

LEGISLATIVE COMMITTEE MINUTES

SB12

Bill as Introduced

SB 12 - AS INTRODUCED

2013 SESSION

13-0370
03/09

SENATE BILL

12

AN ACT

relative to protection and preservation of significant archeological deposits.

SPONSORS:

Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Rep. Norelli, Rock 26;
Rep. Cali-Pitts, Rock 30; Rep. Pantelakos, Rock 25

COMMITTEE:

Public and Municipal Affairs

ANALYSIS

This bill authorizes a planning board to take action to protect and preserve significant archeological deposits in conjunction with its exercise of subdivision or site plan review.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to protection and preservation of significant archeological deposits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Preservation of Archeological Deposits or Sites. Amend RSA 674 by
2 inserting after section 42 the following new subdivision:

3 Preservation of Archeological Deposits or Sites

4 674:42-a Preservation of Archeological Deposits or Sites. In conjunction with its exercise of
5 subdivision or site plan review, the planning board may take action to protect and preserve
6 significant archeological deposits or sites that qualify as historic resources, as defined in RSA 227-
7 C:1, VII. Prior to exercising such authority, the board shall adopt regulations providing for the
8 protection of such deposits and sites. The board may seek the advice of the historic district
9 commission or the heritage commission, or both, if such commissions exist, in adopting and applying
10 such regulations.

11 2 Effective Date. This act shall take effect upon its passage.

SB 12 - AS AMENDED BY THE SENATE

02/14/13 0235s

2013 SESSION

13-0370

03/09

SENATE BILL **12**

AN ACT relative to protection and preservation of significant archeological deposits.

SPONSORS: Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Rep. Norelli, Rock 26;
Rep. Cali-Pitts, Rock 30; Rep. Pantelakos, Rock 25

COMMITTEE: Public and Municipal Affairs

AMENDED ANALYSIS

This bill authorizes the adoption of optional provisions for the protection or preservation of archeological resources in master plans, subdivision regulations, and site plan review regulations.

.....

Explanation: Matter added to current law appears in *bold italics*.
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SB 12 - AS AMENDED BY THE SENATE

02/14/13 0235s

13-0370
03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to protection and preservation of significant archeological deposits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Master Plan; Archeological Resources. Amend RSA 674:2, III(h) to read as follows:

2 (h) A section which identifies cultural, *archeological*, and historic resources and
3 protects them for rehabilitation or preservation from the impact of other land use tools such as land
4 use regulations, housing, or transportation. Such section may encourage the preservation or
5 restoration of stone walls, provided agricultural practices, as defined in RSA 21:34-a, are not
6 impeded.

7 2 New Subparagraph; Subdivision Regulations; Archeological Resources. Amend RSA 674:36, II
8 by inserting after subparagraph (n) the following new subparagraph:

9 (o) As a condition of subdivision approval, where the subdivision requires an alteration
10 of terrain permit under RSA 485-A:17, require that the applicant protect or document archeological
11 resources in areas of archeological sensitivity that have been identified in the master plan in
12 accordance with RSA 674:2, III(h).

13 3 New Subparagraph; Site Plan Review Regulations; Archeological Resources. Amend RSA
14 674:44, II by inserting after subparagraph (j) the following new subparagraph:

15 (k) As a condition of site plan approval, require that the applicant protect or document
16 archeological resources in areas of archeological sensitivity that have been identified in the master
17 plan in accordance with RSA 674:2, III(h).

18 4 Effective Date. This act shall take effect January 1, 2014.

CHAPTER 76
SB 12 - FINAL VERSION

02/14/13 0235s

2013 SESSION

13-0370
03/09

SENATE BILL **12**

AN ACT relative to protection and preservation of significant archeological deposits.

SPONSORS: Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Rep. Norelli, Rock 26;
Rep. Cali-Pitts, Rock 30; Rep. Pantelakos, Rock 25

COMMITTEE: Public and Municipal Affairs

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CHAPTER 76
SB 12 - FINAL VERSION

02/14/13 0235s

13-0370
03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to protection and preservation of significant archeological deposits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 76:1 Master Plan; Archeological Resources. Amend RSA 674:2, III(h) to read as follows:

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6 impeded.

7 76:2 New Subparagraph; Subdivision Regulations; Archeological Resources. Amend RSA
8 674:36, II by inserting after subparagraph (n) the following new subparagraph:

9 (o) As a condition of subdivision approval, where the subdivision requires an alteration
10 of terrain permit under RSA 485-A:17, require that the applicant protect or document archeological
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12 accordance with RSA 674:2, III(h).

13 76:3 New Subparagraph; Site Plan Review Regulations; Archeological Resources. Amend
14 RSA 674:44, II by inserting after subparagraph (j) the following new subparagraph:

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17 plan in accordance with RSA 674:2, III(h).

18 76:4 Effective Date. This act shall take effect January 1, 2014.

19 Approved: June 7, 2013

20 Effective Date: January 1, 2014

Amendments



Amendment to SB 12

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Master Plan; Archeological Resources. Amend RSA 674:2, III(h) to read as follows:

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18 archeological resources in areas of archeological sensitivity that have been identified in the master
19 plan in accordance with RSA 674:2, III(h).

20 4 Effective Date. This act shall take effect January 1, 2014.

2013-0213s

AMENDED ANALYSIS

This bill authorizes the adoption of optional provisions for the protection or preservation of archeological resources in master plans, subdivision regulations, and site plan review regulations.

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6 use regulations, housing, or transportation. Such section may encourage the preservation or
7 restoration of stone walls, provided agricultural practices, as defined in RSA 21:34-a, are not
8 impeded.

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10 by inserting after subparagraph (n) the following new subparagraph:

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18 archeological resources in areas of archeological sensitivity that have been identified in the master
19 plan in accordance with RSA 674:2, III(h).

20 4 Effective Date. This act shall take effect January 1, 2014.

Amendment to SB 12
- Page 2 -

2013-0235s

AMENDED ANALYSIS

This bill authorizes the adoption of optional provisions for the protection or preservation of archeological resources in master plans, subdivision regulations, and site plan review regulations.

Committee Minutes

**SENATE CALENDAR NOTICE
PUBLIC AND MUNICIPAL AFFAIRS**

ATTENDANCE

- Senator David Boutin Chairman
- Senator Jeanie Forrester V Chairman
- Senator Bette Lasky
- Senator David Pierce
- Senator Nancy Stiles

START = 9:02 AM
9:03 AM

STOP : 9:03 AM
10:33 AM
HEARINGS

For Use by Senate Clerk's Office ONLY

Bill Status

Docket

Calendar

Proof: Calendar Bill Status

Date: January 10, 2013

Wednesday 1/16/2013

PUBLIC AND MUNICIPAL AFFAIRS	LOB 102	9:00 AM
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<small>(Name of Committee)</small>	<small>(Place)</small>	<small>(Time)</small>
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EXECUTIVE SESSION MAY FOLLOW

- | | | |
|---------|--------|--|
| 9:00 AM | SB12 | relative to protection and preservation of significant archeological deposits. |
| 9:30 AM | SB11-L | relative to water resources utility districts. |

Sponsors:

SB12

- | | | | |
|--------------------------|--------------------|----------------------------|-----------------------|
| Sen. Nancy Stiles | Rep. Terie Norelli | Rep. Jacqueline Cali-Pitts | Rep. Laura Pantelakos |
| Sen. Martha Fuller Clark | | | |

SB11-L

- | | | | |
|-----------------------|-----------------------|-----------------------|-----------------------|
| Sen. Nancy Stiles | Sen. Russell Prescott | Rep. Patrick Abrami | Rep. Timothy Copeland |
| Rep. Donna Schlachman | Rep. Eileen Flockhart | Rep. Patricia Lovejoy | |

PUBLIC AND MUNICIPAL AFFAIRS COMMITTEE

Hearing Report

Deb Martone, Legislative Aide

SB 12 -- An Act relative to protection and preservation of significant archaeological deposits.

Hearing Date: January 16, 2013

Time Opened: 9:03 am

Time Closed: 10:33 am

Members of the Committee Present: Senators Boutin, Forrester, Stiles, Lasky and Pierce.

Bill Analysis: Authorizes a planning board to take action to protect and preserve significant archaeological deposits in conjunction with its exercise of subdivision or site plan review.

Sponsors: Senators Stiles and Fuller Clark; Representatives Norelli, Cali-Pitts and Pantelakos.

Who supports the bill: Senators Stiles, Fuller Clark and Cataldo; Representative Cali-Pitts; Dr. Richard Boisvert, NH Division of Historical Resources; Jennifer Goodman, NH Preservation Alliance; Rick Taintor, City of Portsmouth; M. Christine Dwyer, Portsmouth City Council; J. Dennis Robinson, Portsmouth.

Who opposes the bill: James Gove, Gove Environmental Services, Inc.; Ken Rhodes; Atty. Ari Pollack, Home Builders and Remodelers Association of NH; Gary Abbott, Associated General Contractors of NH, Inc.

Who took no position on the bill: Deborah Loiselle, NH Department of Environmental Services.

Summary of testimony presented in support:

Senator Stiles:

- The intent is to offer the opportunity to document subsurface artifacts of a local community's history, NOT to prohibit new construction.
- The bill would place enabling legislation within the local community's Master Plan to facilitate both historic district commissions and heritage commissions to work closely with planning boards in developing a local ordinance utilizing the site review process.

Rick Taintor, Portsmouth Planning Director (submitted testimony, not in attendance):

- Without standards regarding the review, evaluation and preservation of archaeological artifacts within their Subdivision and Site Plan Review Regulations, planning boards have little or no control over the preservation of these artifacts.

M. Christine Dwyer, Portsmouth City Councilor (submitted testimony, not in attendance):

- Passage of SB 12 will clarify to local authorities that it is appropriate and legal to regulate the actions of private developers with respect to underground resources and artifacts.

J. Dennis Robinson, local author and historian (submitted testimony, not in attendance):

- Without these basic safeguards we risk much; once a historic site has been torn apart, its archaeological value is destroyed forever.

Senator Fuller Clark:

- Reviewed the history of the Portsmouth Port Walk project, and the loss of archaeological artifacts.
- Offered media reports detailing various archaeological projects.
- The proposed legislation is directed at commercial and industrial sites, and not residential sites.

Dr. Richard Boisvert, State Archaeologist/Deputy State Historic Preservation Officer:

- The Division of Historical Resources stands ready to assist local communities in the development of standards.

Jennifer Goodman, Executive Director, NH Preservation Alliance:

- These archaeological resources are vulnerable resources; they need an extra level of attention.
- The Alliance has access to national "best practices" models, but would need time to adapt them for use in New Hampshire.

Summary of testimony presented in opposition:

James Gove, Gove Environmental Services, Inc.:

- The process as proposed is redundant; such a review is currently required under Section 106 of the National Preservation Act of 1966. Senator Boutin, however, pointed out that RSA 227-C:7 currently grants the Division of Historical Resources the authority to regulate archaeological preservation. It would appear the proposed legislation would conflict with state statute. Dr. Boisvert clarified the authority of the Historical Resources Division as it pertains to state owned properties only. The Division has no permitting authority outside of that.
- What standards can a planning board utilize?
- The NH Division of Historical Resources is barely meeting workload requirements presently.
- Should every subdivision and site plan be burdened by additional time and cost? Send SB 12 to a study committee.

Gary Abbott, Associated General Contractors:

- Contractors do not want to dig up and destroy historic resources of the state.
- The AGC is concerned with miscellaneous planning boards instituting varying policies all over the state.

Atty. Ari Pollock, Home Builders and Remodelers Association of NH:

- The association is looking for a better understanding of how this legislation would be utilized across the state. What particular type of circumstance would this legislation enable an ordinance to relate to?
- The legislation provides very little guidance or limitation as to how these regulations on the local level should be crafted.
- Predictability of the regulatory environment is truly a prime consideration.
- Could such regulations be used to simply stop an otherwise viable project?
- Would compliance with these ordinances require costly delays in the planning process?
- How would disagreements be resolved? Does a planning board have the relative expertise to make those decisions? Is there a possibility of increase in litigation?
- The legislation should provide specific guidance or insert a purpose clause.

Ken Rhodes, Practitioner in Engineering Field, AGC Member:

- Detailed 25 years of experience in working with various planning boards.

Action: Pending

dam

Date hearing report completed: January 16, 2013

Speakers

Senate Public and Municipal Affairs Committee: Sign-In Sheet

Date: 01/16/2013

Time: 9:00 AM Public Hearing on SB 12

SB 12

Relative to protection and preservation of significant archeological deposits.

PLEASE PRINT

Name	Representing	Please Check				
<i>J. Bergman CAH - FH</i>		Support <input checked="" type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
		Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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		Support <input type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Testimony

Good Morning Mr. Chairman and Committee Members

For the record I am Nancy Stiles, Senator from District 24 that includes 11 Seacoast area communities. I appear before you to introduce SB12 relative to protection and preservation of significant archeological deposits, making this option available but not required for all communities in the state. The intent of this legislation is to give the opportunity to document history of our communities and NOT to prohibit new construction. I believe these two entities can work together for a positive result for both.

The concerns about acknowledging the history of our great state came to light for me with a few instances in Portsmouth. I decided then to work with stakeholders to identify what we might do to make sure communities had the opportunity to determine what actions they would chose to take to document subsurface items of their community's history as we continue new developments to meet the needs of today.

After meeting with a variety of individuals including some of the councilors in Portsmouth, archeologists, members at Portsmouth Athenaeum (AN THE NE AM), *Beth Murray* Richard Boisvert and former Rep. Belvin we determined that the most effective, optional and possibly least intrusive way to address this issue is to place the **enabling** legislation within the Master Plan of communities so that both the Historic District Commissions and the Heritage Commissions can work closely with the planning boards to develop a process through an ordinance that would be appropriate for that specific community **IF** that was their desire.

While the processes in communities, if they choose to implement it, could look very different, it will meet the concerns of that community through the site review process and give the opportunity that hidden history of that community has been documented.

Share news clippings and letters from Portsmouth Councilor Dwyer, Portsmouth's Planning Director Rick Taintor, and Historian, Dennis Robinson. *Belvin from SB 260*

I ask for your support in this enabling legislation.

Artifacts retrieved from privy as development's third phase begins

By **Charles McMahon**

cmcmahon@seacoastonline.com

December 23, 2012 2:00 AM

PORTSMOUTH — Broken pieces of the city's history were unearthed this past week during an archeological dig at the future site of the Portwalk phase 3 development.

The two-day dig, conducted by Independent Archaeological Consulting LLC of Portsmouth, turned up several pieces of the city's past, some of which are believed to be around 200 years old.

IAC team member Jesse Cofelice said the dig focused around three areas at the Portwalk site. The dig sites were previously identified by IAC owner Kathleen Wheeler as having a "high probability" of there being remnants of old foundations or "back yard spaces."

On Thursday, the second and final day of the dig, Cofelice said the team came across a privy buried deep in the ground. While a privy is an outhouse, Cofelice said it can contain valuable clues as to what went on in the early days of Portsmouth.

The privy found Thursday, which was located at the bottom of a deep trench, was not far from the first phase of the Portwalk development on Deer Street. In 2010, a team from IAC conducted similar digs prior to phase 2 of the development — the Residences at Portwalk.

The team extracted 3,500 artifacts from the site, including one prehistoric American Indian projectile point.

During the most recent dig, Cofelice said the team turned up numerous artifacts as well.

"Everything was coming out of the ground so fast," she said. "We found a lot of animal bones and remains of meals such as a few fish vertebrae, a lot of chicken bones, and larger pieces of materials most likely from a cow or sheep."

Cofelice said the team also found pieces of dishware potentially dating to the late 1700s or early 1800s. Artifacts include pieces of a shell edge blue Pearlware plate and a Pearlware bowl, each with unique dendritic patterns. The broken pieces of dishware likely date back 200 years, she said.

"It's going to be really neat to see if we got all of it," Cofelice said.

While it's not known how the pieces of dishware ended up in the privy, Cofelice speculated it could be related to a changing of the household. She said the plates could've been thrown away because they were considered out of style.

Local historian J. Dennis Robinson said the broken dishware could be interpreted as a clue to what was in style nearly 200 years ago. Having been a critic of Portwalk's treatment of the city's archaeology over the years, Robinson was on hand for the final day of the dig.

"It's like the iPhone 5 versus an iPhone 4," Robinson said, adding the plates could potentially point to just how style conscious people were back then. "They were buying what was hot in the local stores and that's what's interesting."

Cofelice said everything discovered at the site will go back to the lab to be cleaned and examined. Once the artifacts are catalogued and inventoried, Cofelice said the team will then attempt to go back in time to determine how old the privy is and to whom it belonged. She said the work could even reveal where the Pearlware was purchased.

"We will work to create a story of the artifacts," she said. "Then we can turn it over to the public so they can see what's under their streets."

Meanwhile, work at Portwalk's final phase is expected to commence in the coming weeks. The development will

trash. Finding the bottle in the privy may mean Wentworth's house was on the site in the 1770s, Tranchemontagne said.

He said the company followed all the rules in building on the site, but there was confusion about what needed to be done and who had jurisdiction. He noted that the area had been disturbed many times over the years by past developments.

"For us, the most important thing is to have a clear set of rules. We want to make sure it's clear. Obviously, it hasn't been over the past few years," he said.

State Archaeologist Richard Boisvert said most of what archaeologists have found is not museum quality, but even mundane things can help tell the story of a time if pieced together and put into its proper context.

"If it doesn't have meaning, it's just a rock, just a piece of broken pottery," he said.

Tranchemontagne said the Portwalk developers plan to display artifacts found at the construction site.

"We're very open. We want these artifacts, particularly if they have historical significance, to be seen," he said.



NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Cultural Resources
19 Pillsbury Street, Concord, NH 03301-3570
TDD Access Relay NH 1-800-735-2964
www.nh.gov/nhdhr

603-271-3483
603-271-3558
FAX 603-271-3433
preservation@dcr.nh.gov

Senate Bill 12 Relative to protection and preservation of significant archeological deposits Senate Public and Municipal Affairs Committee Public Hearing Testimony, January 16, 2013

I am here today representing the NH Division of Historical Resources to speak on behalf of Senate Bill 12, which would amend RSA 674.

Archaeological sites by their very nature are hidden from view and as a consequence are vulnerable to damage or destruction by excavation for the construction of roads, buildings and other development. Local histories and previous research often alert us to the presence, or at least high probability, of significant archaeological deposits within our communities. This proposed amendment to RSA 674 would allow for consideration of archaeological resources through existing planning processes.

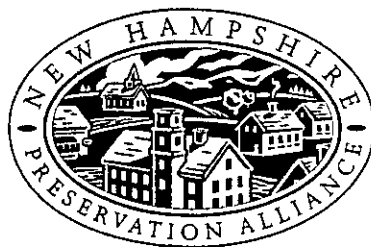
There is considerable diversity among the state's communities, both in terms of the size and composition of the towns and municipalities as well as the nature of their archaeological resources. A process appropriate for a densely populated urban community with 18th century archaeological deposits would be quite different than a process for a more thinly populated lakeside community where ancient Native American sites are known. The flexibility provided within this legislation accommodates such variation of communities and archaeological resources by allowing each town or city to develop its own method and level of protection.

We at the NH Division of Historical Resources support this bill and look forward to working with planning boards to helping preserve and protect the archaeological resources of the state.

Thank you for this opportunity to testify and I would be happy to address any questions from the committee.

Respectfully submitted,
Richard A. Boisvert, Ph.D.
State Archaeologist and
Deputy State Historic Preservation Officer
NH Division of Historical Resources





BOARD OF DIRECTORS

January 16, 2013

CHAIR
KEN VISCARELLO
MANCHESTER

The Honorable David Boutin
Chair, Public and Municipal Affairs
c/o N.H. Legislative Office Building
Room 102
Concord, NH 03301

VICE CHAIR
KATHY BOGLE SHIELDS
CANTERBURY

TREASURER
CHRISTOPHER ROGERS, C.P.A.
FRANCESTOWN

Re: SB 12

SECRETARY
MICHAEL B. TULE
MILFORD

Dear Chair Boutin and members of the committee:

IMMEDIATE PAST CHAIR
MICHAEL BRUSS
BRADFORD

The N.H. Preservation Alliance urges your support of Senate Bill 12, relative to the protection and preservation of significant archeological deposits.

ANDI AXMAN
EPSOM

The Preservation Alliance is the statewide non-profit historic preservation organization with individual, organizational and business members across the state. Last year, we assisted with the rescue, rehabilitation or restoration of over 100 landmark properties, and helped municipalities adopt preservation, planning and development tools such as demolition delay ordinances and RSA 79 E (downtown tax incentive).

SUSAN BOOTH
CANTERBURY

PAULA CABOT
LOUDON

JEFFREY D. GILBERT
RYE

This bill provides an important, flexible mechanism for local planning boards to adopt regulations to raise awareness of a vulnerable type of resource -- archeological resources -- and help to identify and protect them. Local regulations, if adopted, could be customized to a particular municipality's needs and interests, and help add predictability to planning and development processes.

PATRICK F. McDERMOTT
MANCHESTER

RICHARD M. MONAHAN, JR., AIA
PETERBOROUGH

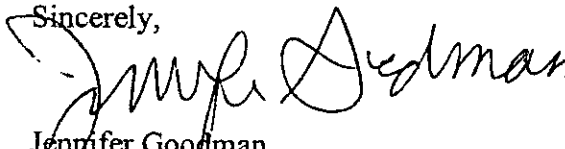
JAYME SIMOES
CONCORD

We encourage you to support this bill that will help further the appreciation and preservation of our state's important historic assets.

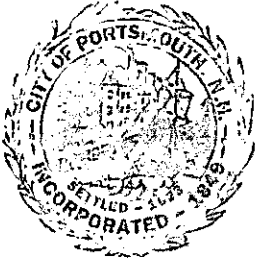
STEPHEN TAYLOR
MERIDEN

HUNTER ULF, AIA
HANOVER

LINDA UPHAM-BORNSTEIN, PH.D.
LANCASTER

Sincerely,

Jennifer Goodman
Executive Director

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CITY OF PORTSMOUTH

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January 15, 2013

The Honorable David Boutin
New Hampshire Senator
Chairman of the Public and Municipal Affairs Committee
Legislative Office Building, Room 102-A
33 North State Street
Concord, NH 03301

RE: SB 12

Dear Senator Boutin and Committee Members:

I am writing in support of SB 12, a bill that would enable Planning Boards to determine the appropriate approach for protecting archaeological resources within their Subdivision and Site Plan Review Regulations.

It is not uncommon for Subdivision and Site Plan Review Regulations to allow Planning Boards to require reports on a wide variety of topics, including archaeological/historical studies. However, most Planning Board regulations do not include standards or criteria for evaluating and protecting archaeological deposits or sites. This is particularly problematic when a private developer unearths artifacts of historic significance. Without standards regarding the review, evaluation and preservation of archaeological artifacts within their Subdivision and Site Plan Review Regulations, Planning Boards have little or no control over the preservation of these artifacts.

This is an issue of particular concern for the City of Portsmouth as we are seeing an increase in commercial development in our historic downtown. This area was a vibrant part of New Hampshire's early history, and subsurface artifacts are distributed widely throughout our commercial core. This bill will allow Planning Boards to craft standards and procedures for archaeological protection that address the particular needs of their communities.

I ask on behalf of the City of Portsmouth that you support SB 12. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Taintor". The signature is fluid and cursive, with the first name "Rick" being more prominent.

Rick Taintor
Planning Director

cc: Portsmouth Legislative Delegation
John P. Bohenko, City Manager

**WRITTEN TESTIMONY BEFORE THE SENATE PUBLIC AND MUNICIPAL
AFFAIRS COMMITTEE
JANUARY 16, 2013
REGARDING SB 12
BY PORTSMOUTH CITY COUNCILOR M. CHRISTINE DWYER**

I am M. Christine Dwyer, a current Portsmouth City Councilor and long-term member of the Portsmouth Planning Board, I am writing in support of SB 12, the act that provides planning boards with the authority to protect and preserve archeological resources. Given our experiences in Portsmouth, we think it is very important to enable and encourage New Hampshire's cities and towns to take into account the rich historical record that exists in some locales beneath the ground. With the same level of care that planning boards and historic commissions attend to preserving resources that are visible, New Hampshire citizens need to think about the effects of ground disturbance undertaken by private developers.

In modern day Portsmouth, when we have undertaken municipal construction projects, we have had the practice of taking into account the archaeological potential of the area and taken actions to preserve important artifacts. As is widely known now, the African Burying Ground was one of the discoveries that was made earlier in the decade as a result of a municipal sewer project; archaeologists were on call to the City during that project. As a result of that discovery, the Burying Ground has been recognized as a nationally significant site—the only such authenticated site in New England.

But Portsmouth has NOT had planning regulations that govern the actions of private developers, and we clearly need to do so. As Portsmouth's downtown northern tier is being developed, construction is taking place in an area that is historically significant. Given our city's economic vitality, we are experiencing substantial infill development in the downtown area along with re-development and renovation of historic sites, more frequently now including underground parking.

We agree that it is appropriate for recommended regulations to emanate from the Planning Board. The Planning Board is the entity that grants approval and sets conditions/stipulations for approval of the plans of private developers, including the requirement for construction management plans that would address protection for artifacts uncovered during construction.

Passage of SB 12 will make it clear to local authorities (i.e. legal department, City Council, other appropriate boards) that it is appropriate and legal to regulate the actions of private developers with respect to underground resources and artifacts.

WHY I SUPPORT NH SENATE BILL SB-12

First settled in 1623, New Hampshire is among the earliest colonial American sites with a Native American occupation that dates back thousands of years before. Telling our unique New Hampshire stories is, today, a critical part of our heritage tourism industry. Yet as New Hampshire grows, we often inadvertently destroy the rich history that lies hidden just beneath our feet. While we may think those archaeological treasures are already well protected by federal, state, or local regulations, in too many cases they are not. Other states have taken action to preserve their legacy. This bill, that I deeply support, will help us preserve the stories of New Hampshire's past that fuel our current and future economy. Preservation and progress are not opposing forces. Here in historic New Hampshire, they are one in the same. This bill simply offers us the opportunity to occasionally pause, to dig deeper into our storied past, and to discover who came before us and how they lived -- for our kids and for our economy. Without these basic safeguards we risk a great deal because, once an historic site has been torn apart, its archaeological value is destroyed forever. we only get one chance. Here in New Hampshire (you only have to look at our state seal) we value and honor the past every day. But that past is not static. It changes and grows as our knowledge increases. That's what this bill does -- it tells us who we truly used to be. And if you don't know where you've been, you don't know where you're going.

J. Dennis Robinson,
Portsmouth, NH



01/16/2013

Testimony of James Gove

Senate Bill 12

An act relative to protection and preservation of significant archeological deposits.

Oppose for the following reasons:

- 1- Redundancy: What is being asked for is already done under Section 106 of the National Historic Preservation Act of 1966. Most large projects undergo this kind of review. Does it make sense to ask the Planning Boards to take the time and effort to duplicate something that is already being done?
- 2- Standards: The only standards I am aware of are issued by the NH Division of Historical Resources under the guidance of the State Historic Preservation Officer. Common standards of practice in determining the significance of archeological deposits are not like using manuals on wetland delineation criteria or septic system design. The current process is that consultants submit their findings to DHR and the Division issues a letter of determination. Where does the Planning Board fit into the current system? What standards would they be able to reference?
- 3- Workload: The NH DHR is barely making their workload requirements now. If they are asked to review every subdivision and site plan that is reviewed by all the Planning Boards in the State, they will need a huge increase in staff. Unless the legislature is prepared to bolster the funding to the NH DHR to undertake a process that is likely to quadruple their current workload, the review of subdivisions and site plans will grind to a halt.
- 4- Cost: Archeological consultants are not inexpensive. For a simple walk over and file review of a site, the average cost is \$3,000.00. If they find an area that needs to be investigated, the cost for this Phase Two will be \$10,000.00. Should every subdivision and every site plan be burdened by this additional cost?

My suggestion is that this bill be sent to study committee. No one wants to lose significant archeological sites in NH, but neither do we want to burden the Planning Boards and applicants with undue additional costs and review time.

New Hampshire Division of HISTORICAL RESOURCES

Tuesday, January 15, 2013



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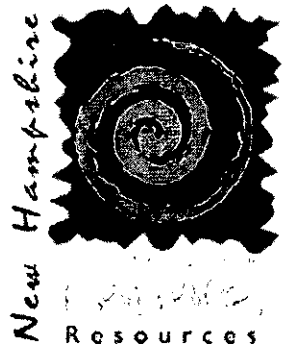
Project Review & Compliance > Frequently Asked Questions (FAQ's)

General R&C (Section 106) Questions

- What is Section 106 project review?
- Who established Section 106 review?
- Why was Section 106 created?
- Who are the key players in the Section 106 review process?
- Who initiates Section 106 project review?
- What is the role of the Division of Historical Resources (DHR) in the Section 106 review process? What are the responsibilities of the federal agency?
- What is a federal "undertaking"?
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NHDHR R&C Questions

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- Can the Section 106 review process stop a project?
- I'm concerned about a proposed new development and its threat to a historic property. What can be done about it?



Archaeological Questions

- **What happens if the DHR requests that an archaeological survey be conducted for a project?**
- **What will the archaeologist do during the survey?**
- **How long does an archaeological survey take?**
- **What if the archaeological survey finds no evidence of archaeological sensitivity?**
- **What if the archaeologist finds a potentially significant site?**

Architectural Questions

- **How do I know if a building located in my project area is eligible or listed in the National Register of Historic Places?**
- **What if buildings on my property have not been previously surveyed?**
- **Who determines if my property is eligible for the National Register of Historic Places?**

What is Section 106 project review?

Section 106 review is the process of assisting federal and state agencies and their applicants in determining whether or not their projects will affect significant historic properties. This process allows for consideration of alternatives that may avoid or reduce any potential effect while the projects are still in the planning stages.

The review process is administered by the **Advisory Council on Historic Preservation**, an independent federal agency, with assistance from the State Historic Preservation Office (SHPO). The process is based on two principles:

- Decisions should be based on full knowledge of all relevant information.
- Decisions should consider all interests. Public comment is an important part of the Section 106 process. For more details, check out the **Citizens' Guide to Section 106 Review**. 36 CFR § 800.1(a)

Who established Section 106 review?

The Congress did, as part of the **National Historic Preservation Act of 1966** (NHPA). NHPA, strengthened and expanded by several subsequent amendments, today has become the cornerstone of this country's historic preservation policy.

Why was Section 106 created?

NHPA was enacted because of public concern that so many of our nation's historic resources were not receiving adequate attention as the government sponsored much needed public works projects. In the 1960s, federal preservation law applied only to a handful of nationally significant properties, and Congress recognized that new legislation was needed to protect the many other historic properties that were being harmed by federal activities. 36 CFR § 800.1(a)

Who are the key players in the Section 106 review process?

- Federal Agency
- Advisory Council on Historic Preservation
- Consulting Parties
- State Historic Preservation Office (SHPO)

- Tribal Historic Preservation Office (THPO)
- Native American tribes and organizations
- Applicants
- Local Government
- Organizations and individuals
- National Park Service
- The Public 36 CFR § 800.2

Who initiates Section 106 project review?

The federal agency involved in the proposed project or activity is responsible for initiating and completing the Section 106 review process. Under certain circumstances, local governmental bodies or project proponents may act as the responsible agency. The agency works with the State Historic Preservation Officer (an official appointed in each state or territory to administer the national historic preservation program) and the Advisory Council to do so. There can be other participants in the Section 106 process as well. At times, local governments, representatives of Indian tribes, applicants for federal grants, licenses, or permits, the public, and others may join in the review process when it affects their interests or activities. 36 CFR § 800.3

What is the role of the Division of Historical Resources (DHR) in the Section 106 review process?

The DHR is charged with representing New Hampshire's interest in protecting the State's significant historic, architectural, archaeological, and cultural resources. The division's role as SHPO in project review is advisory and consultative, relying on practices established by federal and state law, and on the body of information gathered through DHR's ongoing survey. 36 CFR § 800.2(C)(1)

What are the responsibilities of the federal agency?

Although federal agencies are responsible for completion of all steps of the Section 106 process, certain federal agencies transfer some of these responsibilities to others. For example, applicants for federal financial assistance or for federal permits may be required to provide information about the project directly to the SHPO and to complete the step of identification in consultation with the SHPO. 36 CFR § 800.2(a)

What is a federal "undertaking"?

Pursuant to the October 1992 Amendments to the National Historic Preservation Act, an "undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with federal financial assistance; (C) those requiring a federal permit, license, or approval; and (D) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. 36 CFR § 800.16(y)

When should I start the Section 106 review process?

You should start the process as early as possible in the project planning process. Section 106 review should proceed before other environmental reviews in order to prevent project delays. 36 CFR § 800.1(c)

How do I start the Section 106 review process?

To initiate Section 106 review in New Hampshire, submit a completed Request for Project Review form (RPR) to the DHR. The RPR must be submitted by mail (project submissions will not be accepted via

facsimile or e-mail). The DHR submits its comments to project proponents in writing, not by telephone or e-mail.

Who can complete a Request for Project Review form (RPR)?

The RPR must be completed by the project proponent or appointed agent.

How do I get a Request for Project Review form?

The RPR and instructions for completing the form can be downloaded from the DHR website here:

www.nh.gov/nhdhr/review

How can I access topographic maps and geographic coordinates as requested in the RPR form?

The DHR asks that the relevant portion of a 7.5 USGS map indicating the defined project boundary be attached to the RPR form. USGS topographic maps and State Plane coordinates can be printed or downloaded free of charge from UNH's GRANITView website at: <http://granitview.unh.edu>

USGS topographic maps and State Plane coordinates are available through a variety of sources. Topo Maps can be printed or downloaded free of charge from UNH's **GRANITView** website. If you are unfamiliar with using this mapping please see instructions below. If you are using a mapping service other than GranitView make sure the coordinate system is set to NH State Plane, Feet (WGS84 datum). An example of NH State Plane coordinates for the State House in Concord is:

Easting: 1018526 Northing: 257678

Instructions on How to Use GRANITView to Access Topo Maps and Geographical Coordinates 

What will the DHR do with a completed RPR?

Once received at the DHR, the RPR will be reviewed by our professional staff. Within 30 days of receipt, we will respond in writing. The response will include information on:

- whether the project is likely to affect historic or archaeological properties,
- whether further DHR review is required,
- whether additional information is needed to assess the likelihood that historic or archaeological properties will be affected by the proposed project, and
- whether an archaeological survey or historic study of the property is warranted

If, after review of the RPR submittal, the DHR determines that the project is unlikely to affect significant historic or archaeological resources, then the SHPO review is complete.

How long does Section 106 review take?

The DHR comments on all projects within 30 days from receipt of the RPR. However, due to the large number of projects we review each year and our limited staffing, sometimes our review can take a bit longer. In order to expedite the process, please make sure your submittal package is as complete as possible, including all materials and information requested within the RPR. Please keep in mind that some projects require the submittal of additional information including inventory forms, archeological reports etc. which may necessitate additional consultation with the DHR.

What can I do to have my review expedited?

The best way to have your review expedited is to make sure the information submitted is complete, so that the DHR does not need to request additional information.

Should I telephone the DHR to inquire as to the status of the review my project?

It is not advisable. Telephoning the DHR can actually result in a delay in our response time due to our limited staffing.

Should I meet with DHR staff to present my project information in person?

No. Send in a completed Request for Project Review. DHR staff will review it and request a meeting, if needed.

Will DHR review delay a project?

There is no reason that DHR review should delay a project as long as the project planners contact the DHR (by submitting a RPR) early in the project planning process. Delays are most frequently caused when project planners do not initiate DHR review early in the planning process, or submit incomplete information.

What constitutes a historic property or significant archaeological site?

For purposes of Section 106, any property listed in or eligible for the National Register of Historic Places is considered historic. The National Register is the official list of the nation's historic places worthy of preservation; it is administered by the National Park Service, which is part of the Department of the Interior. The list includes buildings, structures, objects, sites, districts, and archaeological resources. The listed properties are not just of nationwide importance; most are significant primarily at the state or local level. The protections of Section 106 extend to properties that possess significance but have not yet been listed or formally determined eligible for listing. 36 CFR § 800.16(l)

What makes a historic property "significant"?

The National Register of Historic Places has outlined four main criteria against which historic properties that are fifty years of age or older are assessed for significance. These criteria are the basis for which historic properties are evaluated in the Section 106 process. They are:

- **Criterion A:** properties that are associated with events that have made a significant contribution to the broad patterns of our history;
- **Criterion B:** properties that are associated with the lives of persons significant in our past;
- **Criterion C:** properties that embody the distinctive characteristics of a type, period, or method of construction, or properties that represent the work of a master, or properties that possess high artistic values, or properties that represent a significant and distinguishable entity whose components may lack individual distinction;
- **Criterion D:** properties that have yielded, or may be likely to yield information important in prehistory or history 36 CFR § 800.4(c)(1)

Criteria for National Register eligibility are listed at www.nps.gov/nr/listing.htm

What happens if a National Register eligible or listed site, building, or structure is located within a project impact area?

If a National Register eligible or listed site, building, or structure is identified within the impact area of the project, in consultation with any applicable state or federal agency, will apply the criteria of effect to

determine whether the effect will be adverse. Not all projects have adverse effects on historic properties. If the project is found to have no adverse effect, DHR review is complete. 36 CFR § 800.5
RSA 227-C:1-a, I (1998)

What happens if the project is determined to have an adverse effect to a significant historic or archaeological property?

If a project is found to have an adverse effect to a significant historic property or archaeological site, DHR enters into consultation with the project proponents and the federal agency and, as warranted, other government agencies and other interested parties. The goal of the consultation is to arrive at prudent and feasible measures that will avoid, minimize, or mitigate the adverse effect. The proponent may be asked to submit an analysis of alternatives in order to determine if there are feasible alternatives that will avoid, minimize, or mitigate the adverse effect.

The end result of the consultation process is the developing and signing of a Memorandum of Agreement (MOA) between the proponent, SHPO, the state or federal funding, permitting, or licensing agency, and other participating parties as warranted. An MOA is a written agreement that stipulates the measures that will be taken to avoid, minimize and/or mitigate the adverse effects and states that the signatories agree to these measures. Once the stipulations of the MOA are fulfilled, DHR review is complete. 36 CFR § 800.6

Can the Section 106 review process stop a project?

No. The Advisory Council, SHPO, and the review process cannot stop a project. The process can take time, especially if the federal agency is slow to initiate consultation in the first phase, does not provide complete information, or if the Federal agency and SHPO are not in agreement as to the effect of a project on historic properties or appropriate mitigation measure.

I'm concerned about a proposed new development and its threat to a historic property. What can be done about it?

If the proposed new development will involve state or federal funding, licenses or permits, the project proponent must submit a Request for Project Review. Individuals and organizations with a demonstrated interest in the project may participate in Section 106 review as consulting party. Participation is subject to approval by the responsible Federal agency.

If the proposed new development will involve only local permits, contact your local historical commission to see whether the property is in a **Local Historic District** or whether your municipality has a demolition delay by-law.

Archaeological Questions

What happens if the DHR requests that an archaeological survey be conducted for a project?

If, after reviewing a RPR, the DHR requests that an archaeological survey be conducted for the project impact area, the proponent should engage the services of a qualified archaeological consultant to conduct the survey. A list of qualified archaeologists can be found at www.nh.gov/nhdhr/consultants_archaeology.html

What will the archaeologist do during the survey?

The archaeologist will conduct an archaeological sensitivity assessment of the project area and the surrounding area. The survey entails background investigations such as environmental research and a

literature search to develop a context for both the existing and past physical and cultural environment and setting. The archaeologists will conduct a file search at the DHR to examine site location maps, site inventory forms, and cultural resource reports relevant to the project locale and those providing insight into relevant historic contexts.

The archaeologist will then visit the project area and conduct a field investigation. During the field investigation the archaeologist will systematically walk all of the accessible areas to examine the ground surface and record areas that have potential archaeological sensitivity. Occasionally, the field investigation will include soil coring and, if useful, a small number of judgmentally-placed .5x.5 meter shovel tests to gain a better understanding of subsurface conditions.

If areas of archaeological sensitivity are found, the archaeologist, in consultation with the DHR, may recommend additional sub-surface investigations to determine if an archaeological site exists within the project area and, if so, determine the approximate boundary of the site.

After background research and field inspection are complete, the archaeologist will analyze the data and produce a report providing the results of the survey and make a recommendation on archaeological sensitivity.

How long does an archaeological survey take?

Each archaeological survey is unique and completion time depends on the size of the project area, the scope of the investigation, weather conditions, and other factors. The best way to answer this question is to ask the archaeological consultant performing the survey.

What if the archaeological survey finds no evidence of archaeological sensitivity?

If, after reviewing a report on the results of the survey, the DHR concurs that the results of the survey indicate that the project area does not exhibit archaeological sensitivity, the DHR will inform the proponent by letter within 30 days of receipt of the report. If no significant archaeological sites or other historic properties will be affected by the project, DHR review is complete.

What if the archaeologist finds a potentially significant site?

If, after reviewing a report on the results of the survey, the DHR concurs that the results of the survey indicate that one or more significant archaeological sites exist within project impact areas, the DHR will recommend that the sites be avoided, or, if avoidance is not possible, that further archaeological testing be conducted in order to evaluate the sites to determine whether they are eligible for listing in the State and National Registers of Historic Places.

Architectural Questions

How do I know if a building located in my project area is eligible or listed in the National Register of Historic Places?

The New Hampshire Division of Historical Resources maintains extensive files on the cultural resources documented in New Hampshire. These files are routinely accessed by cultural resources professionals for compliance with Section 106 of the Historic Preservation Act and RSA 227:C. The Division has been in an ongoing process of updating the inventory filing system and making the files more readily accessible. The files are open by appointment to consultants and researchers Monday through Friday from 8:00 until 4:00 by calling 603.271.6568 or tanya.krajcik@dcr.nh.gov.

What if buildings on my property have not been previously surveyed?

For projects involving a single building, a NHDHR Individual Inventory Form completed by a qualified architectural historian is required (see www.nh.gov/nhdhr/consultants for list of qualified consultants).

For projects involving more than one building, the DHR will request a completed NHDHR Area Form. In addition, it will be necessary to complete the first two pages of a NHDHR Individual Inventory Form for each building in the project area. Instructions for completing the **inventory forms and blank forms** are available on our web site. A list of qualified architectural historians who regularly do this type of work in New Hampshire is available at www.nh.gov/nhdhr/consultants.

Who determines if my property is eligible for the National Register of Historic Places?

The DHR, working with the applicable state or federal agency, reviews all inventory forms and determines eligibility. The DHR's Determination of Eligibility (DOE) Committee evaluates inventory forms and resources at meetings twice a month. Staff reviewers need at least one week in advance of the meeting to review the research and prepare a determination. Written comments are mailed to the project's lead federal agency and other participants shortly after the DOE meeting confirming eligibility status or requesting additional information.

For more information on the review process please refer to the Advisory Council on Historic Preservation's **Protecting Historic Properties: A Citizen's Guide to Section 106 Review**

 Adobe Acrobat Reader format. You can download a free reader from **Adobe**.



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SB 12 - SEN. FULLER
@LARK

Stiles, Norelli co-sponsor historic artifacts bill

By **NORMA LOVE**

Associated Press

January 15, 2013 2:00 AM

CONCORD — Broken bits of pottery and other artifacts unearthed during construction might be worthless to builders but tell a story to an archaeologist about New Hampshire's history.

But New Hampshire has no law governing what happens to artifacts unearthed during commercial land developments, and many fear the chance to learn more about the past is slipping away.

State Sen. Nancy Stiles, a Hampton Republican, is hoping to change that by sponsoring legislation that would give communities a say in what happens to the artifacts. House Speaker Terie Norelli, a Portsmouth Democrat, is co-sponsoring the bill because she believes it will help preserve precious historical resources.

Stiles and Norelli say the bill won't stop construction, but state Rep. Dan McGuire, an Epsom Republican, argues it could delay construction or increase costs.

"This bill is more likely to cause the destruction of archaeological treasures than to preserve them because it uses the stick instead of the carrot. If someone discovers an arrowhead on their property, will they inform others about it and risk the loss of property value, or will they hide it and destroy the evidence?" McGuire wrote in an email.

McGuire helped kill the same measure last year but doubts he has the votes to do so again now that the House is under Democratic control.

The bill would enable communities to establish a process to protect and preserve significant archaeological deposits or sites that qualify as historic resources. Planning boards would follow the regulations when reviewing subdivisions and commercial site plans. The planning boards could seek advice from historic or heritage commissions if they exist in the town in applying the regulations.

Cordell Johnston, government affairs counsel for the New Hampshire Municipal Association, said the association, which represents communities, has no position on the bill since it leaves it to each municipality to decide if it wishes to adopt regulations. Johnston said any artifacts found would belong to the property owner. He said the proposal would apply to commercial developments, not to individual homeowners.

"I can't imagine (the proposed law) would authorize a planning board to require the property owner to give up their property," he said.

Johnston said McGuire is correct that it could cost a developer money.

"But that is true of just about any kind of restrictions imposed through site plan and subdivision review," he added.

A hearing on the bill is scheduled for Wednesday morning in the Senate Public and Municipal Affairs Committee.

Stiles filed the bill because Portsmouth had no say about possible archaeological deposits affected by the \$95 million Portwalk development in a historic section of the city's downtown.

In 2009, Cathartes Private Investments of Boston began a three-phase project that includes two hotels, luxury apartments, retail space and an underground garage. During the first phase, Parade Mall was demolished and a hotel was erected. No federal money was involved in the project, so a federal regulation requiring an archaeological evaluation was not triggered.

But federal funding was included in the financing of the second phase and the developer hired a local archaeological firm to evaluate the site and unearth artifacts. The same firm searched the site of the final phase in December. In both instances, old pottery and other artifacts were found — some possibly several hundred years old.

Cathartes spokesman Scott Tranchemontagne said the most interesting piece was a bottle belonging to Joshua Wentworth, a New Hampshire patriot in the colonial era. It was found in a privy, which is where people threw trash. Finding the bottle in the privy may mean Wentworth's house was on the site in the 1770s, Tranchemontagne said.

He said the company followed all the rules in building on the site, but there was confusion about what needed to be done and who had jurisdiction. He noted that the area had been disturbed many times over the years by past developments.

"For us, the most important thing is to have a clear set of rules. We want to make sure it's clear. Obviously, it hasn't been over the past few years," he said.

State Archaeologist Richard Boisvert said most of what archaeologists have found is not museum quality, but even mundane things can help tell the story of a time if pieced together and put into its proper context.

"If it doesn't have meaning, it's just a rock, just a piece of broken pottery," he said.

Tranchemontagne said the Portwalk developers plan to display artifacts found at the construction site.

"We're very open. We want these artifacts, particularly if they have historical significance, to be seen," he said.

Portwalk digging yields archaeological finds

Artifacts retrieved from privy as development's third phase begins

By **Charles McMahon**

cmcmahon@seacoastonline.com

December 23, 2012 2:00 AM

PORTSMOUTH — Broken pieces of the city's history were unearthed this past week during an archeological dig at the future site of the Portwalk phase 3 development.

The two-day dig, conducted by Independent Archaeological Consulting LLC of Portsmouth, turned up several pieces of the city's past, some of which are believed to be around 200 years old.

IAC team member Jesse Cofelice said the dig focused around three areas at the Portwalk site. The dig sites were previously identified by IAC owner Kathleen Wheeler as having a "high probability" of there being remnants of old foundations or "back yard spaces."

On Thursday, the second and final day of the dig, Cofelice said the team came across a privy buried deep in the ground. While a privy is an outhouse, Cofelice said it can contain valuable clues as to what went on in the early days of Portsmouth.

The privy found Thursday, which was located at the bottom of a deep trench, was not far from the first phase of the Portwalk development on Deer Street. In 2010, a team from IAC conducted similar digs prior to phase 2 of the development — the Residences at Portwalk.

The team extracted 3,500 artifacts from the site, including one prehistoric American Indian projectile point.

During the most recent dig, Cofelice said the team turned up numerous artifacts as well.

"Everything was coming out of the ground so fast," she said. "We found a lot of animal bones and remains of meals such as a few fish vertebrae, a lot of chicken bones, and larger pieces of materials most likely from a cow or sheep."

Cofelice said the team also found pieces of dishware potentially dating to the late 1700s or early 1800s. Artifacts include pieces of a shell edge blue Pearlware plate and a Pearlware bowl, each with unique dendritic patterns. The broken pieces of dishware likely date back 200 years, she said.

"It's going to be really neat to see if we got all of it," Cofelice said.

While it's not known how the pieces of dishware ended up in the privy, Cofelice speculated it could be related to a changing of the household. She said the plates could've been thrown away because they were considered out of style.

Local historian J. Dennis Robinson said the broken dishware could be interpreted as a clue to what was in style nearly 200 years ago. Having been a critic of Portwalk's treatment of the city's archaeology over the years, Robinson was on hand for the final day of the dig.

"It's like the iPhone 5 versus an iPhone 4," Robinson said, adding the plates could potentially point to just how style conscious people were back then. "They were buying what was hot in the local stores and that's what's interesting."

Cofelice said everything discovered at the site will go back to the lab to be cleaned and examined. Once the artifacts are catalogued and inventoried, Cofelice said the team will then attempt to go back in time to determine how old the privy is and to whom it belonged. She said the work could even reveal where the Pearlware was purchased.

"We will work to create a story of the artifacts," she said. "Then we can turn it over to the public so they can see what's under their streets."

Meanwhile, work at Portwalk's final phase is expected to commence in the coming weeks. The development will consist of a five-story, mixed-use building that abuts Hanover and Deer streets and Maplewood Avenue.

The building, which was approved by city land-use boards earlier this year, includes room for a hotel, residential units, mixed retail/restaurant use, a surface-level parking deck and a one-story underground parking garage.

Scott Tranchemontagne, spokesman for developer Cathartes Private Investments, said the development team was thrilled IAC was able to do the work. "It's important work at a historic site in a historic city," Tranchemontagne said.

Once phase 3 is complete, Tranchemontagne said he expects the development team will look to commemorate the history of the site in some fashion, potentially through a plaque placed on site.

"We want to recognize the history of the site in this city," he said. "Celebrating it is important for the Portwalk development."

Artifact-protection bill stalls in House

By **Charles McMahon**

cmcmahon@seacoastonline.com

May 12, 2012 2:00 AM

PORTSMOUTH — A bipartisan bill enabling communities to protect and preserve significant archeological findings failed to pass the N.H. House of Representatives this week after a vote ended in a tie.

Senate Bill 260, "relative to protection and preservation of significant archeological deposits," failed after the 173-173 vote on a motion to pass.

While a tie vote means the bill failed passage, a separate vote to table the legislation allows for another vote on it later.

The bill is co-sponsored by state Sen. Nancy Stiles, R-Hampton, and Portsmouth Democratic Reps. Terie Norelli, Jacqueline Cali-Pitts and Laura Pantelakos.

Stiles said Friday she is hopeful that the bill will be voted off the table next week. She said she has been in talks with other legislators who opposed the bill, to see whether some wording in the bill can be changed to achieve its passage.

The legislation, which authorizes a city or town planning board to take action to protect and preserve significant archeological deposits in conjunction with its exercise of subdivision or site plan review, passed the Senate in March.

This week, the House Municipal and County Government Committee recommended passage of the bill, 16-1.

The legislation would enable local legislative bodies to adopt regulations that would allow their planning boards to take action, when appropriate, to protect and preserve significant archeological sites.

Stiles said she considers the bill important because it's enabling legislation.

She said the bill is of particular importance to Portsmouth because of a controversy that ensued last year after historic artifacts were found and identified at the site of Portwalk, a downtown mixed-use development.

The dust-up involving Portwalk led some observers to question whether more could be done to preserve the city's history by allowing more oversight at the local or state level.

Portwalk gets final nod from Planning Board

Zoning concerns evaporate

By **Charles McMahon**

cmcmahon@seacoastonline.com

January 20, 2012 2:00 AM

PORTSMOUTH — The Planning Board on Thursday night approved the third and final phase of Portwalk, clearing the way for the major downtown development to begin construction as early as this fall.

Approval of the large-scale, mixed-use development comes after months of work between project officials from Cathartes Private Investments and the city's various land-use boards.

Planning Board members took little time approving the site review application Thursday night. The proposal had most recently been postponed by the Planning Board at a meeting in mid-December, after planners expressed concerns over whether the project met zoning laws. A recent decision from the city's Legal Department, however, affirmed the project is in accordance with the city's zoning ordinance.

The project involves the construction of a five-story, 71,500-square-foot building abutting Hanover and Deer streets and Maplewood Avenue. It includes room for a 124-room hotel, 92 residential units and 10,335 square feet of mixed retail/restaurant use. The proposal also includes a surface-level parking deck and a one-story underground parking garage.

Planning Board members were less critical of the proposal at Thursday night's meeting. Some members even offered praise to developers for amending site plans throughout the process to include relocation of generators and an entrance to a trash room.

Another change announced at the meeting involved the addition of retail space along Maplewood Avenue.

One stipulation of approval involved developers making an archaeological analysis conducted on the property available to the city and the state Division of Historic Resources. Planners asked that the development team also follow through on any recommendations included in the study relative to artifacts being found on the property.

After approving the project, Planning Board Chairman John Ricci thanked the development team for their work with the city over the past several months.

"I think this is a much better plan than last month's proposal," said Ricci.

Scott Tranchemontagne, spokesman for Cathartes Private Investments, said the development team is pleased it can move ahead with its plans to complete the entire Portwalk project.

"This is a strong project for us and for the city," said Tranchemontagne. "There's still a lot of work to be done. Some people would look at this as the last step, but it's really the first step for us."

Tranchemontagne said the next steps for the project include fully designing it as well as securing financing. He said that, if all goes to plan, the project could break ground in the fall.

Once started, Tranchemontagne said the construction timeline would likely last 18 months.

SB 12 - SEN. FULLER
CLARK

Planning Board to discuss archaeological protections

By **Charles McMahon**

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January 19, 2012 2:00 AM

PORTSMOUTH — The Planning Board will gather before tonight's regular meeting for a work session on subsurface investigation and its relation to site review regulations.

The work session will begin at 6 p.m. in the Eileen Dondero Foley Council Chambers.

Planning Director Rick Taintor said the work session follows a request from the City Council to look at how the city could incorporate archaeology into its site plan review regulations. Debate about archaeological preservation arose last year during construction at the Portwalk development, after which local historian J. Dennis Robinson called New Hampshire's preservation laws "weak" with minimal oversight.

Discussion prompted city officials and elected state officials to call for stricter regulatory oversight authority to local municipalities when it comes to subsurface archeology. A proposed bill introduced by state Sen. Nancy Stiles, R-Hampton, requires historic district commissions to adopt regulations to protect and preserve "subsurface archaeological deposits" found within historic districts. The bill was introduced Jan. 4 and, if passed, would require historic commissions to adopt archaeological preservation regulations by Dec. 31, 2013.

At the same time, the City Council asked planning officials to study whether they could provide more protection with current site review standards. The Planning Board's current site plan review regulations allow the board to require "exhibits, data, reports or studies" on a variety of topics including "archaeological/historical studies." However, regulations do not include guidance for determining when such studies should be required, or standards or criteria for evaluating the findings or requiring mitigation.

Taintor said the work session will allow more discussion regarding the scope of research, on-site investigation and review, as well as required mitigation approaches. City staff has issued a recommendation on how to deal with the issue that Taintor said will be discussed at the work session.

Consultant identifies Portwalk sites likely to hold artifacts

By **Charles McMahon**

cmcmahon@seacoastonline.com

December 21, 2011 2:00 AM

PORTSMOUTH — Developers of Portwalk on Tuesday released results of an archaeological sensitivity assessment for the final phase of the major downtown project.

The study, conducted by Independent Archaeological Consulting LLC of Portsmouth, covers the background and historical significance of the parcel at 195 Hanover St. The 13-page report includes schematics, site maps and a listing of reference material. It also includes a slate of recommendations and conclusions.

The assessment identifies three areas where archeological resources are likely to be present. The first is the northeast corner of Portwalk Lot 3 at the intersection of Deer and Vaughan streets, the former homestead of merchant Titus Salter, according to the report. The area was minimally affected by development over the years.

"We anticipate that the back yard will contain deposits related to the Salter occupation and that its household privy might be present," the report states.

The next area is the intersection of Deer Street and Maplewood Avenue, a site once was home to Phoebe Hart. The house is believed to have stood there from the early 1800s to urban renewal of the 1970s. Area 3 is considered to be the noncontiguous extension of the Hart house lot, which may contain resources from at least one privy and elements from a blacksmith shop.

The report recommended the owner and consultant develop a mutually acceptable plan to further evaluate the three areas before construction. Scott Tranchemontagne, spokesman for developer Cathartes Private Investments, said the plan is to do just that.

"We're pleased that the report is complete and has been submitted," he said. "We plan on following the recommendations in the report."

Tranchemontagne said a mitigating circumstance to the recommendation is the fact that Lot 3 is currently a paved parking lot. He said whatever is required in terms of excavation and digging will occur after the parking lot is gone. He said the development team will work with consultants from now to early summer to develop a plan on how to follow the recommendations. As far as what will happen with any artifacts found at the site, he said there have been preliminary discussions on the best way to display them in the future.

"We appreciate the history of this site," he said. "We fully intend to follow recommendations of our consultants."

City Councilor Chris Dwyer, an advocate of protecting historic artifacts beneath the surface of property in the city, said she considered the report a good step in the right direction. Dwyer, along with State Sen. Nancy Stiles, R-Hampton, spearheaded a legislative effort to provide more local control to municipalities regarding subsurface preservation.

The report, which was requested as part of the Planning Board's site review, is only the beginning, Dwyer said. The real effort will be to pass a law that allows the city authority to enforce recommendations of such archaeological assessments, she said.

"It would give us a little more teeth," Dwyer said.

J. Dennis Robinson, a local historian who has been highly critical of Portwalk's treatment of the city's archaeology, said once the land is dug up, artifacts can be lost forever.

"We need to get the importance of history into the DNA of this city if we are going to keep our economy going strong," he said. "History is our life's blood."

- see clip on SR 6650
by same author
9-25-11

Local control sought for subsurface artifacts

Senator wants to empower towns to save items in historic districts

By **Charles McMahon**

cmcmahon@seacoastonline.com
November 02, 2011 2:00 AM

PORTSMOUTH — A legislative push to create more local control of "subsurface preservation" is officially in the mix in Concord.

State Sen. Nancy Stiles, R-Hampton, said Tuesday she has submitted legislation that would enable a community to create a historic district ordinance.

Wording of the Legislative Service Request is currently in draft form and should be complete in the near future, Stiles said. It currently reads as follows: "The Historic District Commission may perform research and prepare the content of the historic district ordinance prior to its adoption or amendment."

The goal of the legislation is to "provide a process for the protection and preservation of subsurface archaeological deposits discovered within the district," according to the proposed language.

The city's HDC would have ultimate responsibility for administering the ordinance and regulations. All regulations should also be compatible with the master plan and zoning ordinance of the city, town or county in which they exist, according to Stiles' bill.

The topic of "subsurface preservation" was in the spotlight recently, after historic artifacts were found and identified at the site of Portwalk, a downtown mixed-use development. The recent dust-up involving Portwalk led some observers to question whether more could be done to preserve the city's history. While experts agreed that developers followed all rules when it came to preserving the artifacts discovered at the site, questions followed about more oversight at the local or state level.

One of those skeptics was local historian J. Dennis Robinson, who said the laws regarding subsurface preservation are "weak, and oversight is minimal."

Stiles said she was able to pursue the legislation after discussing the concerns with Robinson, in addition to city officials and local archaeologists. Input from the state Division of Historic Resources was also part of the process, said Stiles.

There is also support from state Rep. William Belvin, an Amherst Republican.

City Councilor Chris Dwyer said she spoke briefly with Stiles about her plan. Dwyer was the local advocate who was able to get the City Council to look further into the subject of subsurface preservation and whether there are any other local controls the city can use to exercise authority over historic artifacts being found underground.

The city's Planning Department and legal team are researching the request.

"I think the idea of keeping within the historic district boundaries is a pragmatic choice to try to move forward on something that would have a realistic chance in committee," Dwyer said of the bill's chances in Concord.

Stiles said she still has some work to do on the bill, however. The local lawmaker said she is working on the language of the proposal so that it doesn't infringe upon residential property owners.

"I want to work in language carefully to make sure that the ordinance would be drafted by the Historic District Commission and would specifically differentiate between public property, commercial property and residential property," Stiles said.

Stiles said she's also working on the bill to broaden and ensure communication among state and federal agencies charged with oversight.

The proposed law would also require any municipality choosing to create the historic district ordinance to have it drafted by Dec. 31, 2013, Stiles said.

SR# 6650

Lack of state law endangers N.H. artifacts

Trio says federal 'Section 106' process ineffective without enhanced regulations

By **Charles McMahon**

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September 25, 2011 2:00 AM

PORTSMOUTH — Is New Hampshire hurting its own history?

Some local experts believe little local control, limited state oversight and a flawed federal framework of historic preservation requirements threatens the relevance of what lies beneath.

The recent dust-up involving historic artifacts being found and identified at Portwalk has led some to question whether more could be done to preserve the city's history.

In an attempt to learn more, Seacoast Sunday polled a trio of experts on their thoughts regarding the current process.

State official's point of view

Elizabeth Muzzey, director and state historic preservation officer for the N.H. Division of Historical Resources, said the roots of historic preservation begin with the National Historic Preservation Act of 1966.

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects that their federally funded activities and programs have on significant historic properties. "Significant historic properties" are those that are included in, or eligible for, the National Register of Historic Places.

The federal law serves as a "checks and balances" for federally funded, permitted or licensed projects, Muzzey said. It allows for the historic relevance of a project to be considered in project planning and minimizes potentially adverse impacts, she said.

"The 106 process is not meant to prevent projects," she said.

Calling it a "consultation process," Muzzey said it's incumbent upon the state preservation officer, federal agency providing funding or permitting and the project proponent to work together.

She said projects often finish the review process quickly because no historic resources are found or no adverse effect is determined. "A relatively small percentage of projects we see get to the point where there are adverse effects and mitigation is needed," she said.

Muzzey said it's always beneficial if direct impact to a site can be avoided, but if it can't, creating a report similar to what Portwalk developers commissioned will suffice.

With phase 3 of Portwalk right around the corner, Muzzey said it's unclear if the developer, Cathartes Private Investments, will need to follow the 106 process.

"We are ready to do our part in that review if it becomes a federal undertaking," she said. "If it does, a lot of the work has already been done."

Archeologist's point of view

Kathleen Wheeler, owner of Independent Archaeological Consulting, is all too familiar with the Section 106 process. As the archaeologist hired to conduct digging and create a report on Portwalk's phase 2, Wheeler said the number one thing to consider about the 106 process is that it is essentially an "unfunded mandate."

"The purpose of Section 106 is to recognize our buried history before it gets taken away in a development project," she said.

Section 106 is a small, short paragraph written within the over-arching federal law, that Wheeler said can be tricky to implement. "It's very cumbersome," she said.

Having been intimately involved in archaeological work conducted as part of Portwalk's phase 2, Wheeler said the Section 106 requirement is a piece of the permitting process that is often overlooked. "A lot of people aren't really aware of it," she said. "By the time an archaeologist comes on the site, very, very often it is a whole other piece that nobody planned of in time and money."

Portwalk's phase 2 had to go through the Section 106 process because of the federal funding it utilized through the U.S. Department of Housing and Urban Development.

Wheeler said she was brought in by Cathartes Private Investments to study archaeology found on site as part of the 106 process. She said the developer technically followed all the rules and complied with all that was expected of it regarding the 106 process.

The problem, however, she said is that the 106 process is really the only protection for the historical significance of a development site.

Wheeler said she works in multiple states across New England. In all states, other than New Hampshire, there is active legislation that requires archaeology be conducted at development sites.

In Massachusetts, Wheeler said state law mandates that almost every development needs to have some type of archaeology study, whether it uses federal money or not.

In Vermont, archaeology is required for a development on land over a certain amount of acreage and in Maine there are similar requirements for development of more than 20 acres, Wheeler said.

There is nothing currently on the books in New Hampshire.

"We have a Legislature with 400 people who have a lot of things to do and one of them is not making archaeology something we have to do," Wheeler said.

Historian's point of view

Local historian J. Dennis Robinson, who has been critical of the Portwalk project, said the over-arching problem is not the developers, but rather the requirements they must follow. He said the issue with Portwalk may lie in a developer's interpretation of the spirit of the law.

"Developers may claim to follow the letter of the law," he said. "The laws are weak and oversight is minimal. But they clearly miss the spirit of the law, which is to preserve Portsmouth history and educate the public."

However, Robinson said his concerns about the historic preservation of the site are not meant to prevent the project from happening.

"People wrongly assume that since I'm pro-archaeology, that I'm also anti-hotel," Robinson said. "The opposite is true. I am a huge fan of building our tourist infrastructure. Without more short-stay visitors, our little population can't support the rich culture and history we enjoy all around us every day."

I'm simply opposed to destroying subsurface history in the name of progress. It's wasteful, unnecessary, potentially illegal, and just plain dumb economically. The more history we preserve, the more fascinating Portsmouth becomes, and the more attractive we are as a destination for people who will stay in our hotels and eat in our restaurants and support our museums."

When it comes to the added time and cost the 106 process creates, Robinson said there are far worse consequences if a developer ignores the archaeology.

"Developers understandably fear anything that may increase their costs," he said. "Avoiding archaeology may seem, at first, like good risk management — out of sight, out of mind."

Robinson said as far as he knows, preserving what's under a construction project has never stopped a project in New Hampshire. They have, however, delayed many projects locally.

Demolition of the Wentworth School building to make way for a new softball field on Granite Street was delayed last year due to the 106 process, as was the construction of the new Portsmouth Public Library. Robinson said he's seen it happen on many occasions.

"My brother discovered the 5,000-year-old Native American skeleton during construction of the Seabrook nuclear power plant," he said. "It didn't stop the project, but it provided a wealth of information historians are still writing and talking about decades later."

Robinson said he would advocate for some type of regulation that allows more local control when it comes to preserving what lies beneath.

"This city is unique because of its nearly 400-year occupation. Thus it needs unique regulations," Robinson said. "People may think the city, state or feds are protecting archaeology, but in most cases, no one is standing up for history."

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Date: February 7, 2013

THE COMMITTEE ON Public and Municipal Affairs

to which was referred Senate Bill 12

AN ACT relative to protection and preservation of significant
 archeological deposits.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0235s

CONSENT CALENDAR VOTE: 5-0

Senator Nancy Stiles for the Committee

This enabling legislation, as amended, authorizes the adoption of provisions for the protection or preservation and documentation of archeological resources in the master plan, subdivision regulations and site plan review process. Final language was the result of many various stakeholders coming together in support.

Debra Martone 271-3092

New Hampshire General Court - Bill Status System

Docket of SB12

Docket Abbreviations

Bill Title: relative to protection and preservation of significant archeological deposits.*Official Docket of SB12:*

Date	Body	Description
1/3/2013	S	Introduced and Referred to Public & Municipal Affairs; SJ 4
1/10/2013	S	Hearing: 1/16/13, Room 102, LOB, 9:00 a.m.; SC4
2/7/2013	S	Committee Report: Ought to Pass with Amendment # 2013-0235s , 2/14/13; Vote 5-0; CC; SC8
2/14/2013	S	Committee Amendment 0235s, AA, VV
2/14/2013	S	Ought to Pass with Amendment 0235s, MA, VV; OT3rdg; SJ 5
3/27/2013	H	Introduced and Referred to Municipal and County Government; HJ31 , PG.1073
4/3/2013	H	Public Hearing: 4/10/2013 11:00 AM LOB 301
4/9/2013	H	Executive Session: 4/16/2013 1:00 PM LOB 301
4/17/2013	H	Committee Report: Ought to Pass for April 24 (Vote 16-0; CC); HC33 , PG.1094-1095
4/24/2013	H	Ought to Pass: MA VV; HJ38 , PG.1243
4/24/2013	H	Enrolled; HJ38 , PG.1257
5/2/2013	S	Enrolled
6/7/2013	S	Signed by the Governor on 06/07/2013; Chapter 0076; Effective 01/01/2014

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB 12 ORIGINAL REFERRAL _____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

_____ HANDOUTS FROM THE PUBLIC HEARING

PREPARED TESTIMONY AND OTHER SUBMISSIONS

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 0213s - AMENDMENT # 0235s
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): _____

DATE DELIVERED TO SENATE CLERK

07/16/13

Debra A. Martore
By COMMITTEE AIDE