



1 National Life Drive, Davis 2, Montpelier, VT 05620-3901
(802) 828-1294 | <https://anr.vermont.gov/>

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE AGENCY OF NATURAL RESOURCES, DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND THE AGENCY OF COMMERCE AND
COMMUNITY DEVELOPMENT, DIVISION FOR HISTORIC PRESERVATION
REGARDING THE AMERICAN RESCUE PLAN ACT FOR VILLAGE WATER AND
WASTEWATER PROJECTS**

WHEREAS, the Agency of Natural Resources (ANR), Department of Environmental Conservation (DEC) has an unprecedented opportunity to further projects under the American Rescue Plan Act (ARPA) related to village water and wastewater;

WHEREAS, ARPA funding must be encumbered by December 2024 and fully expended by September of 2026;

WHEREAS, ARPA funding is exempt from Section 106 of the National Historic Preservation Act, and do not require consultation with the Division for Historic Preservation (VDHP);

WHEREAS, all projects receiving this ARPA funding are anticipated to use additional state or federal funding, thus requiring consultation with VDHP for 22 V.S.A. Chapter 14 and Section 106;

WHEREAS, the feasibility phase to determine if a location is acceptable as a waste disposal facility requires deep test pits or trenches dug by a backhoe, an activity that may negatively impact potential archaeologically sensitive areas. No above-ground historic resources will be adversely affected in the feasibility phase;

WHEREAS, DEC and VDHP seek to streamline the feasibility phase related to the archaeological consultation process to ensure potential archaeologically sensitive areas are not adversely affected and timelines align with funding deadlines;

WHEREAS, archaeology professionals qualified to conduct the evaluations and archaeological testing for the feasibility phase shall be chosen from an approved retainer list and must meet the Secretary of the Interior's Professional Qualifications Standards (36 C.F.R. part 61);

NOW, THEREFORE, DEC and VDHP agree that the following stipulations will be implemented for all ARPA-related village water and wastewater projects using additional state or federal funding.

STIPULATIONS

1. The applicant or their agent (such as a consulting engineer or other consultant contracted to work on behalf of the applicant) identifies the proposed locations of the deep feasibility test pits or trenches and provides to DEC and the contracted archaeological professional.

2. The contracted archaeological professional from the pre-approved BGS retainer list shall evaluate those proposed feasibility test pits to identify any known or potential archaeologically sensitive areas.
 - a. All archaeological investigations must follow [the VDHP's Guidelines for Conducting Archaeology in Vermont \(2017\)](#).
 - b. The desk review investigation at a minimum will include:
 - Known archaeological sites within and near to the project area as well as properties listed on both the National and State Registers of Historic Places,
 - Reviews conducted previously within and adjacent to the project area,
 - Predictive models for pre-Contact resources,
 - Relevant maps for historic resources, and
 - LiDAR mapping.
3. Archaeological investigation does **not** require an Archaeological Resource Assessment (ARA) or approved scope of work only if:
 - a. For plowed fields, after field is plowed, the archaeological professional conducts Phase I site identification consisting of surface walkover for **each** feasibility test pit or trench; or
 - b. For wooded areas and hayfields, or other properties that cannot be plowed, the archaeological professional conducts Phase I site identification consisting of two archaeological test pits for **each** feasibility test pit or trench.
4. Approved scopes of work are required if the archaeological professional proposes **alternative Phase I scopes of work** to the methodology stated above;
 - i. Proposed alternative scopes of work with justification will be reviewed by VDHP within 10 (ten) days of receipt;
 - ii. Alternative scopes of work can proceed if VDHP does not respond within 10 (ten) days with concurrence or consultation requires additional information.
5. If the feasibility test pits or trenches are determined to be **not sensitive** by the archaeological professional, documentation justifying this determination must be approved by VDHP prior to feasibility testing;
 - i. Determinations of not archaeologically sensitive with justification will be reviewed by VDHP within 10 (ten) days of receipt;
 - ii. Feasibility testing can proceed if VDHP does not respond within 10 (ten) days with concurrence or consultation requires additional information.
6. VDHP shall review the completed archaeological investigation results for the feasibility phase
 - a. Review must include the findings and recommendations of the archaeological professional as an end of field letter;
 - b. If Phase I testing results in the identification of potentially eligible archaeological resources in the location of a proposed feasibility test trench, then that location must be avoided and preliminary site documentation provided in submittal to VDHP.
 - i. Review by VDHP will be completed within 15 (fifteen) days of receipt of completed documentation;

- ii. Feasibility testing can proceed if VDHP does not respond within 15 (fifteen) days with concurrence or consultation requires additional information.
7. To ensure timely reviews, all archaeological reviews and documentation must be submitted concurrently to DEC and VDHP.
8. It is understood that at the feasibility phase, the entire area of potential effect (APE) will **not** be defined;
 - a. **However**, the overall APE must be established for VT SHPO consultation under 22 V.S.A. and Section 106 when the construction plans for the wastewater facility are prepared; and
 - b. Consultation at this phase includes archaeological sensitivity and above-ground historic resources and will require additional archaeological investigations. Review at this phase shall follow these existing agreements where applicable:
 - Memorandum of Agreement between the Vermont Department of Environmental Conservation and the Vermont State Historic Preservation officer for the Administration of The Vermont Drinking Water State Revolving Loan Fund and Vermont Clean Water State Revolving Loan Fund (executed April 10, 2016); and
 - Memorandum of Agreement amongst the Department of Forests, Parks and Recreation, and Fish and Wildlife, Agency of Natural Resources; Division for Historic Preservation, Agency of Commerce and Community Development; and the Vermont Advisory Council on Historic Preservation (executed June 23, 2023) for projects reviewed under Title 22.

DURATION

This MOU for the feasibility phase of the village water and wastewater projects shall expire upon the full expenditure of the ARPA funding at the end of September 2026.

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Signatories



Date 1/12/2024

Maggie Gendron, Deputy Secretary
Agency of Natural Resources

DocuSigned by:



Date 1/17/2024

Alex Farrell, Commission
Housing and Community Development

DocuSigned by:



Date 1/12/2024

Laura V. Trieschmann, State Historic Preservation Officer
Division for Historic Preservation

DocuSigned by:



Date 1/17/2024

Ed Clark, Chair
Vermont Advisory Council on Historic Preservation

Approved Archaeological Professional Retainer List:

Dr. John G. Crock
Director
UVM Consulting Archaeology Program (UVM-CAP)
111 Delehanty Hall
180 Colchester Avenue
Burlington, VT 05405
John.crock@uvm.edu
(802) 656-4310

Justin DiVirgilio
President
Hartgen Archeological Associates, Inc.
PO Box 81
Putney, VT
JDivirgilio@hartgen.com
(802) 387-6020

Kimberly Smith
Project Manager
HDR
99 High Street
Boston, MA 02110-2305
(617) 357-7756

Robert N. Bartone
President and Director
Northeast Archaeology Research Center, Inc.
382 Fairbanks Road
Farmington, ME 04938
Bartone@nearchaeology.com
(207) 860-4032

Dr. Christopher Donta
Cultural Resources Team Lead
SWCA Environmental Consultants
15 Research Drive
Amherst, MA 01002
(413) 256-0202

Dr. Charles Knight
Principal Investigator
Crown Consulting, LLC
169 Bellevue Street
Winooski, VT 05404
crownconsultingvt@gmail.com
(802) 734-6709