.

Determining the Cultural Heritage Value of Archaeological Resources

The *Standards and Guidelines for Consultant Archaeologists* sets out criteria for determining the cultural heritage value of archaeological resources, including information value, value to a community, and value as a public resource. They define a set of indicators based on these criteria, which helps to determine which archaeological resources are significant and therefore must be preserved or conserved. Engagement with First Nations may also identify Indigenous values not captured in this table.

Indicators Showing Cultural Heritage Value or Interest (reproduced from *Standards and Guidelines for Consultant Archaeologists*)

Information Value

The archaeological site contributes to local, regional, provincial or national archaeological history.

Criteria	Indicators
Cultural Historical Value	Information from the archaeological site advances an understanding of: <ul style="list-style-type: none"> • Cultural history – locally, regionally, provincially or nationally • Past human social organization at family, household or community level • Past material culture – manufacture, trade, use and disposal
Historical Value	The archaeological site is associated with: <ul style="list-style-type: none"> • Oral histories of a community, Indigenous community, or specific group or family • Early exploration, settlement, land use or other aspect of Ontario's history • The life or activities of a significant historical figure, group, organization or institution • A significant historical event (cultural, economic, military, religious, social or political)
Scientific Value	The archaeological site contains important evidence that contributes to: <ul style="list-style-type: none"> • Paleo-environmental studies • Testing of experimental archaeological techniques
Rarity or Frequency	The archaeological site is: <ul style="list-style-type: none"> • Unique – locally, regionally, provincially or nationally • Useful for comparison with similar archaeological sites in other areas • A type that has not been studied or has rarely been studied, and is therefore under-represented in archaeological research
Productivity	The archaeological site contains: <ul style="list-style-type: none"> • Large quantities or artifacts, especially diagnostic artifacts

Indicators Showing Cultural Heritage Value or Interest
(reproduced from *Standards and Guidelines for Consultant Archaeologists*)

	<ul style="list-style-type: none"> • Exotic or rare artifacts demonstrating trade or other exchange patterns
Integrity	<ul style="list-style-type: none"> • The archaeological site is well preserved and retains a large degree of original material

Value to a Community

The archaeological site has intrinsic value to a community, Indigenous community, or group.

Criteria	Indicators
The archaeological site has traditional, social or religious value.	<p>The archaeological site:</p> <ul style="list-style-type: none"> • Contains human remains • Is identified as a sacred site • Is associated with a traditional recurring event in the community, Indigenous community or group (e.g., an annual celebration) • Is a known landmark

Value as a Public Resource

The archaeological site contributes to enhancing the public's understanding and appreciation of Ontario's past.

Criteria	Indicators
The archaeological site has potential for public use for education, recreation or tourism.	<p>The archaeological site:</p> <ul style="list-style-type: none"> • Is or can be made accessible to tourists, local residents or school groups • Is or can be incorporated into local education, recreation or tourism strategies and initiatives

Assessing Archaeological Resource Impacts and Identifying Mitigation Strategies

If no adverse impacts to an archaeological resource will occur, then development may proceed as planned. Many of the sites routinely encountered will not require further investigation, beyond the mapping, measuring and photographing of the surface attributes of the archaeological site that has already occurred during the Stage 2 archaeological assessment.

Should a significant Indigenous archaeological resource be discovered during an archaeological assessment, provincial regulations require the development proponent, the consultant archaeologist, and the relevant Indigenous community(s) to assess the potential impact(s) to it and arrive at rational decisions regarding potential mitigative options. Those

may involve protection and avoidance of the archaeological site within the context of the proposed development, its mitigation by salvage excavation (salvage and removal), or a combination of these approaches. These decisions are subject to review by MHSTCI and MHSTCI must concur with them.

The relevant Indigenous community(s) must also be consulted throughout the site mitigation process. Under all circumstances there should be an effort to identify the group or more likely groups that are the most appropriate (on cultural-historical grounds) to act as the designated descendants of those who occupied the project area in the past, and who are willing to participate and ensure that cultural heritage remains are treated in an appropriate manner. This identification process is best achieved through negotiation with a variety of communities in order that they may themselves arrive at the final decision. It should also be noted that the MHSTCI *Standards and Guidelines for Consultant Archaeologists*, which includes a Bulletin entitled *Engaging Aboriginal Communities in Archaeology*, requires Indigenous consultation between Stages 3 and 4 archaeological investigations on significant Indigenous sites and recommended consultation before Stage 2 and 3.

It should also be noted that detailed information regarding a site is frequently required to make a more accurate assessment of significance and to determine the potential for adverse effects. This may involve different levels of on-site investigations.

Where more extensive archaeological mitigation is required, recommended mitigative options may take numerous forms, including:

- *Preservation*: the preferred mitigative option. Preservation may involve long-term protective measures such as project design changes (archaeological site protection) that integrate the resource within the overall development plan. To further avoid both accidental impact and intentional vandalism and looting, additional protective measures may include fencing, screening, or in special circumstances, capping.

The site preservation/avoidance option has both short- and long-term components. The short-term component involves both the redesign of the development plan (e.g., lot layouts, parkland, road, and service alignments) and ensuring that the resource(s) to be preserved are physically protected during construction by means of fencing or other visible barriers. The long-term protective measures entail the use of prohibitive zoning by-laws, as permitted by subsection 34(1) of the *Planning Act*, or through other conditions or orders that prohibit any future land use activities that might result in soil disturbance for the avoidance and protection area of the site. Consideration should

be given for Site Management Plans for archaeological resources retained in situ, as well as funding for perpetual care of sites transferred into public ownership.

- *Stabilization*: may be required in the case of eroding archaeological deposits. This may involve the salvage excavation of the eroding area and/or the construction of retaining walls or barriers.
- *Systematic Data Recovery*: involves the recovery of data from significant archaeological sites when other mitigative options are not feasible. It includes a complete or partial systematic surface collection, excavation, or both; a comparative analysis and interpretation of site content and contextual information; and production of an investigative report. This mitigation strategy ultimately results in the destruction of the archaeological site and the elimination of its archaeological potential.
- *Monitoring*: monitoring may be undertaken (only in specific circumstances) to ensure that adverse impacts on archaeological sites which could not be predicted or evaluated prior to construction are addressed. Monitoring requires the presence of a consultant archaeologist during the construction phase of a project. This takes the form of scheduled site visits and on-call availability during a long-term project.

All decisions regarding mitigative options or preservation strategies are subject to MHSTCI review and approval. This is achieved through negotiations between the relevant Indigenous communities, staff of the Archaeology Programs Unit of the MHSTCI and the development proponent, which may be facilitated by the consultant archaeologist.

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Glossary

Aboriginal (Indigenous)

Used inclusively in this document to refer to First Nation or Indigenous communities (also known as “bands” under the *Indian Act*), Métis communities, and communities of other Aboriginal peoples who identify themselves as a community, such as those living in urban centres or those belonging to an Indigenous Nation or tribe that encompasses more than one community (e.g., the Pottawatomi, Mississauga, Mohawk).

Approval Authority

In the land use and development context, this includes any public body (e.g., municipality, conservation authority, provincial agency, and ministry) that has the authority to regulate and approve development projects, that fall under its mandate and jurisdiction (e.g., *Planning Act*, *Environmental Assessment Act*, *Aggregate Resources Act*).

Archaeological Assessment

For a defined project area or property, a survey undertaken by a licensed archaeologist within those areas determined to have archaeological potential in order to identify *archaeological sites*, followed by evaluation of their cultural heritage value or interest, and determination of their characteristics. Based on this information, recommendations are made regarding the need for mitigation of impacts and the appropriate means for mitigating those impacts.

Archaeological Resources

In the context of the *Standards and Guidelines for Consulting Archaeologists*, objects, materials and physical features identified by licensed archaeologists during a Stage 2 archaeological assessment as possibly possessing cultural heritage value or interest. Analysis using the criteria set out in the *Standards and Guidelines for Consulting Archaeologists* determines whether those objects, materials and physical features meet the definition of an archaeological site under the *Ontario Heritage Act* and whether Stage 3 archaeological assessment is required. In various planning and development contexts, the term may refer to any or all of archaeological potential, artifacts and archaeological sites.

Archaeological Site

Defined in Ontario regulation (*Ontario Heritage Act*, O. Reg. 170/04) as “any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest.”

Artifact

Defined in Ontario regulation (*Ontario Heritage Act*, O. Reg. 170/04) as "any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest."

Avoidance

The process by which alterations to an archaeological site are preserved during the short-term time period during which development activities are undertaken.

Consultant archaeologist

An archaeologist who enters into an agreement with a client to carry out or supervise archaeological fieldwork on behalf of the client, produce reports for or on behalf of the client and provide technical advice to the client. In Ontario, these people also are required to hold a valid professional archaeological license issued by the Ministry of Tourism, Culture and Sport.

Cultural heritage value or interest

For the purposes of the *Ontario Heritage Act* and its regulations, archaeological resources that possess cultural heritage value or interest are protected as archaeological sites under Section 48 of the *Ontario Heritage Act*. Where analysis of documented artifacts and physical features at a given location meets the criteria stated in the *Standards and Guidelines for Consulting Archaeologists*, that location is protected as an archaeological site and further archaeological assessment may be required.

Development Proponent

An entity, consisting of individuals, private corporations or government bodies, which is undertaking a development project.

Diagnostic artifact

An artifact that indicates by its markings, design or the material from which it is made, the time period it was made, the cultural group that made it or other data that can identify its original context.

Greenfield

Outlying locations of a municipality on lands that have never previously been developed.

Marine archaeological site

An archeological site that is fully or partially submerged or that lies below or partially below the high-water mark of any body of water.

Project Information Form (PIF)

The form archaeological license-holders must submit to the Ministry of Tourism, Culture and Sport upon deciding to carry out fieldwork.

Protection

Measures put in place to ensure that alterations to an archaeological site will be prevented over the long-term period following the completion of a development project.

Restrictive covenants

Section 119 of the *Land Titles Act* (subject to imminent revision) defines restrictive covenants being placed "upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a condition or restriction that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition or restriction running with or capable of being legally annexed to land. R.S.O. 1990, c. L.5, s. 119 (1)." The land registrar may register as annexed to the land a condition, restriction or covenant that is included in a transfer of registered land that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition, restriction or covenant running with or capable of being legally annexed to land. R.S.O. 1990, c. L.5, s. 119 (2).