

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736  
PARKS AND RECREATION DEPARTMENT

**FILED**

04/28/2022 2:17 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Issuance of archaeological permit process amendments

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/01/2022 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
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HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/25/2022

TIME: 6:00 PM

OFFICER: Jo Niehaus

ADDRESS: Online

Zoom registration required

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Registration Required:

[https://us06web.zoom.us/webinar/register/WN\\_Cmu5jrPsSAWZdaEizFG-Ow](https://us06web.zoom.us/webinar/register/WN_Cmu5jrPsSAWZdaEizFG-Ow)

NEED FOR THE RULE(S)

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.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 97.750, ORS 192.345, ORS 358.905, ORS 390.235

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule revision does not predict an adverse impact on any particular racial group. Moreover, these revisions also seek to improve tribal considerations and better incorporate tribal concerns.

The Rule Advisory Committee (RAC) was consulted with on this topic and determined that there are no further impacts to racial equity in this state by the revision. However, the RAC noted that the statute guiding this rulemaking has a tone of historical and racial inequities through the lens of discovery and colonial context.

FISCAL AND ECONOMIC IMPACT:

The RAC was consulted with on the fiscal and economic impact outcomes and concluded that the proposed rule revision will have little to no adverse impact. The revision provides additional clarification that could simplify and streamline administrative burdens. It will likely increase the number of archaeological excavation permit applications, potentially increasing workload for SHPO staff.

Members of the public in the development of archaeology professions, especially in higher education settings and trainings may see a positive economic impact. Landowners, local governments, private archaeology firms and their clients may also see varying levels of little to no economic impact.

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COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

The SHPO will likely see an increase in the number of permit applications and associated compliance activities. There may be similar impacts for local governments, state higher education institutions, and other state agencies like ODOT that also need archaeological permits to comply with statute. Archaeological permits do not generate any revenue for the Oregon Parks and Recreation Department (OPRD).

The proposed rule revision involves a wide spectrum of Oregon businesses that need archaeology clearance for projects but adverse impacts are predicted to be very small, if any. The impact of service and permit costs would be minimal. The additional clarification around a "qualified archaeologist" may assist with hiring practices for archaeological firms.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The RAC was consulted with on the fiscal and economic impact outcomes. The group representation included members from the Association of Oregon Archaeologists that provided small business perspectives to the development of proposed revisions.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

736-051-0000, 736-051-0010, 736-051-0020, 736-051-0030, 736-051-0040, 736-051-0050, 736-051-0060, 736-051-0070, 736-051-0080, 736-051-0090

AMEND: 736-051-0000

RULE SUMMARY: Amendment removes "associated material objects" in (1)(c) and more specifically outlines the protection of confidential information in (2).

CHANGES TO RULE:

736-051-0000  
Dispute Resolution Process ¶

(1) ~~OAR~~ Oregon Administrative Rules (OAR) 736-051-0000 through 736-0451-0050 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~~ 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, ~~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~~ Throughout the dispute resolution process, the location of archaeological sites ~~that may be disclosed during the dispute resolution process~~ and objects will be kept from public disclosure pursuant to ORS 192.345 and include provisions for protecting confidential information.

Statutory/Other Authority: ORS 390.124, ORS 390.240

Statutes/Other Implemented: ORS 390.124, ORS 390.240

RULE SUMMARY: Rules clarified for Dispute Resolution process. Alphabetizing the definitions and reordering to provide better clarification. Expanding and or clarifying the definitions.

CHANGES TO RULE:

736-051-0010

Dispute Resolution Definitions-

As used in OAR 736-051-00020 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.¶  
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.¶

(2a) "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.¶  
Where materials pursuant to ORS 390.235(3)(b) are made available for nondestructive research by scholars:¶

(b) Where "Scholars" means but is not limited to tribal members, traditional cultural practitioners, traditional culturally acceptable resolution of the dispute authorities, archaeologists, academic professionals, and students.¶

(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.¶  
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.¶

(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.¶  
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 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.¶  
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 390.235.905.¶

(6) "Recognized Curatorial Facility" means the Oregon State Museum of Anthropology (OSMA).¶  
Archaeological Permit" means the permit issued under ORS 390.235.¶

(7) "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.¶

(7) "Archaeological Site" 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;¶  
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 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 landowner as applicable or land managing agency, and the most appropriate tribe(s).¶

(11) "Funerary Objects" have the meaning given that term in ORS 358.905.¶  
within six months of collections given that term in ORS 358.905.¶

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

(13) "Funerary Objects Indian Tribe" has the meanings given that term in ORS 358.905 in ORS 97.740.¶

(104) "Associated Material Objects" has the same meaning as see 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 this rule dispute.¶

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

(126) "Sacred Object" has the meaning given that term in ORS 358.905.¶  
Object of Cultural Patrimony" has the meaning given that term in ORS 358.905.¶

(137) "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 O 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.¶¶

(179) "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 re!State Designated Curatorial Facility" means the UOMNCH incorporating to the dispute OSMA.

Statutory/Other Authority: ORS 390.124, ORS 390.240

Statutes/Other Implemented: ORS 390.124, ORS 390.240

AMEND: 736-051-0020

RULE SUMMARY: Clarify the dispute resolution process between the persons or entities whom it can involve.

Grammatical changes to provide more clarity. Expands to include prior failure of applicant's compliance or unresolved comments to a report submitted for a permit issued on or after January 1, 2023.

CHANGES TO RULE:

736-051-0020

Disputes Covered by the Dispute Resolution Process ¶

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

~~(1) 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 approving entities ~~entities with approval authority~~ and applicants over ~~the any proposed~~ 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) Anor objections where:¶~~

(a) An entity with approval authority over an application for a permit objects to its issuance:¶

(A) Based on any proposed terms or conditions.¶

(B) Based on any prior failure of the applicant to comply with terms or conditions of a permit issued on or after January 1, 2023.¶

(C) Based on any unresolved comments to a report submitted for a permit issued on or after January 1, 2023.

Where the entity with approval authority disagrees over the terms, conditions or provis able to include documentation supporting comments were requested and not addressed.¶

(D) Based on a prior violations of the permit; ORS 390.235 by the applicant for failing to obtain a permit, on or after January 1, 2023.¶

~~(e) The applicant disagrees with the any proposed terms; or conditions or provisions of the permit as established by an entity with approval authority f a permit:¶~~

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

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

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

(b) The archaeological permit applicant disagrees with the choice of a recognized or n 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 remains, funerary objects, sacred objects, or objects of cultural patrimony as described in ORS 97.740.

Statutory/Other Authority: ORS 390.124, ORS 390.240

Statutes/Other Implemented: ORS 97.750, ORS 390.235, ORS 97.740

AMEND: 736-051-0030

RULE SUMMARY: Amended to extend the recommended informal dispute resolution process completion time from within 30 days to within 60 days. Also amended to clarify that the disputing party can terminate the dispute to either withdraw or submit to mediation.

CHANGES TO RULE:

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~~objection of a permit or any of its terms, ~~or conditions or provisions, it, 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. ~~It is recommended that t~~The informal dispute resolution process shall be completed within ~~30~~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.

Statutory/Other Authority: ORS 390.124, ORS 390.240

Statutes/Other Implemented: ORS 390.240

AMEND: 736-051-0040

RULE SUMMARY: Minor grammatical updates and word choice. The biggest amendment falls under subsection(5)(e) regarding the specification of public disclosure of sites that need to remain confidential during the dispute resolution process.

CHANGES TO RULE:

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 negot~~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 ~~and~~ 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 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, ORS 390.240

Statutes/Other Implemented: ORS 390.240



AMEND: 736-051-0050

RULE SUMMARY: Updates names to appropriate entities. Removes original subsection (7) referencing appeal process.

CHANGES TO RULE:

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~~HPO:¶¶

(b) The LCIS;¶¶

(c) The UOMNCH;¶¶

(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 provis~~conditions 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, ORS 390.240

Statutes/Other Implemented: ORS 390.240

AMEND: 736-051-0060

RULE SUMMARY: Clarifies subsection (2) by rewording. Articulates that the ORS dictates the required confidentiality of the archaeological objects and sites, not local processes or other rules.

CHANGES TO RULE:

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) ~~It is the policy of the Oregon Parks and Recreation Department (OPRD) and the Oregon State Historic Preservation Office (SHPO) that~~Per ORS 192.345, 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~~objects and sites are confidential and exempt from public disclosure. 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.~~

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

Statutes/Other Implemented: ORS 390.235

AMEND: 736-051-0070

RULE SUMMARY: Clarified application to start from OAR 735-051-0080. In depth changes and specification to some of the definitions including "applicant" to defining "qualified archaeologist" terminology. Amended definitions to "Curatorial Facility" and its alternates in a way that better aligns with the ORS. Added definitions and references to the ORS for terms like "Destroy," "Funerary object," "Historic Cemetery," "Human Remains," "Injure," and "Object of Cultural Patrimony." Amended to specify the definition of "Qualified Archaeologist" and the qualifications. Most notable are definitions of terms used in ORS 390.325 to describe the "Qualified Archaeologist" requirements. Other updates mostly consist of ORS references.

CHANGES TO RULE:

736-051-0070

### Archaeological Permits: Definitions ¶¶

As used in OAR 736-051-00680 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~~¶¶
- (2) "Applicant" means the qualified archaeologist (as defined in ORS 390.235) and the institution/company the person who is applying for represent responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235.¶¶
- (3) "Appropriate Indian Tribe" means the Indian tribe or tribes designated by the Commission on Indian Services as having the greatest interest in the permit application. CIS.¶¶
- (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 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 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 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) "Artifact" ~~means~~ Archaeological Site" has the same as "Archaeological Object." meaning in ORS 358.905.¶¶
- (8) "Burial" has the meaning in ORS 358.905.¶¶
- (8) ~~"Associated Material Objects" means the same as "Funerary Object."~~¶¶
- (9) "Burial Go Conditions" means any additional permit terms proposed for property access, research, notifications, field methods," as found in ORS 390.240(1)(b), means the same as "Funerary Objects." analyses, monitoring, curation, and reporting, by an entity with approval authority.¶¶
- (10) "Curatorial Facility" means either a:¶¶
  - (a) ~~"Recognized" "The "State Designated Curatorial fFacility", which is the Oregon State Museum of Anthropology (OSMA) UOMNCH; or~~¶¶
  - (b) ~~"Alternate" "Curatorial fFacility," 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 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 an archaeological site for the purposes of performing anthropological research agency, and the most appropriate tribe(s). ¶

(123) "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 a type of archaeological excavation inventory method for identifying the preasonably 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, sense or absence of a buried archaeological object or site, not visible from the surface, requiring a permit on non-federal public lands. ¶

(154) "Object of Cultural Patrimony" means: ¶

(a) An Funerary 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; s 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 ¶

(169) "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. ¶

(1720) "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. ¶

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

(1922) "Qualified Archaeologist" 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 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; ¶

(A) 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. ¶

(B) 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. ¶

(C) 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. ¶

(D) 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 of (160 hours) of archaeological laboratory analysis or curating; and

(A) 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.

(B) 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 Master of Arts or Master of Science thesis, or report equivalent in scope and quality, dealing with a 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.

(A) 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. 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.

(B) Where being the "sole author" unequivocally demonstrates the "Qualified Archaeologist" designed and executed the archaeological field research study.

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

(203) "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 curriculum in anthropology specializing in archaeology, or related field.

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

(225) "Removal" means taking any artifact or non-artifactual remains or material, whether archaeological or not, embedded in or on the surface, or under the surface of the ground.

(236) "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 as 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.

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

Statutes/Other Implemented: ORS 358.920, ORS 390.235

AMEND: 736-051-0080

RULE SUMMARY: The rule amendments more clearly outline the process and required information for application of an archaeological permit. Amendments include list of past and present permits, tribes engaged, contingency plans, and research design. The amendments require more specific information, contact information and review process information.

CHANGES TO RULE:

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.¶¶

~~(43) A person qualified archaeologist who desires an archaeological permit pursuant to ORS 390.235 must submit an application to the Oregon Parks and Recreation Director or his or their designee. The application must be complete and be accompanied by:¶¶~~

~~(a) A map that clearly shows the location of the proposed work 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 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 for 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 assisted 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 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 a realistic schedule of research and provide justified recovery procedures is part of the terms of an issued permit;¶¶~~

~~(d) The name, address and phone number and current contact information 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. 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;¶¶

~~(fi) A curation facility for applicable, a contingency plan for any unanticipated discoveries of archaeological objects uncovered during the project or sites during any stage of a project or undertaking.¶¶~~

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

(65) In consultation with the ~~Commission on Indian Services~~ LCIS, the SHPO shall identify the appropriate tribe to be mailed copies of the complete(s) with review authority over the 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 attachment. 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 appropriate state and local entities and respond with their appropriate Indian tribe. The notification shall solicit comments, recommendations for val, approval with conditions, or objection. No response within 30-days means no conditions, or objections to the application. Notification letters shall include a highlighted confidentiality statement. Rwere submitted to SHPO. SHPO shall send copies of all 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 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) If At the archaeological site in question is associated request of any tribe with a prehistoric or historic native Indian culture review authority over a permit application, the applicant shall consult with the appropriate Indian tribe to continue to coordinate with them during the 30-day review period. At a minimum, consultation shall consist of meeting(s) satisfactory to the tribal governing body and/or its designee, and shall include Tribal coordination may 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 archaeological and project work, contingency plans for discovery of remains and artifact permit work, curation, inadvertent discovery contingency plans during both the 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 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 consultation process 48-hour permit review. The request may be granted whenever if the Director or his or ~~their~~ designee, in consultation with the parties listed in subsection (8)(a) of this rule, entities with approval authority 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 ~~to~~ 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.¶

(b) If the Director or his or ~~her~~ 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 consultation ~~pre~~ review request is warranted, the following procedures apply:¶

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

~~(B) During the following 48 hours (excluding Saturday, Sunday, and any legState, Federal, or tribeTribal holidays), the Director or his or her designee shall consult by telephone and/or facsimile with the personsentities with approval authority may respond to the permit application with their approval, approval with conditions, or entities described in section (8) of this rule. If the head of the land managing agency or the tribal governing body of object. No response within 48 hours means the entity with approval authority did not condition or object. If any entity with the appropriate Indian tribal authority 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 when the permit is issued.~~

~~(cb) For the 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 cluding burials, funerary objects, sacred objects, or any objects of cultural patrimony, expedited 48-hour permit reviews are only available if 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 review by the most appropriate tribes, and SHPO has occurred.~~

~~(10) After considering the application, maps, research design, vita and all comments, and 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 358.95561, 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 excav.~~

~~(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, 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 arncuding 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 with the approval of the applicant.~~

~~(a) Amendment applications may address anything in an issued permit, with the exception of field methods. Any number of amendments may be requested.~~

~~(A) All permit deadlines and deliverables may be granted a one-time extension up to one year.~~

~~(B) Approval from a new applicant is required in an amendment addressing a change in responsibility over the permit.~~

~~(b) Amendments will be sencountered during an excavation out for a 10-day review to entities with approval authority.~~

Statutory/Other Authority: ORS 390.235, ORS 390.240

Statutes/Other Implemented: ORS 390.235



AMEND: 736-051-0090

RULE SUMMARY: Removes the provisions for "unintentional" archaeological work or removal or collection of archaeological objects, even on private lands. Amendments clarify private land permit application and amendment process.

CHANGES TO RULE:

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. 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 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 their 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 ~~artif~~archaeological objects not covered by 3598.920(4)(b);¶

(b) ~~The~~ The archaeological permit process for private lands includes the same processes as those 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 (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.¶

(4) Upon receipt of an application, Archaeological permits may be amended according to the process developed by the Director or his or her their designee may contact the landowner to verify the written permission, location and activities of in coordination with Oregon Tribes.¶

(6) Archaeological permits may be amended with the approposed activity val of the applicant.¶

(5a) 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. Amendment applications may address anything in an issued permit, with the exception of field methods. Any number of amendments may be requested.¶

(A) All permit deadlines and deliverables may be granted a one-time extension up to one year.¶

(6B) If an Approval from a new 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 required in an amendment addressing a change in responsibility over the permit.¶

(b) Amendments will be sent out for a 10-day review to entities with approval authority.

Statutory/Other Authority: ORS 390.235, ORS 390.240

Statutes/Other Implemented: ORS 390.235

