

Oregon Parks and Recreation Commission

April 13, 2022

Agenda Item:	9a	Action
Public Comment Allowed:	Yes	
Topic:	Request to Open Rule Making, OAR 736-051-0000 to 0090 Archaeological Permit	
Presented by:	John Pouley, State Archaeologist and Ian Johnson, Associate Deputy State Historic Preservation Officer	

Background: Oregon Administrative Rule (OAR) 736-051-0000 to 0090 defines processes for resolving disputes and applying for State of Oregon Archaeological Excavation permits on non-federal public and private lands. The current OAR was adopted in 1994 and needs updating.

The associated Oregon Revised Statute (ORS) 390.235 (Permits and Conditions for Excavation or Removal of Archaeological or Historical Material) states that a person may not excavate an archaeological site on public or private land without obtaining a permit from the Oregon Parks and Recreation Department (OPRD). It names the State curation facility, requirements for approving other facilities, entities to be consulted with for permit approval, qualifications to apply for a permit, and provides for a dispute resolution process. The State Historic Preservation Office (SHPO) is the OPRD designee.

Outreach for the proposed revision began by addressing roles in statute. According to ORS 390.235(1)(d), rules governing the issuance of permits are to be developed with advice from Oregon Tribes (Tribes) and the Legislative Commission on Indian Services (LCIS). To initiate this process, SHPO sent an email to Tribes and LCIS on August 20, 2021, informing them of the proposed revision along with a request for who should receive correspondence on that topic. With the information received, SHPO sent formal letters on September 13 regarding: the proposed revision, roles in statute to provide advice, and the process moving forward. A copy of the current rule accompanied each with a recommendation to provide initial advice within two months (November 15) in preparation for a discussion forum in December. A reminder email was sent on October 13, followed by another letter on October 26 that included additional details on the schedule moving forward. The letter also acknowledged the larger role of Oregon Tribes in the process, based on authority in statute and through Government-to-Government consultation. The eight-hour rule revision forum with Oregon Tribes and LCIS took place on December 17. A Rule Advisory Committee (RAC) followed in February and early March. The RAC included representation from: Oregon Tribes, LCIS, the University of Oregon Museum of Natural and Cultural History (UOMNCH), Portland State University, the Association of Oregon

Archaeologists (AOA), Association of Oregon Counties, League of Oregon Cities, Oregon Department of Transportation (ODOT), and the United States Army Corps of Engineers (USACE).

Based on all the advice received from Tribes, LCIS, and the RAC, a number of problems exist in the current rule. Primarily, these include: out-of-date processes, references to organizations that now have different names, references to institutions that no longer exist, assigning authority not granted in statute, a need to define terms used in (ORS) 390.235, and a failure to address violations of issued permits.

Feedback for updating out-of-date processes included removing specificity for how information is to be sent (e.g., by fax, or standard mail), to more general references that would allow for any form of submission (e.g., email). Recommendations suggested updating names of institutions in rule that have changed over the years (e.g., Commission on Indian Services [CIS] is now LCIS, and Oregon State Museum of Anthropology [OSMA] is now incorporated into UOMNCH). The 1994 rule also assigns roles to entities not given such authority in statute. For example, the state repository has a role in statute relating to curation and alternate curation facilities, but were given permit review authority in the 1994 rule. The RAC were fine with UOMNCH continuing to review permit applications, and agreed that Department of Justice (DOJ) should weigh in to determine if they can be assigned that role in rule. Tribes, and the RAC recommended removing institutions in rule that no longer exist (e.g., Dispute Resolution Commission). The revised draft addresses each of these changes, with the exception of where DOJ comment is needed.

The most in-depth discussions among Tribes, LCIS, and the RAC involved the need for defining terms relating to what constitutes an Oregon “Qualified Archaeologist” in ORS 390.235. Archaeologists that meet these qualifications are able to apply for State of Oregon Archaeological Excavation Permits.

Among qualifications in ORS 390.235, the RAC focused on definitions. For example, what does it mean to have a post-graduate degree with a “specializing in archaeology” and what is meant by having designed and executed an archaeological study “dealing with archaeological field research”? Members of the RAC admittedly had difficulty separating out the terms used in statute, often addressing issues with one phrase, when a question targeted another. Staff provided initial definitions in the draft rule for “specialization in archaeology” and “dealing with archaeological field research”. Both were updated after discussion with the RAC. There was also discussion on the importance of the intent of the statute. Staff informed the RAC that it is not up to SHPO to periodically change or re-interpret statute, but that they must be consistent with both intent and implementation. The definitions added in the draft rule revision are meant to provide clarity and transparency regarding both intent and implementation.

Tribes and the RAC also discussed the need for a process to address permit compliance and violations. In a DOJ interoffice memo from April 11, 2011, an opinion states that while the SHPO does not have the authority to revoke existing archaeological permits, it does have the authority to deny future permit issuance based on permit violations. While SHPO has never denied permits based on prior violations, it is clear from discussions that a need exists. The rule

needs to address this issue by holding applicants, or their firms/institutions, accountable for complying with terms and conditions of State of Oregon Archaeological Excavation Permits.

The change in the draft rule revision with feedback from the RAC proposes to define instances where an application reviewer may object to the issuance of a permit based on a prior violation, consistent with the DOJ memo. Violations may involve both a failure to comply with the terms, or conditions of an issued permit. The draft rule proposes how this is addressed through the dispute resolution process, and that it will only be based on violations from the point the revised rule is adopted going forward. Addressing it through the dispute resolution process will allow all parties an opportunity to achieve and promote compliance, and hopefully avoid future violations.

Prior Action by Commission: None.

Action Requested: Staff recommends opening rulemaking governing the issuance of archaeological permits 736-051-0000 to 736-051-0090. Updating processes and defining terms from the 1994 rule will provide much needed added clarity and transparency.

Attachments:

Attachment A: Clean Copy of Proposed Rules

Attachment B: Clean Copy of Current Rules

Attachment C: Marked Copy of Current Rules

Prepared by: John Pouley, Oregon State Archaeologist

9a Attachment A: Clean Copy of Proposed Rules

[Parks and Recreation Department](#)

[Chapter 736](#)

Division 51

ARCHAEOLOGICAL PERMITS

[736-051-0000](#)

Dispute Resolution Process

(1) Oregon Administrative Rules (OAR) 736-051-0000 through 736-051-0050 establish procedures the Oregon Parks and Recreation Department shall use in resolving a dispute over:

(a) The issuance of an archaeological permit pursuant to Oregon Revised Statute (ORS) 390.235;

(b) Curation facilities for archaeological objects uncovered pursuant to a permit issued under ORS 390.235;

(c) The disposition of human remains or funerary objects as identified in ORS 97.750.

(2) Throughout the dispute resolution process, the location of archaeological sites and objects will be kept from public disclosure pursuant to ORS 192.345 and include provisions for protecting confidential information.

[736-051-0010](#)

Dispute Resolution Definitions

As used in OAR 736-051-0020 through 736-051-0050, unless the context requires otherwise:

(1) “Alternate Curatorial Facility” means the institution approved by the University of Oregon Museum of Natural and Cultural History (UOMNCH) incorporating the Oregon State Museum of Anthropology (OSMA), and appropriate tribes, meeting standards in ORS 390.235;

(a) Where materials pursuant to ORS 390.235(3)(b) are made available for nondestructive research by scholars;

(i) Where “Scholars” means but is not limited to: tribal members, traditional cultural practitioners, traditional cultural authorities, archaeologists, academic professionals, and students.

(2) “Applicant” means the qualified archaeologist (as defined in ORS 390.235) and the institution/company they represent responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235.

(3) “Appropriate Tribe” means the Indian tribe or tribes designated by the Legislative Commission on Indian Services (LCIS).

(4) “Arbitration” means a process whereby a neutral third party or panel considers the facts and arguments presented by disputing parties and renders a decision.

(5) “Archaeological Object” has the meaning given that term in ORS 358.905.

- (6) "Archaeological Permit" means the permit issued under ORS 390.235.
- (7) "Archaeological Site" has the meaning in ORS 358.905.
- (8) "Burial" has the meaning given that term in ORS 358.905.
- (9) "Conditions" means any additional permit terms proposed for property access, research, notifications, field methods, analyses, monitoring, curation, and reporting, by an entity with approval authority.
- (10) "Entity with Approval Authority" means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department , the private landowner as applicable or land managing agency, the Legislative Commission on Indian Services (LCIS) and the most appropriate tribe(s).
- (11) "Funerary Objects" have the meanings given that term in ORS 358.905.
- (12) "Human Remains" has the meaning given that term in ORS 358.905.
- (13) "Indian Tribe" has the meaning given in ORS 97.740.
- (14) "Mediation" means a process in which a third party assists and facilitates two or more parties to a dispute in reaching a mutually acceptable resolution of the dispute.
- (15) "Negotiation" means an informal process by which an attempt is made by disputing parties to resolve the dispute without the need for mediation or arbitration.
- (16) "Object of Cultural Patrimony" has the meaning given that term in ORS 358.905
- (17) "Qualified Archaeologist" means a person that meets ORS 390.235 education and experience criteria related to archaeological collection and excavation, as support of their ability to comply with terms and conditions of a State of Oregon issued archaeological permit.
- (18) "Sacred object" has the meaning given that term in ORS 358.905.
- (19) "State Designated Curatorial Facility" means the UOMNCH incorporating the OSMA.

[736-051-0020](#)

Disputes Covered by the Dispute Resolution Process

These rules cover disputes among or between persons or entities that have statutory authority to: approve or object to the issuance of an archaeological permit, approve or object to a proposed curatorial facility, approve or object to the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony; apply for an archaeological permit.

- (1) After a permit application is sent out for review, including after its issuance, disputes may arise among or between entities with approval authority and applicants over any proposed terms, conditions, or objections where:
 - (a) An entity with approval authority over an application for a permit objects to its issuance;
 - (i) Based on any proposed terms or conditions.

(ii) Based on any prior failure of the applicant to comply with terms or conditions of any previously issued permit, from the time this rule is enacted.

(iii) Based on any unresolved comments to a report submitted for a previously issued permit.

(A) Where the entity with approval authority is able to include documentation supporting comments were requested and not addressed.

(iv) Based on a prior violation of ORS 390.235 by the applicant for failing to obtain a permit, from the time this rule is enacted.

(b) The applicant disagrees with any proposed terms or conditions of a permit;

(c) The applicant disagrees with an objection to their permit application.

(2) Disputes may arise over the selection of curatorial facilities for archaeological objects uncovered on public lands where:

(a) An entity that has approval authority over the choice of an alternate curatorial facility withholds that approval;

(b) The archaeological permit applicant disagrees with the choice of an alternate curatorial facility as made by an entity with approval authority.

(3) Disputes may arise over the disposition of human remains funerary objects, sacred objects, or objects of cultural patrimony as described in ORS 97.740.

[736-051-0030](#)

Informal Dispute Resolution (Negotiation)

(1) If the permit applicant or an entity with approval authority over an application for a permit objects to the approval or objection of a permit or any of its terms or conditions, they shall notify the State Historic Preservation Office (SHPO) in writing.

(2) The SHPO shall initiate an informal process by which the disputing parties shall attempt to reach agreement. By mutual agreement, the disputing parties may include the SHPO or other third parties in this process, but they shall not be compensated. The informal dispute resolution process shall be completed within 60 days.

(3) At any time a disputing party can terminate the informal dispute resolution process and submit the dispute to mediation or withdraw the dispute by notifying all parties in writing.

[736-051-0040](#)

Mediation

(1) The entities with approval authority shall compile and maintain a list of potential mediators.

(2) Within ten calendar days of receipt of a written request to mediate, the SHPO shall provide the disputing parties with a list of at least three potential mediators, including written credentials of each one.

(3) Within ten calendar days of receipt of the list of potential mediators, each disputing party shall notify the SHPO if one or more of the mediators would be acceptable.

(4) Disputing parties may interview potential mediators. All parties shall agree on the choice of mediator within five working days after the list of acceptable mediators is forwarded to SHPO.

(5) The mediator shall assist the disputing parties in preparing for mediation. Such preparations shall include:

(a) A statement of the issues to be mediated;

(b) A list of the parties who will participate in the mediation;

(c) An estimated completion date for the mediation process. By mutual consent, deadlines may be established for ending or continuing the mediation process;

(d) A statement of what shall constitute agreement. An understanding of what constitutes agreement shall include adequate time for each disputing party's decision-making body to ratify a tentative agreement reached by the mediator and the disputing parties;

(e) Throughout the dispute resolution process, the location of archaeological sites and objects will be kept from public disclosure pursuant to ORS 192.345, and include provisions for protecting confidential information about traditional or sacred places and practices, or other sensitive information associated with archaeological sites and objects;

(f) Provisions for payment of the mediator's services, if the services are not voluntary;

(g) Any other procedural matters the disputing parties determine need resolution before mediation begins on the substantive issues.

[736-051-0050](#)

Arbitration

(1) If the mediation does not yield a result satisfactory to all parties, the disputing parties shall notify the SHPO in writing, and the dispute shall proceed to arbitration.

(2) The SHPO shall notify each of the following of the need to designate one representative to serve on an arbitration panel:

(a) The SHPO;

(b) The LCIS;

(c) The UOMNCH;

(d) The governing bodies of the federally-recognized Indian tribes;

(3) All panel members shall be designated within ten calendar days of receipt of SHPO's notification.

(4) By consensus, the panel shall:

(a) Choose a chair who shall be responsible for scheduling arbitration sessions, notifying all parties with standing in the dispute, and convening the arbitration session; and

(b) Establish the procedural framework for the arbitration.

(5) The issues to be arbitrated are limited to those which could not be resolved by the mediation process.

(6) Any party that declines to participate in the mediation or arbitration process waives its right to approve the permit application, or to set conditions on the approval of the permit application.

[736-051-0060](#)

Application for Archaeological Permit

(1) OAR 736-051-0060 through 736-051-0090 establish procedures the Director of the Parks and Recreation Department, or their designee, shall use in issuing archaeological permits on public and private lands.

(2) Per ORS 192.345, information pertaining to the location of archaeological objects and sites are confidential and exempt from public disclosure. Please consider ethical responsibilities towards confidential information about traditional or sacred places and practices, or other sensitive information associated with archaeological sites and objects. Requirements outside those identified in this rule from local processes or other rules that contradict any of the roles and responsibilities herein, are not enforceable under this process in part due to this exemption.

[736-051-0070](#)

Archaeological Permits: Definitions

As used in OAR 736-051-0080 through 736-051-0090 unless the context requires otherwise:

(1) "Alter" means to disturb or remove any part of an archaeological site.

(2) "Applicant" means the qualified archaeologist (as defined in ORS 390.235) and the institution/company they represent responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235.

(3) "Appropriate Tribe" means the Indian tribe or tribes designated by the LCIS.

(4) "Archaeological Excavation" requires a permit on non-federal public and private lands and means to apply archaeological methods to break the ground surface to remove any buried or embedded archaeological object, feature, or non-archaeological material for the purposes of performing archaeological research.

(5) "Archaeological Object" has the meaning in ORS 358.905.

(6) "Archaeological Permit" means the permit issued under ORS 390.235.

(7) "Archaeological Site" has the meaning in ORS 358.905.

(8) "Burial" has the meaning in ORS 358.905.

(9) "Conditions" means any additional permit terms proposed for property access, research, notifications, field methods, analyses, monitoring, curation, and reporting, by an entity with approval authority.

(10) "Curatorial Facility" means either:

(a) The "State Designated Curatorial Facility", which is the UOMNCH; or

(b) "Alternate Curatorial Facility" which means the institution approved by UOMNCH and appropriate tribes meeting standards in ORS 390.235.

(11) "Destroy" means to injure in entirety.

(12) "Entity with Approval Authority" means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department, the landowner or land managing agency, the Legislative Commission on Indian Services and the most appropriate tribe(s).

(13) "Exploratory Excavation" is a type of archaeological excavation inventory method for identifying the presence or absence of a buried archaeological object or site, not visible from the surface, requiring a permit on non-federal public lands.

(14) "Funerary object" has the meaning in ORS 358.905.

(15) Historic Cemetery has the meaning given in ORS 97.772.

(16) "Human Remains" has the meaning given that term in ORS 358.905.

(17) "Injure" means to inflict damage of any kind.

(18) "Object of Cultural Patrimony" has the meaning given that term in ORS 358.905

(19) "Person" means an individual, a partnership, a public or private corporation, an unincorporated association or any other legal entity. "Person" includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(20) "Private Lands" means lands within the State of Oregon owned by a person, except "Private lands" does not include federal lands or nonfederal public lands, or any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(21) "Public Lands" means any lands owned by the State of Oregon, a city, county, district or municipal or public corporation in Oregon.

(22) "Qualified Archaeologist" means a person that meets the ORS 390.235 education, fieldwork, laboratory or curation, and reporting experience specific to archaeological excavation and analysis, supporting their ability to comply with any terms and conditions of a State of Oregon issued archaeological permit. The "Qualified Archaeologist" must be able to demonstrate that they:

(a) Possess a post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

(i) Where "Post-Graduate Degree" means a Master of Arts (MA), Master of Science (MS), or Doctor of Philosophy (PhD) degree from an accredited member of a state system of higher education; or from an

accredited academic or higher education institution, through an accredited program in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology.

(ii) Where “specialization in archaeology” means the program, coursework, and graduate faculty adhere to departmental requirements for the equivalency of a post-graduate degree in the discipline of archaeology, and the applicable curriculum was appropriately accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education.

(iii) Where “archaeology” means the study of the past based on: archaeological method and theory, the analysis or patterning of any surviving archaeological objects, sites, or features, anthropogenic soils, ethnographic, historic, or oral traditions, and any associated contextual relationships documenting the use of a place or places by people individually or collectively for any amount of time. Archaeology is a subfield of Anthropology.

(iv) Where “documented equivalency” means an official record of a post-graduate degree from a foreign educational institution deemed equivalent to that gained in conventional/accredited U.S. education programs comparable to a MA, MS, or PhD, with a specialization in archaeology.

(b) Have twelve weeks (480 hours) of supervised experience in basic archaeological field research, including both survey and excavation, and four weeks (160 hours) of archaeological laboratory analysis or curating;

(i) Where supervised archaeological field research means at the professional level, as opposed to that obtained as a volunteer, or for undergraduate or graduate school credit.

(ii) Where 480 hours of both survey and excavation means a minimum of 240 hours each.

(c) Have designed and executed an archaeological study, as evidenced by a MA or MS thesis, PhD dissertation, peer reviewed publication, or report equivalent in scope and quality dealing with archaeological field research, of which they are the sole, or primary/lead author.

(i) Where “archaeological field research” means hands-on analysis of a professionally excavated archaeological collection or a portion of a collection from data recovery or test excavations in an archaeological site prior to or after curation at an Oregon “State Designated”, “Alternate Curatorial Facility”, or federally approved facility.

(A) Where the collection consists of archaeological objects and associated data, such as excavation level forms, field maps, catalogs of archaeological objects, archaeological object inventories, collected samples, and photographs, conveying overall provenience.

(ii) Where being the “sole author” unequivocally demonstrates the “Qualified Archaeologist” designed and executed the archaeological study.

(iii) Where a primary/lead author can clearly demonstrate their specific contribution evidencing they were principally responsible for designing and executing the archaeological study.

(23) “Recognized Educational Institution” means:

(A) An accredited member of a state system of higher education; or

(B) An accredited academic or higher education institution with an accredited curriculum in anthropology specializing in archaeology, or related field.

(24) “Recognized Scientific Institution” means a chartered museum, organization, or society with a commitment to the scientific method.

(25) “Remove” means taking any material, whether archaeological or not, embedded in or on the surface, or under the surface of the ground.

(26) “Sacred object” has the meaning given that term in ORS 358.905.

(27) “Tribal Coordination” means a bilateral process of discussion, cooperation, and decision-making about the proposed investigation to assist with the development of the archaeological permit research design.

[736-051-0080](#)

Archaeological Permits: Process for Applying for an Archaeological Permit on Public Lands

(1) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public lands any material of an archaeological, historical, prehistorical, or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department.

(2) An archaeological permit may be issued to:

(a) A qualified archaeologist in the employ of a person conducting an excavation, examination or gathering of archaeological objects for the benefits of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) A qualified archaeologist to salvage archaeological objects from unavoidable destruction; or

(c) A qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740.

(3) A qualified archaeologist who desires an archaeological permit pursuant to ORS 390.235 must submit an application to the Oregon Parks and Recreation Director or their designee. The application must be complete and include:

(a) A map, such as a USGS 7.5 minute topographic at 1:24,000 scale, that enables the landowner or land managing agency, SHPO, LCIS, and the appropriate Indian tribe(s) to clearly understand the exact location of the archaeological investigation;

(b) A research design that explicitly develops the rationale behind the proposed archaeological investigation. The research design supports the applicant’s understanding of appropriate archaeological methods, theoretical paradigms, analyses, curation, laws, anticipated results, and an understanding of the context of place through time. Tribal coordination will assist in the development of the research design which includes background information from any pertinent publications, gray literature, informants, tribes, ethnographies, historic properties of religious and cultural significance, traditional cultural properties, documented archaeological objects and sites, historic documents or National Register bulletins relevant to the objectives of the archaeological investigation and its location. The

research design includes appropriate field and analytical methods to achieve any research objectives based on informed expectations, and is part of the terms of an issued permit;

- (c) The name and current contact information of the landowner or land managing agency;
- (d) The State designated or approved alternate curation facility for archaeological objects, field forms, photographs, and other attendant data from the proposed archaeological investigation;
- (e) A list of any tribes engaged in tribal coordination prior to submitting the archaeological permit application;
- (f) A statement from the applicant disclosing any prior state or federal archaeological law violations;
- (g) A list of all open archaeological permits issued to the applicant still pending;
- (h) A list of any outstanding archaeological permits from the past ten years;
- (i) As applicable, a contingency plan for any unanticipated discoveries of archaeological objects or sites during any stage of a project or undertaking.

(4) Upon receipt of a complete application, the Director or their designee, shall determine whether public lands, as defined in OAR 736-051-0070(16), are involved.

(5) In consultation with the LCIS, the SHPO shall identify the appropriate tribe(s) with review authority over the archaeological permit application.

(a) In the event LCIS is not able to respond within 48 hours, SHPO will designate the most appropriate tribes based on past permits issued in the vicinity.

(6) The SHPO shall provide the complete application to entities with approval authority for review.

(a) Entities with approval authority have 30 calendar days from the date the application is sent to respond with their approval, approval with conditions, or objection. No response within 30-days means no conditions or objections were submitted to SHPO. SHPO shall send copies of all responses to the applicant;

(b) Before issuing a permit, SHPO shall review any conditions to be added to the issued permit, or objections received from entities with review authority;

(c) At the request of any tribe with review authority over a permit application, the applicant shall continue to coordinate with them during the 30-day review period. Tribal coordination may include, but is not limited to a discussion of the proposed archaeological investigations, research design, permit terms or conditions, reporting, tribal monitoring of the permit work, curation, inadvertent discovery contingency plans during the archaeological investigations, or any associated project design or development.

(7) Any person or entity who post SHPO and appropriate tribe clearance review discovers an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony, may request an expedited 48-hour permit review. The request may be granted if the Director or their designee, in coordination with entities with approval authority determine the 30-day permit review period of this rule will result in an undue risk to public health, life or safety, or

an undue threat to the archaeological object, site, human remains, burial, funerary object, sacred object, or object of cultural patrimony. Examples of situations creating undue risk to public health, life or safety include: hazardous material spills, breach of regional flood control facilities, and pipeline failures. Examples of creating undue threat to an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony include: erosion, susceptibility to theft, prolonged exposure to the elements, and proposed construction related activities.

(a) If the Director or their designee determines that an expedited review request is warranted, the following procedures apply:

(i) The applicant shall submit an expedited permit application for the Director or their designee to send out to entities with approval authority for review;

(ii) During the following 48 hours (excluding Saturday, Sunday, and any State, Federal, or Tribal holidays), entities with approval authority may respond to the permit application with their approval, approval with conditions, or object. No response within 48 hours means the entity with approval authority did not condition or object. If any entity with approval authority objects in writing to an expedited review, the director or their designee will not proceed with the expedited review;

(iii) The applicant may proceed when the permit is issued.

(b) For the purposes of this section, excluding burials, funerary objects, sacred objects, or any objects of cultural patrimony, expedited 48-hour permit reviews are only available if prior review by the most appropriate tribes, and SHPO has occurred.

(8) After considering the application, maps, research design, and recommendations for conditions, or objections received by entities with approval authority during consultation, the Director or their designee may issue the permit without conditions, issue the permit with conditions, or deny the permit. The permit does not relieve the applicant of compliance with other federal or state requirements, including, but not limited to, ORS 97.740 to 97.760, 358.905 to 358.961, and 390.235.

(9) The applicant and entities with review authority will receive a copy of the approved signed permit from the Director or their designee.

(10) All work under a permit issued by the Department shall be put on hold in the event human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered during the investigation, including post-fieldwork curation processing. For such discoveries, the permit holder must contact the LCIS, appropriate tribes, Oregon State Police, and SHPO.

(11) Archaeological permits may be amended according to the process developed by the Director or their designee in coordination with Oregon Tribes.

[736-051-0090](#)

Archaeological Permits: Process for Applying for an Archaeological Permit on Private Lands

(1) A person may not excavate, injure, destroy, or alter an archeological site or object, or remove an archeological object from private lands in Oregon unless that activity is authorized by a permit issued pursuant to this rule:

- (a) Permits on private lands will not be required for exploratory excavation to determine the presence of an archaeological site;
- (b) If an archaeological site is identified, all excavation must stop and the site will be recorded on a State of Oregon Archaeological Site Record and submitted to SHPO.
- (i) If additional excavation is necessary to establish the boundary of the site, complete the exploratory probe, or conduct further archaeological investigations of the site, it will require a permit issued under this rule.
- (2) A person who desires an archaeological permit on private lands pursuant to ORS 358.920(1)(a) and 390.235 must submit a request to the Director or their designee:
- (a) The application must be complete and meet the requirements of the public lands rule section OAR 736-051-0080(3). In addition, an application for an archaeological permit on private lands must be accompanied by a copy of the landowner's written permission pursuant to ORS 358.920(5), and a written statement concerning the disposition of any recovered archaeological objects not covered by 358.920(4)(b);
- (b) The archaeological permit process for private lands includes the same processes as those found in OAR 736-051-0080 (2-11) relating to permits on public lands.
- (3) Unless authorized by ORS 97.750, an archaeological permit on private lands shall not be issued for burials, human remains, funerary objects, sacred objects, or objects of cultural patrimony.
- (4) Disputes shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.
- (5) Archaeological permits may be amended according to the process developed by the Director or their designee in coordination with Oregon Tribes.

9a Attachment B: Clean Copy of Current Rules

[Parks and Recreation Department](#)

[Chapter 736](#)

Division 51

ARCHAEOLOGICAL PERMITS

[736-051-0000](#)

Dispute Resolution Process

(1) OAR 736-051-0000 through 736-041-0050 establish procedures the Oregon Parks and Recreation Department shall use in resolving a dispute over:

(a) The issuance of an archaeological permit pursuant to ORS 390.235;

(b) Curation facilities for archaeological objects uncovered pursuant to a permit issued under ORS 390.235;

(c) The disposition of human remains, associated material objects, or funerary objects as identified in ORS 97.750.

(2) It is the policy of the Oregon Parks and Recreation Department and the Oregon State Historic Preservation Office to use best efforts to protect the confidentiality of information pertaining to the location of archaeological sites that may be disclosed during the dispute resolution process.

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 390.124 & 390.240

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0010](#)

Definitions

As used in OAR 736-051-0000 through 736-051-0050, unless the context requires otherwise:

(1) "Arbitration" means a process whereby a neutral third party or panel considers the facts and arguments presented by disputing parties and renders a decision.

(2) "Mediation" means a process in which a third party assists and facilitates two or more parties to a dispute in reaching a mutually acceptable resolution of the dispute.

(3) "Negotiation" means an informal process by which an attempt is made by disputing parties to resolve the dispute without the need for mediation or arbitration.

(4) "Entity with Approval Authority" means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department, an appropriate Indian tribe, the Oregon State Museum of Anthropology, the state agency or local governing body charged with management of the public land in question.

(5) "Applicant" means a person who is applying for an archaeological permit pursuant to ORS 390.235.

- (6) "Recognized Curatorial Facility" means the Oregon State Museum of Anthropology (OSMA).
- (7) "Alternate Curatorial Facility" can mean one or more of the following:
- (a) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued under ORS 390.905 et seq., if approved by OSMA with the concurrence of the appropriate Indian tribe;
 - (b) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe;
 - (c) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide an inventory of material to OSMA within six months of collection.
- (8) "Human Remains" has the meaning given that term in ORS 358.905.
- (9) "Funerary Objects" have the meanings given that term in ORS 358.905.
- (10) "Associated Material Objects" has the same meaning as section (9) of this rule.
- (11) "Burial Goods" as found in ORS 309.240(1)(b), has the same meaning as section (9) of this rule.
- (12) "Sacred Object" has the meaning given that term in ORS 358.905.
- (13) "Qualified Archaeologist" has the meaning given that term in ORS 390.235.
- (14) "Professional Archaeologist" has the meaning given that term in ORS 97.740(6).
- (15) "Archaeological Permit" means the permit issued under ORS 390.235.
- (16) "Archaeological Object" has the meaning given that term in ORS 358.905.
- (17) "Indian Tribe" has the meaning given in ORS 97.740(4).
- (18) "Appropriate Indian Tribe" means the Indian tribe designated by the Commission on Indian Services as having the greatest interest in the subject matter relating to the dispute.

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 390.124 & 390.240

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0020](#)

Disputes Covered by the Dispute Resolution Process

These rules cover disputes among or between: Entities that have statutory authority to approve or disapprove an archaeological permit, or to approve or disapprove a curatorial facility to house archaeological objects, or to approve or disapprove the disposition of human remains, associated material objects, or funerary objects; and applicants for such permits, facilities or dispositions:

- (1) Disputes may arise among or between approving entities and applicants over the terms, conditions, provisions or for approval or disapproval of an archaeological permit where:

- (a) An entity with approval authority over an application for a permit withholds that approval;
- (b) An entity with approval authority disagrees over the terms, conditions or provisions of the permit;
- (c) The applicant disagrees with the terms, conditions or provisions of the permit as established by an entity with approval authority.

(2) Disputes may arise over the selection of curatorial facilities to house archaeological objects uncovered on public lands where:

- (a) An entity that has approval authority over the choice of a recognized or alternate curatorial facility withholds that approval;
- (b) The applicant disagrees with the choice of a recognized or alternate curatorial facility as made by an entity with approval authority.

(3) Disputes may arise over the disposition of human skeletal remains, associated material objects, or funerary objects as described in ORS 97.750 where:

- (a) The appropriate Indian tribe has denied consent within 30 days of the mailing of the request for consent;
- (b) The professional archaeologist proposing the excavation (or the company or agency the archaeologist represents), disagrees with the terms, conditions or provisions of the Indian tribe's written consent, if any.

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 97.750 & 390.235

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0030](#)

Informal Dispute Resolution (Negotiation)

(1) If the permit applicant or an entity with approval authority over an application for a permit objects to the approval or disapproval of a permit or any of its terms, conditions or provisions, it shall notify the State Historic Preservation Office (SHPO) in writing.

(2) The SHPO shall initiate an informal process by which the disputing parties shall attempt to reach agreement. By mutual agreement, the disputing parties may include the SHPO or other third parties in this process, but they shall not be compensated. It is recommended that the informal dispute resolution process be completed within 30 days.

(3) At any time, a disputing party can terminate the informal dispute resolution process and submit the dispute to mediation.

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 390.240

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0040](#)

Mediation

- (1) The entities with approval authority in consultation with the staff of the Dispute Resolution Commission (DRC), shall compile and maintain a list of potential mediators.
- (2) Within ten calendar days of receipt of a written request to mediate, the SHPO shall provide the disputing parties with a list of at least three potential mediators, including written credentials of each one.
- (3) Within ten calendar days of receipt of the list of potential mediators, each disputing party shall notify the SHPO if one or more of the mediators would be acceptable.
- (4) Disputing parties may jointly interview potential mediators. All parties shall agree on the choice of mediator within five working days after the list of acceptable mediators is forwarded to SHPO.
- (5) The mediator shall assist the disputing parties in preparing for the negotiation. Such preparations shall include:
 - (a) A statement of the issues to be mediated;
 - (b) A list of the parties who will participate in the mediation;
 - (c) An estimated completion date for the mediation process. By mutual consent, deadlines may be established for ending or continuing the mediation process;
 - (d) A statement of what shall constitute agreement. An understanding of what constitutes agreement shall include adequate time for each disputing party's decision-making body to ratify any tentative agreement reached by the mediator and the disputing parties;
 - (e) Provisions for protecting confidential information about site location, traditional or sacred practices, or other sensitive information associated with archaeological sites and objects;
 - (f) Provisions for payment of the mediator's services, if the services are not voluntary;
 - (g) Any other procedural matters the disputing parties determine need resolution before mediation begins on the substantive issues.

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 390.240

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0050](#)

Arbitration

- (1) If the mediation does not yield a result satisfactory to all parties, the disputing parties shall notify the SHPO in writing, and the dispute shall proceed to arbitration.
- (2) The SHPO shall notify each of the following of the need to designate one representative to serve on an arbitration panel:

- (a) The State Historic Preservation Office;
 - (b) The Commission on Indian Services;
 - (c) The Oregon State Museum of Anthropology;
 - (d) The governing bodies of the federally-recognized Indian tribes;
 - (e) The Dispute Resolution Commission.
- (3) All panel members shall be designated within ten calendar days of receipt of SHPO's notification.
- (4) By consensus, the panel shall:
- (a) Choose a chair who shall be responsible for scheduling arbitration sessions, notifying all parties with standing in the dispute, and convening the arbitration session; and
 - (b) Establish the procedural framework for the arbitration.
- (5) The issues to be arbitrated are limited to those which could not be resolved by the mediation process.
- (6) Any party that declines to participate in the mediation or arbitration process waives its right to approve the permit application, or to set terms, conditions or provisions on the approval of the permit application.
- (7) The decision of the arbitration panel may be appealed pursuant to ORS 36.365.

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 390.240

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0060](#)

Application for Archaeological Permit

- (1) OAR 736-051-0060 through 736-051-0090 establish procedures the Director of the Parks and Recreation Department shall use in issuing archaeological permits on public and private lands.
- (2) It is the policy of the Oregon Parks and Recreation Department (OPRD) and the Oregon State Historic Preservation Office (SHPO) that information pertaining to the location of archaeological sites, cairns, burials, human remains, funerary objects, sacred objects or objects of cultural patrimony is confidential information that will be disclosed only as required by law.

Statutory/Other Authority: ORS 390.235(1)(d)

Statutes/Other Implemented: ORS 390.235

History:

PR 1-1995, f. & cert. ef. 1-3-95

[736-051-0070](#)

Archaeological Permits: Definitions

As used in OAR 736-051-0060 through 736-051-0090 unless the context requires otherwise:

- (1) "Alter" means to disturb or remove any part of an archaeological site or a feature within an archaeological site.
- (2) "Applicant" means the person who is applying for an archeological permit pursuant to ORS 390.235.
- (3) "Appropriate Indian Tribe" means the Indian tribe designated by the Commission on Indian Services as having the greatest interest in the permit application.
- (4) "Archaeological Site" means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects and the contextual associations of the objects with:
 - (a) Each other; or
 - (b) Biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.
- (5) "Archaeological Object" means an object that:
 - (a) Is at least 75 years old;
 - (b) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and
 - (c) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.
- (6) "Archaeological Permit" means the permit issued under ORS 390.235.
- (7) "Artifact" means the same as "Archaeological Object."
- (8) "Associated Material Objects" means the same as "Funerary Object."
- (9) "Burial Goods," as found in ORS 390.240(1)(b), means the same as "Funerary Objects."
- (10) "Curatorial Facility" means either a:
 - (a) "Recognized" curatorial facility, which is the Oregon State Museum of Anthropology (OSMA); or
 - (b) "Alternate" curatorial facility, which is defined as follows:
 - (A) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued, if approved by OSMA with the concurrence of the appropriate Indian tribe; or
 - (B) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe; or

(C) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide a material inventory to OSMA within six months of collection.

(11) "Excavate" means to break the ground surface to remove any artifact or to remove an embedded artifact, feature or non-artifactual material in an archaeological site for the purposes of performing anthropological research.

(12) "Exploratory Excavation" means digging into or otherwise disturbing the earth to determine whether or not an archaeological site exists at the excavation.

(13) "Funerary Objects" means any artifacts or objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with the individual remains either at the time of death or later.

(14) "Human Remains" means the physical remains of a human body, following death, including, but not limited to bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.

(15) "Object of Cultural Patrimony" means:

(a) An object having ongoing historical, traditional or cultural importance central to the native Indian group or culture itself, rather than property owned by an individual native Indian, and which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe. The object shall have been considered inalienable by the native Indian group at the time the object was separated from such group;

(b) Does not mean unassociated arrowheads, baskets or stone tools for portions of arrowheads, baskets or stone tools.

(16) "Person" means an individual, a partnership, a public or private corporation, an unincorporated association or any other legal entity. "Person" includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(17) "Private Lands" means lands within the State of Oregon owned by a person, except "Private lands" does not include federal lands or nonfederal public lands, or any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(18) "Public Lands" means any lands owned by the State of Oregon, a city, county, district or municipal or public corporation in Oregon.

(19) "Qualified Archeologist" means a person who has the following qualifications:

(a) A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

(b) Twelve weeks of supervised experience in basic archaeological field research, including both survey and excavation and four weeks of laboratory analysis or curating; and

(c) Has designed and executed an archaeological study, as evidenced by a Master of Arts or Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field research.

(20) "Recognized Educational Institution" means:

(a) An accredited member of a state system of higher education; or

(b) An accredited academic or higher education institution with an accredited program in anthropology.

(21) "Recognized Scientific Institution" means a chartered museum, organization or society with a commitment to the scientific method.

(22) "Removal" means taking any artifact or non-artifactual remains on, imbedded in, or under the surface of the ground.

(23) "Sacred Object" means an archaeological object or other object that:

(a) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy;

(b) Is used in connection with the religious or spiritual service or worship of a deity or spirit power; or

(c) Was or is needed by traditional native Indian religious leaders for the practice of traditional native Indian religion.

Statutory/Other Authority: ORS 390.235(1)(d)

Statutes/Other Implemented: ORS 358.920 & 390.235

History:

PRD 1-1999, f. 3-2-99, cert. ef. 3-3-99

PR 1-1997, f. & cert. ef. 3-31-97

PR 1-1995, f. & cert. ef. 1-3-95

[736-051-0080](#)

Archaeological Permits: Process for Applying for an Archaeological Permit on Public Lands

(1) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public lands any material of an archaeological, historical, prehistorical or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department.

(2) A person who is considering a ground-disturbing project on public lands should contact the appropriate Tribe to inquire about the presence of archaeological sites and objects in the project area.

(3) An archaeological permit may be issued to:

(a) A qualified archaeologist in the employ of a person conducting an excavation, examination or gathering of archaeological objects for the benefits of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) A qualified archaeologist to salvage archaeological objects from unavoidable destruction; or

(c) A qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740.

(4) A person who desires an archaeological permit pursuant to ORS 390.235 must submit an application to the Oregon Parks and Recreation Director or his or her designee. The application must be complete and be accompanied by:

(a) A map that clearly shows the location of the proposed work that enables the landowner or land managing agency, SHPO and the appropriate Indian tribe to clearly understand the location of the proposed action;

(b) A resume(s) or vita(s) for the person(s) in direct charge of field work. The resume or vita must demonstrate that the person(s) meets or exceeds the qualifications listed in OAR 736-051-0080(3);

(c) A research design that explicitly develops the rationale behind the proposed research, giving the theoretical orientation, justification for problem selection, logic and procedures for the research strategy. The design must define the universe of study, establish realistic minimal expectations and a realistic schedule of research and provide justified recovery procedures;

(d) The name, address and phone number of the landowner or land managing agency;

(e) A copy of the notice required under ORS 358.950(1), if the excavation is associated with a prehistoric or historic American Indian archaeological site;

(f) A curation facility for archaeological objects uncovered during the project.

(5) Upon receipt of a complete application, the Director or his or her designee shall determine whether public lands, as defined in OAR 736-051-0070(16), are involved.

(6) In consultation with the Commission on Indian Services, the SHPO shall identify the appropriate tribe to be mailed copies of the complete archaeological permit application.

(7) As soon as practicable, but generally not to exceed two working days, the SHPO shall mail copies of the complete application to the appropriate Indian tribe, if any, the land managing agency, Commission on Indian Services, Oregon State Museum of Anthropology, and the applicable local government planning department.

(8)(a) Before issuing a permit, the Director or his or her designee shall contact the appropriate Indian tribe, if any, the landowner or head of the land managing agency, the Director of the Oregon State Museum of Anthropology at the University of Oregon State Museum of Anthropology at the University of Oregon, the appropriate local planning commission, and the Commission on Indian Services;

(b) Notification shall consist of mailing the complete application and its attachments to appropriate state and local entities and the appropriate Indian tribe. The notification shall solicit comments, recommendations for conditions, or objections to the application. Notification letters shall include a highlighted confidentiality statement. Responses to the solicitation must be received within 30 calendar days of the date of the letter. SHPO shall send copies of all responses to the applicant;

(c) If the archaeological site in question is associated with a prehistoric or historic native Indian culture, the applicant shall consult with the appropriate Indian tribe during the 30 day period. At a minimum, consultation shall consist of meeting(s) satisfactory to the tribal governing body and/or its designee, and shall include discussion of the proposed work, archaeological permit terms or conditions, tribal

monitoring of the archaeological and project work, contingency plans for discovery of remains and artifacts during both archaeological work and project development, and curation of artifacts;

(d) If an entity listed in subsection (a) of this section makes any objection or requests a condition to the application, the applicant shall contact the entity and attempt to resolve the issue. If the objection or request for condition is resolved by the applicant and the entity, they shall notify the SHPO in writing of the resolution. If the applicant and the entity cannot resolve the objection or request for condition within the 30 calendar days allowed for comment on the permit application, the Director or his or her designee shall determine what effect, if any, the objection or proposed condition shall have on the permit application.

(9)(a) Notwithstanding the provisions of section (8) of this rule, any person or entity who discovered an archaeological or historic site or burial during construction may request an expedited consultation process. The request may be granted whenever the Director or his or her designee, in consultation with the parties listed in subsection (8)(a) of this rule, determines that the 30 day consultation period provided in subsection (8)(b) of this rule will result in extreme economic hardship to the person or entity making the request, or an undue risk to public health, life or safety, or an undue threat to the site or burial. Examples of situations creating undue risk to public health, life or safety include hazardous material spills, breach of regional flood control facilities, and pipeline failures.

(b) If the Director or his or her designee determines that an expedited consultation process is warranted, the following procedures apply:

(A) The applicant shall contact the Director or his or her designee by telephone and/or facsimile to provide the information described in sections (4) and (7) of this rule;

(B) During the following 48 hours (excluding Saturday, Sunday, and any legal or tribal holidays), the Director or his or her designee shall consult by telephone and/or facsimile with the persons or entities described in section (8) of this rule. If the head of the land managing agency or the tribal governing body of the appropriate Indian tribe objects in writing to an expedited review, the Director or his or her designee will not proceed with the expedited review;

(C) The applicant may proceed with approval from the Director or his or her designee, to be followed by written notice as provided in section (12) of this rule.

(c) For purposes of this section, "extreme economic hardship" means a quantifiable and verifiable expenditure or fiscal loss that is unreasonable for the requestor to bear under the circumstances, including but not limited to the following:

(A) The importance of the project or non-archaeological use that would be delayed during the consultation period;

(B) The additional costs that would be incurred during the consultation period;

(C) The total cost of the project;

(D) The degree to which expedited consultation could achieve the same protection of the site as consultation over the standard 30 day permit application review period;

(E) Whether the requestor reasonably could have avoided the additional costs by anticipating the need for a permit and consultation at an earlier time.

(10) After considering the application, maps, research design, vita and all comments, recommendations for conditions, or objections received by entities with approval authority during consultation, the Director or his or her designee may issue the permit without conditions, issue the permit with conditions or deny the permit. The permit does not relieve the applicant of compliance with other federal or state requirements, including, but not limited to, ORS 97.740 to 97.760, 358.905 to 358.955, and 390.235 to 390.240.

(11) For purposes of this rule, no permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe.

(12) The applicant and all parties defined in ORS 390.235(1)(f) shall be notified of the Director's decision by first class mail.

(13) Disputes among or between applicants and entities with approval authority shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.

(14) The permit issued by the Department shall be reviewed and may be suspended or revoked if human remains, funerary objects or sacred objects are encountered during an excavation.

Statutory/Other Authority: ORS 390.235 & 390.240

Statutes/Other Implemented: ORS 390.235

History:

PR 1-1995, f. & cert. ef. 1-3-95

[736-051-0090](#)

Archaeological Permits: Process for Applying for an Archaeological Permit on Private Lands

(1) A person may not knowingly and intentionally excavate, injure, destroy or alter an archeological site or object or remove an archeological object from private lands in Oregon unless that activity is authorized by a permit issued pursuant to this rule:

(a) Permits on private lands will not be required for exploratory excavation to determine the presence of an archaeological site;

(b) The provisions of this rule do not apply to a person who unintentionally discovers an archaeological object that has been exposed by the forces of nature and retains the object for personal use, except for sacred objects, human remains, funerary objects or objects of cultural patrimony;

(c) Collection of an arrowhead from the surface of private land is permitted if collection can be accomplished without the use of any tool.

(2)(a) It is strongly recommended that anyone considering a development project on private lands on previously undisturbed ground contact the SHPO and the appropriate Tribe(s) to determine whether archaeological sites and objects are likely to be present in the project area. This contact will reduce the chance that the project will be delayed due to discovery of an archaeological site;

(b) SHPO shall coordinate, along with the governing bodies of the Oregon Tribes and the CIS, joint efforts to create and disseminate informational materials that will be distributed to local governments, federal and state agencies, and permitting authorities on the requirements of ORS Chapters 97, 358 and 390, and these rules.

(3) A person who desires an archaeological permit to excavate or remove objects on private lands pursuant to ORS 358.920(1)(a) and 390.235 must submit a request to the Oregon State Parks and Recreation Director or his or her designee:

(a) The application must be complete and meet the requirements of the public lands rule section OAR 736-051-0080(4). In addition, an application for an archaeological permit on private lands must be accompanied by a copy of the landowner's written permission pursuant to ORS 358.920(5), and a written statement concerning the disposition of any recovered artifacts not covered by 358.920(4)(b);

(b) The archaeological permit process for private lands is the same as that found in OAR 736-051-0080(6), (7), (8), (9), (10), (12) and (14) relating to permits on public lands. The SHPO must be satisfied that reasonable concerns of the appropriate Tribe(s) have been addressed by the applicant.

(4) Upon receipt of an application, the Director or his or her designee may contact the landowner to verify the written permission, location and activities of the proposed activity.

(5) Unless authorized by ORS 97.750, an archaeological permit on private lands shall not be issued if the activity includes burials, funerary objects, or human remains.

(6) If an applicant disputes the permit conditions, or the Director's denial of a permit, the dispute shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.

Statutory/Other Authority: ORS 390.235 & 390.240

Statutes/Other Implemented: ORS 390.235

History:

[PRD 4-2017, minor correction filed 10/20/2017, effective 10/20/2017](#)

PR 1-1995, f. & cert. ef. 1-3-95

[Parks and Recreation Department](#)

[Chapter 736](#)

Division 51

ARCHAEOLOGICAL PERMITS

[736-051-0000](#)

Dispute Resolution Process

(1) [Oregon Administrative Rules \(OAR\)](#) 736-051-0000 through 736-~~051041~~-0050 establish procedures the Oregon Parks and Recreation Department shall use in resolving a dispute over:

(a) The issuance of an archaeological permit pursuant to [Oregon Revised Statute \(ORS\)](#)~~ORS~~ 390.235;

(b) Curation facilities for archaeological objects uncovered pursuant to a permit issued under ORS 390.235;

(c) The disposition of human remains, ~~associated material objects~~, or funerary objects as identified in ORS 97.750.

(2) ~~Throughout the dispute resolution process, it is the policy of the Oregon Parks and Recreation Department and the Oregon State Historic Preservation Office to use best efforts to protect the confidentiality of information pertaining to the location of archaeological sites and objects will that may be kept from public disclosure pursuant to disclosed during the dispute resolution process.~~

~~Statutory/Other Authority: ORS 192.345 and include provisions for protecting confidential information. 390.124 & 390.240~~

~~Statutes/Other Implemented: ORS 390.124 & 390.240~~

~~History:~~

~~PR 6-1994, f. & cert. ef. 4-22-94~~

[736-051-0010](#)

Dispute Resolution Definitions

As used in OAR 736-051-~~00200000~~ through 736-051-0050, unless the context requires otherwise:

(1) “Alternate Curatorial Facility” means the institution approved by the University of Oregon Museum of Natural and Cultural History (UOMNCH) incorporating the Oregon State Museum of Anthropology (OSMA), and appropriate tribes, meeting standards in ORS 390.235;

(a) Where materials pursuant to ORS 390.235(3)(b) are made available for nondestructive research by scholars;

(i) Where “Scholars” means but is not limited to: tribal members, traditional cultural practitioners, traditional cultural authorities, archaeologists, academic professionals, and students.

(2) “Applicant” means the qualified archaeologist (as defined in ORS 390.235) and the institution/company they represent responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235.

(3) “Appropriate Tribe” means the Indian tribe or tribes designated by the Legislative Commission on Indian Services (LCIS).

~~(4)~~ (1) “Arbitration” means a process whereby a neutral third party or panel considers the facts and arguments presented by disputing parties and renders a decision.

(5) “Archaeological Object” has the meaning given that term in ORS 358.905.

(6) “Archaeological Permit” means the permit issued under ORS 390.235.

(7) “Archaeological Site” has the meaning in ORS 358.905.

(8) “Burial” has the meaning given that term in ORS 358.905.

(9) “Conditions” means any additional permit terms proposed for property access, research, notifications, field methods, analyses, monitoring, curation, and reporting, by an entity with approval authority.

(10) “Entity with Approval Authority” means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department , the private landowner as applicable or land managing agency, the Legislative Commission on Indian Services (LCIS) and the most appropriate tribe(s).

(11) “Funerary Objects” have the meanings given that term in ORS 358.905.

(12) “Human Remains” has the meaning given that term in ORS 358.905.

(13) “Indian Tribe” has the meaning given in ORS 97.740.

~~(14)~~ (2) “Mediation” means a process in which a third party assists and facilitates two or more parties to a dispute in reaching a mutually acceptable resolution of the dispute.

~~(15)~~ (3) “Negotiation” means an informal process by which an attempt is made by disputing parties to resolve the dispute without the need for mediation or arbitration.

(16) “Object of Cultural Patrimony” has the meaning given that term in ORS 358.905

(17) “Qualified Archaeologist” means a person that meets ORS 390.235 education and experience criteria related to archaeological collection and excavation, as support of their ability to comply with terms and conditions of a State of Oregon issued archaeological permit.

~~(18) “Sacred object~~(4) “Entity with Approval Authority” means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department, an appropriate Indian tribe, the Oregon State Museum of Anthropology, the state agency or local governing body charged with management of the public land in question.

~~(5) “Applicant” means a person who is applying for an archaeological permit pursuant to ORS 390.235.~~

~~(6) "Recognized Curatorial Facility" means the Oregon State Museum of Anthropology (OSMA).~~

~~(7) "Alternate Curatorial Facility" can mean one or more of the following:~~

~~(a) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued under ORS 390.905 et seq., if approved by OSMA with the concurrence of the appropriate Indian tribe;~~

~~(b) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe;~~

~~(c) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide an inventory of material to OSMA within six months of collection.~~

~~(8) "Human Remains" has the meaning given that term in ORS 358.905.~~

~~(9) "State Designated Curatorial Facility" "Funerary Objects" have the meanings given that term in ORS 358.905.~~

~~(10) "Associated Material Objects" has the same meaning as section (9) of this rule.~~

~~(11) "Burial Goods" as found in ORS 309.240(1)(b), has the same meaning as section (9) of this rule.~~

~~(12) "Sacred Object" has the meaning given that term in ORS 358.905.~~

~~(13) "Qualified Archaeologist" has the meaning given that term in ORS 390.235.~~

~~(14) "Professional Archaeologist" has the meaning given that term in ORS 97.740(6).~~

~~(15) "Archaeological Permit" means the UOMNCH incorporating the OSMA permit issued under ORS 390.235.~~

~~(16) "Archaeological Object" has the meaning given that term in ORS 358.905.~~

~~(17) "Indian Tribe" has the meaning given in ORS 97.740(4).~~

~~(18) "Appropriate Indian Tribe" means the Indian tribe designated by the Commission on Indian Services as having the greatest interest in the subject matter relating to the dispute.~~

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 390.124 & 390.240

History:

PR 6-1994, f. & cert. ef. 4-22-94

[736-051-0020](#)

Disputes Covered by the Dispute Resolution Process

These rules cover disputes among or between persons or entities : ~~Entities~~ that have statutory authority to: approve or object to the issuance of ~~disapprove~~ an archaeological permit, ~~or to~~ approve or object to ~~disapprove~~ a proposed curatorial facility, ~~to house archaeological objects, or to~~ approve or object to ~~disapprove~~ the disposition of human remains, ~~associated material objects, or~~ funerary objects, sacred

~~objects, or objects of cultural patrimony; apply for ; and applicants for such permits, facilities or dispositions:~~

~~(1) Disputes may arise among or between approving entities and applicants over the terms, conditions, provisions or for approval or disapproval of an archaeological permit, where:~~

~~(1) After a permit application is sent out for review, including after its issuance, disputes may arise among or between entities with approval authority and applicants over any proposed terms, conditions, or objections where:~~

~~(a) An entity with approval authority over an application for a permit objects to its issuancewithholds that approval;~~

~~(i) Based on any proposed (b) An entity with approval authority disagrees over the terms or, conditions, or provisions of the permit;~~

~~(ii) Based on any prior failure of the e) The applicant to complydisagrees with the terms or, conditions or provisions of any previously issuedthe permit, from the time this rule is enacted.~~

~~(iii) Based on any unresolved comments to a report submitted for a previously issued permit.~~

~~(A) Where the as established by an entity with approval authority is able to include documentation supporting comments were requested and not addressed.~~

~~(iv) Based on a prior violation of ORS 390.235 by the applicant for failing to obtain a permit, from the time this rule is enacted.~~

~~(b) The applicant disagrees with any proposed terms or conditions of a permit;~~

~~(c) The applicant disagrees with an objection to their permit application.~~

(2) Disputes may arise over the selection of curatorial facilities ~~for to house~~ archaeological objects uncovered on public lands where:

(a) An entity that has approval authority over the choice of ~~ana-recognized or~~ alternate curatorial facility withholds that approval;

(b) The archaeological permit applicant disagrees with the choice of ~~ana-recognized or~~ alternate curatorial facility as made by an entity with approval authority.

(3) Disputes may arise over the disposition of human ~~skeletal~~ remains, ~~associated material objects, or~~ funerary objects, sacred objects, or objects of cultural patrimony as described in ORS 97.740. 750 ~~where:~~

~~(a) The appropriate Indian tribe has denied consent within 30 days of the mailing of the request for consent;~~

~~(b) The professional archaeologist proposing the excavation (or the company or agency the archaeologist represents), disagrees with the terms, conditions or provisions of the Indian tribe's written consent, if any.~~

Statutory/Other Authority: ORS 390.124 & 390.240

Statutes/Other Implemented: ORS 97.750 & 390.235

History:

~~PR 6-1994, f. & cert. ef. 4-22-94~~

[736-051-0030](#)

Informal Dispute Resolution (Negotiation)

(1) If the permit applicant or an entity with approval authority over an application for a permit objects to the approval or ~~objection~~~~disapproval~~ of a permit or any of its terms ~~or~~, conditions, ~~they or provisions~~, it shall notify the State Historic Preservation Office (SHPO) in writing.

(2) The SHPO shall initiate an informal process by which the disputing parties shall attempt to reach agreement. By mutual agreement, the disputing parties may include the SHPO or other third parties in this process, but they shall not be compensated. ~~The~~~~it is recommended that the~~ informal dispute resolution process ~~shall~~ be completed within ~~6030~~ days.

(3) At any time, a disputing party can terminate the informal dispute resolution process and submit the dispute to mediation ~~or withdraw the dispute by notifying all parties in writing~~.

Statutory/Other Authority: ~~ORS 390.124 & 390.240~~

Statutes/Other Implemented: ~~ORS 390.240~~

History:

~~PR 6-1994, f. & cert. ef. 4-22-94~~

[736-051-0040](#)

Mediation

(1) The entities with approval authority ~~in consultation with the staff of the Dispute Resolution Commission (DRC)~~, shall compile and maintain a list of potential mediators.

(2) Within ten calendar days of receipt of a written request to mediate, the SHPO shall provide the disputing parties with a list of at least three potential mediators, including written credentials of each one.

(3) Within ten calendar days of receipt of the list of potential mediators, each disputing party shall notify the SHPO if one or more of the mediators would be acceptable.

(4) Disputing parties may ~~jointly~~ interview potential mediators. All parties shall agree on the choice of mediator within five working days after the list of acceptable mediators is forwarded to SHPO.

(5) The mediator shall assist the disputing parties in preparing for ~~mediation~~~~the negotiation~~. Such preparations shall include:

(a) A statement of the issues to be mediated;

(b) A list of the parties who will participate in the mediation;

(c) An estimated completion date for the mediation process. By mutual consent, deadlines may be established for ending or continuing the mediation process;

(d) A statement of what shall constitute agreement. An understanding of what constitutes agreement shall include adequate time for each disputing party's decision-making body to ratify ~~a~~ tentative agreement reached by the mediator and the disputing parties;

(e) Throughout the dispute resolution process, the location of archaeological sites and objects will be kept from public disclosure pursuant to ORS 192.345, and include provisions~~Provisions~~ for protecting confidential information about ~~site location~~, traditional or sacred places and practices, or other sensitive information associated with archaeological sites and objects;

(f) Provisions for payment of the mediator's services, if the services are not voluntary;

(g) Any other procedural matters the disputing parties determine need resolution before mediation begins on the substantive issues.

~~Statutory/Other Authority: ORS 390.124 & 390.240~~

~~Statutes/Other Implemented: ORS 390.240~~

~~History:~~

~~PR 6-1994, f. & cert. ef. 4-22-94~~

[736-051-0050](#)

Arbitration

(1) If the mediation does not yield a result satisfactory to all parties, the disputing parties shall notify the SHPO in writing, and the dispute shall proceed to arbitration.

(2) The SHPO shall notify each of the following of the need to designate one representative to serve on an arbitration panel:

(a) The ~~SHPO~~State Historic Preservation Office;

(b) The ~~LCIS~~Commission on Indian Services;

(c) The ~~UOMNCH~~Oregon State Museum of Anthropology;

(d) The governing bodies of the federally-recognized Indian tribes;

~~(e) The Dispute Resolution Commission.~~

(3) All panel members shall be designated within ten calendar days of receipt of SHPO's notification.

(4) By consensus, the panel shall:

(a) Choose a chair who shall be responsible for scheduling arbitration sessions, notifying all parties with standing in the dispute, and convening the arbitration session; and

(b) Establish the procedural framework for the arbitration.

(5) The issues to be arbitrated are limited to those which could not be resolved by the mediation process.

(6) Any party that declines to participate in the mediation or arbitration process waives its right to approve the permit application, or to set ~~terms, conditions or provisions~~ on the approval of the permit application.

~~(7) The decision of the arbitration panel may be appealed pursuant to ORS 36.365.~~

~~Statutory/Other Authority: ORS 390.124 & 390.240~~

~~Statutes/Other Implemented: ORS 390.240~~

~~History:~~

~~PR 6-1994, f. & cert. ef. 4-22-94~~

[736-051-0060](#)

Application for Archaeological Permit

(1) OAR 736-051-0060 through 736-051-0090 establish procedures the Director of the Parks and Recreation Department, or their designee, shall use in issuing archaeological permits on public and private lands.

(2) ~~Per ORS 192.345, it is the policy of the Oregon Parks and Recreation Department (OPRD) and the Oregon State Historic Preservation Office (SHPO) that information pertaining to the location of archaeological sites, cairns, burials, human remains, funerary objects and sites are confidential and exempt from public disclosure. Please consider ethical responsibilities towards, sacred objects or objects of cultural patrimony is confidential information about traditional or sacred places and practices, or other sensitive information associated with archaeological sites and objects. Requirements outside those identified in this rule from local processes or other rules that contradict any of the roles and responsibilities herein, are not enforceable under this process in part due to this exemption that will be disclosed only as required by law.~~

~~Statutory/Other Authority: ORS 390.235(1)(d)~~

~~Statutes/Other Implemented: ORS 390.235~~

~~History:~~

~~PR 1-1995, f. & cert. ef. 1-3-95~~

[736-051-0070](#)

Archaeological Permits: Definitions

As used in OAR 736-051-~~00800060~~ through 736-051-0090 unless the context requires otherwise:

(1) "Alter" means to disturb or remove any part of an archaeological site, ~~or a feature within an archaeological site.~~

(2) "Applicant" means the qualified archaeologist (as defined in ORS 390.235) and the institution/company they represent responsible person who is applying for the terms and any conditions of an archaeological archeological permit pursuant to ORS 390.235.

(3) "Appropriate ~~Indian~~ Tribe" means the Indian tribe or tribes designated by the LCIS Commission on Indian Services as having the greatest interest in the permit application.

(4) "Archaeological Excavation" requires a permit on non-federal public and private Site" means a geographic locality in Oregon, including but not limited to submerged and submersible lands and means

~~to apply the bed of the sea within the state's jurisdiction, that contains archaeological objects and the contextual associations of the objects with:~~

~~(a) Each other; or~~

~~(b) Biotic or geological remains or deposits. Examples of archaeological methodsites include but are not limited to break the ground surface to remove any buried or embedded archaeological object, feature, or non-archaeological material for the purposes of performing archaeological researchshipwrecks, lithic quarries, house-pit villages, camps, burials, lithic scatters, homesteads and townsites.~~

~~(5) "Archaeological Object" has the meaning in ORS 358.905means an object that:~~

~~(a) Is at least 75 years old;~~

~~(b) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and~~

~~(c) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.~~

~~(6) "Archaeological Permit" means the permit issued under ORS 390.235.~~

~~(7) "Artifact" means the same as "Archaeological Site" has the meaning in ORS 358.905. Object."~~

~~(8) "Associated Material Objects" means the same as "Funerary Object."~~

~~(9) "Burial" has the meaning Goods," as found in ORS 358.905.390.240(1)(b), means the same as "Funerary Objects."~~

~~(9) "Conditions" means any additional permit terms proposed for property access, research, notifications, field methods, analyses, monitoring, curation, and reporting, by an entity with approval authority.~~

~~(10) "Curatorial Facility" means either:~~

~~(-a) The "State Designated Curatorial Facility", ÷~~

~~(a) "Recognized" curatorial facility, which is the UOMNCH; Oregon State Museum of Anthropology (OSMA); or~~

~~(b) "Alternate Curatorial Facility"—curatorial facility, which means the is defined as follows:~~

~~(A) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued, if approved by UOMNCH and OSMA with the concurrence of the appropriate tribes meeting standards in ORS 390.235. Indian tribe; or~~

~~(11) "Destroy" means to injure in entirety.~~

~~(B) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe; or~~

~~(C) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide a material inventory to OSMA within six months of collection.~~

~~(11) “Excavate” means to break the ground surface to remove any artifact or to remove an embedded artifact, feature or non-artifactual material in an archaeological site for the purposes of performing anthropological research.~~

~~(12) “Entity with Approval Authority” means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department, the landowner or land managing agency, the Legislative Commission on Indian Services and the most appropriate tribe(s).~~

~~(13) “Exploratory Excavation” is a type of archaeological excavation inventory method for identifying the presence or absence of a buried means digging into or otherwise disturbing the earth to determine whether or not an archaeological object or site, not visible from the surface, requiring a permit on non-federal public lands site exists at the excavation.~~

~~(14) “Funerary object” has the meaning in ORS 358.905.~~

~~(15) Historic Cemetery has the meaning given in ORS 97.772.~~

~~(16) “Human Remains” has the meaning given that term in ORS 358.905.~~

~~(17) “Injure” means to inflict damage of any kind.~~

~~(18) (13) “Funerary Objects” means any artifacts or objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with the individual remains either at the time of death or later.~~

~~(14) “Human Remains” means the physical remains of a human body, following death, including, but not limited to bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.~~

~~(15) “Object of Cultural Patrimony” has the meaning given that term in ORS 358.905 means:~~

~~(19(a) An object having ongoing historical, traditional or cultural importance central to the native Indian group or culture itself, rather than property owned by an individual native Indian, and which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe. The object shall have been considered inalienable by the native Indian group at the time the object was separated from such group;~~

~~(b) Does not mean unassociated arrowheads, baskets or stone tools for portions of arrowheads, baskets or stone tools.~~

~~(16) “Person” means an individual, a partnership, a public or private corporation, an unincorporated association or any other legal entity. “Person” includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.~~

~~(2017) “Private Lands” means lands within the State of Oregon owned by a person, except “Private lands” does not include federal lands or nonfederal public lands, or any lands the title to which is:~~

- (a) Held in trust by the United States for the benefit of any Indian tribe or individual;
- (b) Held by an Indian tribe or individual subject to a restriction by the United States against alienation.

~~(2118)~~ “Public Lands” means any lands owned by the State of Oregon, a city, county, district or municipal or public corporation in Oregon.

(22) “Qualified Archaeologist” means a person that meets the ORS 390.235 education, fieldwork, laboratory or curation, and reporting experience specific to archaeological excavation and analysis, supporting their ability to comply with any terms and conditions of a State of Oregon issued archaeological permit. The “Qualified Archaeologist” must be able to demonstrate that they:

(a) Possess a ~~(19)~~ “Qualified Archeologist” means a person who has the following qualifications:

~~(a)~~ A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

(i) Where “Post-Graduate Degree” means a Master of Arts (MA), Master of Science (MS), or Doctor of Philosophy (PhD) degree from an accredited member of a state system of higher education; or from an accredited academic or higher education institution, through an accredited program in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology.

(ii) Where “specialization in archaeology” means the program, coursework, and graduate faculty adhere to departmental requirements for the equivalency of a post-graduate degree in the discipline of archaeology, and the applicable curriculum was appropriately accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education.

(iii) Where “archaeology” means the study of the past based on: archaeological method and theory, the analysis or patterning of any surviving archaeological objects, sites, or features, anthropogenic soils, ethnographic, historic, or oral traditions, and any associated contextual relationships documenting the use of a place or places by people individually or collectively for any amount of time. Archaeology is a subfield of Anthropology.

(iv) Where “documented equivalency” means an official record of a post-graduate degree from a foreign educational institution deemed equivalent to that gained in conventional/accredited U.S. education programs comparable to a MA, MS, or PhD, with a specialization in archaeology.

(b) ~~Have twelve~~Twelve weeks (480 hours) of supervised experience in basic archaeological field research, including both survey and excavation, ~~and~~ four weeks (160 hours) of archaeological laboratory analysis or curating; ~~and~~

(i) Where supervised archaeological field research means at the professional level, as opposed to that obtained as a volunteer, or for undergraduate or graduate school credit.

(ii) Where 480 hours of both survey and excavation means a minimum of 240 hours each.

(c) ~~Have~~Has designed and executed an archaeological study, as evidenced by a MA or MS~~Master of Arts or Master of Science~~ thesis, PhD dissertation, peer reviewed publication, or report equivalent in scope and quality, dealing with archaeological field research, of which they are the sole, or primary/lead author.

(i) Where “archaeological field research” means hands-on analysis of a professionally excavated archaeological collection or a portion of a collection from data recovery or test excavations in an archaeological site prior to or after curation at an Oregon “State Designated”, “Alternate Curatorial Facility”, or federally approved facility.

(A) Where the collection consists of archaeological objects and associated data, such as excavation level forms, field maps, catalogs of archaeological objects, archaeological object inventories, collected samples, and photographs, conveying overall provenience.

(ii) Where being the “sole author” unequivocally demonstrates the “Qualified Archaeologist” designed and executed the archaeological study.

(iii) Where a primary/lead author can clearly demonstrate their specific contribution evidencing they were principally responsible for designing and executing the archaeological study.

(23) ~~(20)~~ “Recognized Educational Institution” means:

(Aa) An accredited member of a state system of higher education; or

(Bb) An accredited academic or higher education institution with an accredited ~~curriculum program~~ in anthropology specializing in archaeology, or related field.

(2421) “Recognized Scientific Institution” means a chartered museum, organization, or society with a commitment to the scientific method.

(25) ~~Remove22) “Removal”~~ means taking any material, whether archaeological or not, embedded in or on the surface artifact or non-artifactual remains on, imbedded in, or under the surface of the ground.

(2623) “Sacred Object” ~~means an archaeological object or other object~~ has the meaning given that term in ORS 358.905. ~~that:~~

(27) “Tribal Coordination” means a bilateral process of discussion, cooperation, and decision-making about the proposed investigation to assist with the development of the archaeological permit research design.

(a) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy;

(b) Is used in connection with the religious or spiritual service or worship of a deity or spirit power; or

(c) Was or is needed by traditional native Indian religious leaders for the practice of traditional native Indian religion.

Statutory/Other Authority: ORS 390.235(1)(d)

Statutes/Other Implemented: ORS 358.920 & 390.235

History:

PRD 1-1999, f. 3-2-99, cert. ef. 3-3-99

PR 1-1997, f. & cert. ef. 3-31-97

PR 1-1995, f. & cert. ef. 1-3-95

[736-051-0080](#)

Archaeological Permits: Process for Applying for an Archaeological Permit on Public Lands

(1) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public lands any material of an archaeological, historical, prehistorical, or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department.

~~(2) A person who is considering a ground-disturbing project on public lands should contact the appropriate Tribe to inquire about the presence of archaeological sites and objects in the project area.~~

~~(3) An archaeological permit may be issued to:~~

~~(a) A qualified archaeologist in the employ of a person conducting an excavation, examination or gathering of archaeological objects for the benefits of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;~~

~~(b) A qualified archaeologist to salvage archaeological objects from unavoidable destruction; or~~

~~(c) A qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740.~~

(34) A qualified archaeologist ~~person~~ who desires an archaeological permit pursuant to ORS 390.235 must submit an application to the Oregon Parks and Recreation Director or their ~~his or her~~ designee. The application must be complete and include ~~be accompanied by:~~

~~(a) A map, such as a USGS 7.5 minute topographic at 1:24,000 scale, that clearly shows the location of the proposed work~~ that enables the landowner or land managing agency, SHPO, LCIS, and the appropriate Indian tribe(s) to clearly understand the exact location of the archaeological investigation ~~proposed action;~~

~~(b) A research design that explicitly develops the rationale behind the proposed archaeological investigation. The research design supports the applicant's understanding of appropriate archaeological methods, theoretical paradigms, analyses, curation, laws, anticipated results, and an understanding of the context of place through time. Tribal coordination will assist in the development of the research design which includes background information from any pertinent publications, gray literature, informants, tribes, ethnographies, historic properties of religious and cultural significance, traditional cultural properties, documented archaeological objects and sites, historic documents or National Register bulletins relevant to the objectives of the archaeological investigation and its location. The research design includes appropriate field and analytical methods to achieve any research objectives based on informed expectations, and is part of the terms of an issued permit;~~

~~(c) A resume(s) or vita(s) for the person(s) in direct charge of field work. The resume or vita must demonstrate that the person(s) meets or exceeds the qualifications listed in OAR 736-051-0080(3);~~

~~(c) A research design that explicitly develops the rationale behind the proposed research, giving the theoretical orientation, justification for problem selection, logic and procedures for the research strategy. The design must define the universe of study, establish realistic minimal expectations and a realistic schedule of research and provide justified recovery procedures;~~

~~(d) The name, address and current contact information phone number~~ of the landowner or land managing agency;

~~(d) The State designated or approved alternate curation (e) A copy of the notice required under ORS 358.950(1), if the excavation is associated with a prehistoric or historic American Indian archaeological site;~~

~~(f) A curation facility for archaeological objects, field forms, photographs, and other attendant data from the proposed archaeological investigation;~~

~~(e) A list of any tribes engaged in tribal coordination prior to submitting the archaeological permit application;~~

~~(f) A statement from the applicant disclosing any prior state or federal archaeological law violations;~~

~~(g) A list of all open archaeological permits issued to the applicant still pending;~~

~~(h) A list of any outstanding archaeological permits from the past ten years;~~

~~(i) As applicable, a contingency plan for any unanticipated discoveries of archaeological objects or sites uncovered during any stage of a the project or undertaking.~~

~~(45) Upon receipt of a complete application, the Director or their his or her designee, shall determine whether public lands, as defined in OAR 736-051-0070(16), are involved.~~

~~(56) In consultation with the LCIS Commission on Indian Services, the SHPO shall identify the appropriate tribe(s) with review authority over to be mailed copies of the complete archaeological permit application.~~

~~(a) In the event LCIS is not able to respond within 48 hours, SHPO will designate the most appropriate tribes based on past permits issued in the vicinity.~~

~~(6) The SHPO shall provide (7) As soon as practicable, but generally not to exceed two working days, the SHPO shall mail copies of the complete application to the appropriate Indian tribe, if any, the land managing agency, Commission on Indian Services, Oregon State Museum of Anthropology, and the applicable local government planning department.~~

~~(8)(a) Before issuing a permit, the Director or his or her designee shall contact the appropriate Indian tribe, if any, the landowner or head of the land managing agency, the Director of the Oregon State Museum of Anthropology at the University of Oregon State Museum of Anthropology at the University of Oregon, the appropriate local planning commission, and the Commission on Indian Services;~~

~~(b) Notification shall consist of mailing the complete application to entities with approval authority for review.~~

~~(a) Entities with approval authority have and its attachments to appropriate state and local entities and the appropriate Indian tribe. The notification shall solicit comments, recommendations for conditions, or objections to the application. Notification letters shall include a highlighted confidentiality statement. Responses to the solicitation must be received within 30 calendar days from of the date the application is sent to respond with their approval, approval with conditions, or objection. No response within 30-~~

~~days means no conditions or objections were submitted to SHPO of the letter.~~ SHPO shall send copies of all responses to the applicant;

~~(b) Before issuing a permit, SHPO shall review any conditions to be added to the issued permit, or objections received from entities with review authority;~~

~~(c) At if the request of any tribe archaeological site in question is associated with review authority over a permit application prehistoric or historic native Indian culture, the applicant shall continue to coordinate consult with them the appropriate Indian tribe during the 30-day review period. Tribal coordination may At a minimum, consultation shall consist of meeting(s) satisfactory to the tribal governing body and/or its designee, and shall include, but is not limited to a discussion of the proposed work, archaeological investigations, research design, permit terms or conditions, reporting, tribal monitoring of the permit work, curation, inadvertent discovery contingency plans during the archaeological investigations, or any associated and project design or work, contingency plans for discovery of remains and artifacts during both archaeological work and project development, and curation of artifacts;~~

~~(7) Any (d) If an entity listed in subsection (a) of this section makes any objection or requests a condition to the application, the applicant shall contact the entity and attempt to resolve the issue. If the objection or request for condition is resolved by the applicant and the entity, they shall notify the SHPO in writing of the resolution. If the applicant and the entity cannot resolve the objection or request for condition within the 30 calendar days allowed for comment on the permit application, the Director or his or her designee shall determine what effect, if any, the objection or proposed condition shall have on the permit application.~~

~~(9)(a) Notwithstanding the provisions of section (8) of this rule, any person or entity who post SHPO and appropriate tribe clearance review discovers an archaeological object, site, human remains, burial, discovered an archaeological or historic cemetery, funerary object, sacred object, or object of cultural patrimony, site or burial during construction may request an expedited 48-hour permit review consultation process. The request may be granted if whenever the Director or their his or her designee, in coordination consultation with entities with approval authority determinethe parties listed in subsection (8)(a) of this rule, determines that the 30-day permit review consultation period provided in subsection (8)(b) of this rule will result in extreme economic hardship to the person or entity making the request, or an undue risk to public health, life or safety, or an undue threat to the archaeological object, site, human remains, site or burial, funerary object, sacred object, or object of cultural patrimony. Examples of situations creating undue risk to public health, life or safety include: hazardous material spills, breach of regional flood control facilities, and pipeline failures. Examples of creating undue threat to an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony include: erosion, susceptibility to theft, prolonged exposure to the elements, and proposed construction related activities.~~

~~(ab) If the Director or their his or her designee determines that an expedited review request consultation process is warranted, the following procedures apply:~~

~~(iA) The applicant shall submit an expedited permit application for the contact the Director or their his or her designee by telephone and/or facsimile to send out to entities with approval authority for review provide the information described in sections (4) and (7) of this rule;~~

~~(iiB)~~ During the following 48 hours (excluding Saturday, Sunday, and any State, Federal, legal or Tribal/tribal holidays), entities with approval authority may respond to the permit application with their approval, approval with conditions, or object. No response within 48 hours means the entity with approval authority did not condition or object. If any entity with approval authority ~~Director or his or her designee shall consult by telephone and/or facsimile with the persons or entities described in section (8) of this rule. If the head of the land managing agency or the tribal governing body of the appropriate Indian tribe~~ objects in writing to an expedited review, the director ~~Director~~ or their ~~his or her~~ designee will not proceed with the expedited review;

~~(iiiC)~~ The applicant may proceed when the permit is issued ~~with approval from the Director or his or her designee, to be followed by written notice as provided in section (12) of this rule.~~

~~(be)~~ For the purposes of this section, excluding burials, funerary objects, sacred objects, “extreme economic hardship” means a quantifiable and verifiable expenditure or any objects ~~fiscal loss that is unreasonable for the requestor to bear under the circumstances, including but not limited to the following:~~

~~(A)~~ The importance of cultural patrimony, ~~the project or non-archaeological use that would be delayed during the consultation period;~~

~~(B)~~ The additional costs that would be incurred during the consultation period;

~~(C)~~ The total cost of the project;

~~(D)~~ The degree to which expedited 48-hour ~~consultation could achieve the same protection of the site as consultation over the standard 30 day permit~~ reviews are only available if prior ~~application~~ review period;

~~(E)~~ Whether the requestor reasonably could have avoided the additional costs by the most appropriate tribes, and SHPO has occurred ~~anticipating the need for a permit and consultation at an earlier time.~~

~~(8)10~~ After considering the application, maps, research design, vita ~~and all comments,~~ recommendations for conditions, or objections received by entities with approval authority during consultation, the Director or their ~~his or her~~ designee may issue the permit without conditions, issue the permit with conditions, or deny the permit. The permit does not relieve the applicant of compliance with other federal or state requirements, including, but not limited to, ORS 97.740 to 97.760, 358.905 to 358.961 ~~1955,~~ and 390.235 ~~to 390.240.~~

~~(9)11~~ For purposes of this rule, no permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe.

~~(12)~~ The applicant and all parties defined in ORS 390.235(1)(f) ~~shall be notified of the Director’s decision by first class mail.~~

~~(13)~~ Disputes among or between applicants and entities with review ~~approval~~ authority will receive a copy of the approved signed permit from the Director or their designee ~~shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.~~

~~(10) All work under a(14) The permit issued by the Department shall be put on hold in the event reviewed and may be suspended or revoked if human remains, funerary objects, or sacred objects, or objects of cultural patrimony are encountered during the investigation, including post-fieldwork curation processing. For such discoveries, the permit holder must contact the LCIS, appropriate tribes, Oregon State Police, and SHPO an excavation.~~

~~(11) Archaeological permits may be amended according to the process developed by the Director or their designee in coordination with Oregon Tribes.~~

~~Statutory/Other Authority: ORS 390.235 & 390.240~~

~~Statutes/Other Implemented: ORS 390.235~~

~~History:~~

~~PR 1-1995, f. & cert. ef. 1-3-95~~

[736-051-0090](#)

Archaeological Permits: Process for Applying for an Archaeological Permit on Private Lands

~~(1) A person may not knowingly and intentionally excavate, injure, destroy, or alter an archeological site or object, or remove an archeological object from private lands in Oregon unless that activity is authorized by a permit issued pursuant to this rule:~~

~~(a) Permits on private lands will not be required for exploratory excavation to determine the presence of an archaeological site;~~

~~(b) If an archaeological site is identified, all excavation must stop and the site will be recorded on a State of Oregon Archaeological Site Record and submitted to SHPO.~~

~~(i) If additional excavation is necessary to establish the boundary of the site, complete the exploratory probe, or conduct further archaeological investigations of the site, it will require a permit issued under this rule.~~

~~(2)(b) The provisions of this rule do not apply to a person who unintentionally discovers an archaeological object that has been exposed by the forces of nature and retains the object for personal use, except for sacred objects, human remains, funerary objects or objects of cultural patrimony;~~

~~(c) Collection of an arrowhead from the surface of private land is permitted if collection can be accomplished without the use of any tool.~~

~~(2)(a) It is strongly recommended that anyone considering a development project on private lands on previously undisturbed ground contact the SHPO and the appropriate Tribe(s) to determine whether archaeological sites and objects are likely to be present in the project area. This contact will reduce the chance that the project will be delayed due to discovery of an archaeological site;~~

~~(b) SHPO shall coordinate, along with the governing bodies of the Oregon Tribes and the CIS, joint efforts to create and disseminate informational materials that will be distributed to local governments, federal and state agencies, and permitting authorities on the requirements of ORS Chapters 97, 358 and 390, and these rules.~~

~~(3)~~ A person who desires an archaeological permit ~~to excavate or remove objects~~ on private lands pursuant to ORS 358.920(1)(a) and 390.235 must submit a request to the ~~Oregon State Parks and Recreation~~ Director or ~~their~~his or her designee:

(a) The application must be complete and meet the requirements of the public lands rule section OAR 736-051-0080~~(34)~~. In addition, an application for an archaeological permit on private lands must be accompanied by a copy of the landowner's written permission pursuant to ORS 358.920(5), and a written statement concerning the disposition of any recovered ~~archaeological objects~~artifacts not covered by 358.920(4)(b);

(b) The archaeological permit process for private lands ~~includes~~is the same processes as ~~those that~~ found in OAR 736-051-0080 ~~(2-11(6), (7), (8), (9), (10), (12) and (14))~~ relating to permits on public lands. ~~The SHPO must be satisfied that reasonable concerns of the appropriate Tribe(s) have been addressed by the applicant.~~

~~(3)(4) Upon receipt of an application, the Director or his or her designee may contact the landowner to verify the written permission, location and activities of the proposed activity.~~

~~(5) Unless authorized by ORS 97.750, an archaeological permit on private lands shall not be issued for if the activity includes burials, human remains, funerary objects, sacred objects, or objects of cultural patrimony or human remains.~~

~~(4) Disputes(6) If an applicant disputes the permit conditions, or the Director's denial of a permit, the dispute shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.~~

~~(5) Archaeological permits may be amended according to the process developed by the Director or their designee in coordination with Oregon Tribes. Statutory/Other Authority: ORS 390.235 & 390.240 Statutes/Other Implemented: ORS 390.235~~

~~History:~~

~~PRD 4-2017, minor correction filed 10/20/2017, effective 10/20/2017~~

~~PR 1-1995, f. & cert. ef. 1-3-95~~