



# **Rulemaking: Issuance of Archaeological Permits**

**Public comments received  
June 24, 5:00pm through July 1, 5:00pm**



# Submit a public comment on a rule

Oregon Parks and Recreation Department

## Proposed rule change:

**Issuance of Archaeological Permits**

## Commenter name (if provided):

Dennis Griffin

**Location (if provided):** Eugene, OR

## Date comment received:

June 27, 2022 05:16 PM

## Commenter email (if provided):

grifd@peak.org

## Public comment:

Thank you for the opportunity to review the proposed revisions to the current Administrative Rules for ORS 390.235. I truly appreciate everything that OPRD has done to keep the proposed rule changing process open to the public. I have paid close attention to the committee's review of the current Administrative Rules and believe that Oregon SHPO has done an excellent job in trying to select a fair and impartial committee to review the current rules and to try and come up with revisions that would clarify much of the confusion that has resulted since their conception. My only comment regarding committee content, and this comment is a minor one, is that it would have been good if additional archaeological contractors were part of the review committee.

Two committee members had an indirect role in this capacity; however, both were primarily representing the Association of Oregon Archaeologists, rather than professional archaeological contractors that would have been familiar with and routinely applied for permits. This comment is made in light of the inclusion of two other committee members that had little knowledge of, or direct ties to, the permit process under review (i.e., Coos County and the Army Corps).

With regards to the proposed revisions of the current administrative rules, I believe that the authors have done a good job of noting areas of earlier confusion, summarizing concerns noted by the review committee, and coming up with a draft of proposed revisions. I am very familiar with the current Administrative Rules for ORS 390.235, having served as the State

Archaeologist at the Oregon SHPO for 18 years, and having been a professional archaeologist practicing in the Pacific Northwest for over 43 years. As such, I would like to commend the Oregon SHPO's efforts to rewrite the current proposed rule revisions. For the most part, I find them to be clear, concise, and much needed. Several areas that have been noted in the revisions have been a problem to permit applicants for many years and I believe the proposed revisions will go far in clarifying the future permit process. However, I would like to submit a few comments regarding areas that remain unclear or where I would like to suggest clarification or reconsideration. I have attached a Word document that summarizes my comments regarding the currently proposed Rules' revisions. If for any reason my attachment does not arrive, please contact me at your convenience so that I try again to resend the document.

\ Dennis Griffin Ph.D., RA /

Cultural  
Horizons

**Review Comments on Proposed Administrative Rules (OAR) 736-051-0000 thru 0090  
covering the Issuance of Archaeological Permits in Oregon**

Commenter: Dennis Griffin

27 June, 2022

Thank you for the opportunity to review the new proposed rules for the Issuance of Archaeological Permits in Oregon. I appreciate everything that the Oregon State Parks and Recreation Department has done to keep the proposed rule changing process open to the public and I would like to submit comments regarding the current proposed changes. I am very familiar with the current administrative rules for ORS 390.235, having served as the State Archaeologist with the Oregon SHPO for 18 years, and having been a professional archaeologist practicing in the Pacific Northwest for over 43 years. To become more aware of the issues being discussed that went into the current proposed rules, I watched two of the three public meetings that discussed the proposed rule changes. While not having any notes from which I could follow the committee's discussion, the process was still enlightening, and I am generally gratified by the end proposed product. However, I would like to submit a few specific comments regarding the proposed rules. These comments are noted below, referenced by the appropriate section and subsection of the proposed rule.

736-051-0010 Even after sitting in on the review committee meetings, it is unclear to me why the current proposed rules seek to present 'Definitions' in two separate sections within the proposed rules (the first addressing parts 736-051-0020 through 736-051-0050, and the second for 736-051-0060 through 736-051-0090. I realize that the original administrative rules had done likewise, but one concise set of definitions would make more sense to at least this reader.

736-051-0010(1)(c) The proposed rules have purposely removed the phrase "associated material objects" from the existing rules section, I believe this was done since the authors hope to capture all associated material objects under the existing definition of "Funerary Objects". However, funerary objects are confined to those objects seen as a part of a death rite or ceremony that have purposively been interred with individual human remains. Many Native Americans were killed during eighteenth and nineteenth century epidemics and nineteenth century wars that were never officially "buried" or underwent tribal death rites and ceremonies. For example, I recall Perry Chocktoot, Director of the Cultural and Heritage Department for the Klamath Tribes stressing his concern in the past for the need to protect and recover objects that a warrior was wearing when they were killed in battle (e.g., war shirt) or objects relating to human remains that had been abandoned along lake shores after being murdered. How would such objects fall under the current proposed rules if "associated material objects" was removed from the rule? I think this term should be replaced within the text since it is not synonymous with funerary objects.

736-051-0010 (5) Archaeological Object – Given past controversies regarding how the definition of an archaeological object has been perceived [object=1 versus objects equals  $\geq 2$ ], I think it would be good to quantify this fact. Whether an object signifies a single entity has been a

controversial issue in past compliance efforts regarding state archaeological laws, and clarification of this fact, even if it appears redundant, should be considered here.

736-051-0010(7) – Archaeological Site – In the same vein as the above comment, the definition of an archaeological site in ORS 358-905 states that such an area contains “archaeological objects and the contextual associations of the archaeological excavations”. Much discussion has occurred since the passage of ORS 358.905 as to the number of artifacts needed to be considered “objects” (i.e., 2 or more with an object being a singular item) as well as the importance of plow-zone archaeology where contextual association may be lacking but the value of the artifacts remain. Since the later clarification is a matter specifically included in the statute definition, this may be something that is best addressed during future review of the statute itself. However, given the amount of discussion SHPO has had with LCIS, Oregon Tribes, and the professional archaeological community regarding the number of artifacts that would constitute “objects”, some clarification in the current proposed rules should be included here. This is the purpose of revising existing administrative rules, to clarify inconsistencies or confusion in how current rules are interpreted.

736-051-0020(1)(a)(B) – It is good to see that some measures are finally being taken to penalize permit applicants who fail to meet the conditions of their archaeological permits. Since at least 2010, applicants, and the companies they work for, have been made aware when permit conditions (e.g., reports submitted to Tribes, LCIS & SHPO, artifacts curated, tribes consulted) have not been met but there has been no mechanism to use such failures to influence a permittee’s ability to acquire future permits. This addition here is long overdue.

736-051-0070(b)(A) – I would suggest the inclusion of the phrase “(i.e., fieldschool)” at the end of this section so that the note regarding undergraduate or graduate school credit has a clearly understood reference.

736-051-0070 (22)(c) – Changes made to this section of the Rules are very problematic. A question that has come up in the past in trying to review a permit applicant’s qualifications is how does one judge report equivalency. Nothing in the proposed rule seeks to clarify this problem. Instead, the inclusion of a peer reviewed publication as being equivalent in scope and quality to a Master’s thesis makes such a comparison much more difficult. It is quite easy today to have an article reviewed and accepted in a peer-reviewed publication with it having little archaeological substance, and it is difficult to recall seeing many articles that attempt to reference the design and execution of an archaeological study (comparable to the range and scope of a thesis as noted in statute [390.235(6)(b)]). Past Oregon SHPO guidance has stressed that reports considered equivalent in scope and quality needed to have the following sections: Introduction, Research Questions or Problem Orientation, Background and Prior Research (Literature Review), Methods/Materials, Analyses, Results, Discussion/Conclusions, References Cited/Bibliography, Appendices. I rarely recall ever seeing a peer reviewed article that would mirror this. The current proposed rules are watering down this most-important component of who is qualified to obtain an archaeological permit and lead future state archaeological

excavations. How would an article published about people's attitudes regarding a particular excavation fit this new standard? In addition, the importance of such a document having a sole author has been reduced to that of only being a primary or lead author. How does one measure such attributes? In an article with three authors, all may be considered equal in merit therefore any of the authors could be considered a primary author. How does the SHPO hope to quantify the role of a specific author in meeting the needs captured by the above requirement? I strongly feel that the watering down of this most-important component of the law is an approach to be avoided and suggest that the author's consider replacing it with the earlier language. State Administrative Rules are supposed to clarify the intention of the state statute they relate to, not water them down so that they lack any true meaning or the original intention of the statute they are trying to define. This current subsection is very problematic and does the opposite of what was originally intended. It is not necessary and counterproductive to the spirit of the statute.

736-051-0080((3)(f)) – Are you seeking an applicant to disclose any prior state or federal law violations that would have occurred after January 1, 2023 (see 736-051-0020(1)(a)(B)) or those that may have occurred through past failure to comply with earlier state archaeological permits as well? Oregon SHPO has documented, and shared with permit applicants, and on their web page, many past state permit violations that could apply to future permit applicants if this disclosure is left open-ended. Consider clarifying what the intention of this section is.

736-051-0080(3)(h) - Define "outstanding archaeological permits"? Do you mean all permits that have not had a final report submitted to the appropriate agencies; archaeological collections have not been submitted to the appropriate repository, or some other criteria that has been left unresolved? This would be good to qualify since it is confusing as written. Here you note within a ten year period (see above comment). Does a similar timeline fit subsection (3)(f)?

736-051-0080(5) – This subsection states that "in consultation with the LCIS, the SHPO shall identify the appropriate tribe(s) with review authority over the archaeological permit application". I know that this is taken from the existing administrative rules; however, it does not reflect what is stated in current state statutes. ORS 97.750(2) states that LCIS designates what tribes are appropriate rather than the SHPO. The SHPO earlier had the responsibility to designate appropriate Tribes; however, this was changed in 1980, following the passage of House Bill 3196, with the LCIS being designated as the agency best suited to select the appropriate tribe(s) in cases of future permits. Statute 390.235(1)(d) does state that the State Parks and Recreation Director (SHPO), with the advice of the Oregon Tribes and LCIS, shall adopt rules governing the issuance of permits but it does not give the SHPO the authority to designate appropriate tribes. However, I am aware of the current process of tribal selection conducted between LCIS and the SHPO, and how the SHPO has been given permission by LCIS, in the event that LCIS is not able to respond within 48 hours, to select the most appropriate tribes based on past permits issued in the vicinity. This has served as a good, workable process and it is clearly stated in the revised rule. The initial section; however, should clarify that LCIS remains the designated authority to select the appropriate tribe(s) rather than how it is currently written.

736-051-0080(6) – This proposed subsection lacks any timeline for how soon SHPO should seek to respond to a completed permit application to be sent out for review. Isn't this something that should be included so that the length of the permit process can be estimated by applicants and agencies having the need to acquire future permits? I don't think its inclusion would result in any problems for SHPO in responding, since they remain quite efficient in prioritizing permit application reviews; however, it does provide a level of transparency and clarity to both applicants and agencies as to the expected length of the process that will follow a permit's submission.

736-051-0080(7) – The expedited review section is unclear and needs clarification. As written, it states that once SHPO and appropriate Tribes have completed their review (which assumes that a permit has already been issued), an expedited permit can be requested. If a permit has already been issued, expedited status should no longer be required. Why would one be concerned about future discovery of an archaeological object if SHPO and Tribes have already reviewed a permit? Normally expedited review is requested following a discovery, but before SHPO or Tribes have seen a permit application (e.g., discovery of an eroding burial).

I understand that the key to the expedited review process is captured in subsection (7)(b) where the discovery of burials, funerary objects, sacred objects, and objects of cultural patrimony are considered prime examples for expedited review. All other cases will no longer be considered for expedited status unless the project has earlier been reviewed and obtained SHPO concurrence (e.g., discovery of feature during earlier approved project which requires a change in methodology from earlier permit or approved process). Given this, the expedited review process has generally been summarized well, except for the opening sentence of the subsection.

736-051-0080(11) – This subsection states that a permit can be amended with the approval of the applicant. Who else would seek to amend a permit? This is an important new section to include in the Rules but it could be written clearer. For example, "A permit applicant can request an amendment to their existing archaeological permit under a number of conditions including: (a) & (b)." By exception of field methods are you meaning changes in the types of field methods to be used or the number (e.g., change from 50cm x 50cm probes to 1m x 1m test units; or change from two to ten units)? This comment applies to 736-051-0090(6) as well

736-051-0090(1)(b) – Very important clarification in proposed rules. Thank you for its inclusion. Why is it not noted under 736-051-0080?

\ Dennis /

Dennis Griffin, Ph.D., RPA  
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# Submit a public comment on a rule

Oregon Parks and Recreation Department

## Proposed rule change:

**Issuance of Archaeological Permits**

## Commenter name (if provided):

Tom Connolly

**Location (if provided):** Eugene, OR

## Public comment:

Oregon Administrative Rules (OAR) delineate the procedures for implementing statutory directives outlined by Oregon Revised Statutes (ORS). ORS 390.235(3) specifies that "Any archaeological materials . . . recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology . . . ." The Museum is obligated, by statute, to curate archaeological materials or to approve an alternate curatorial facility.

The proposed OAR changes include a change to the definition of "Entity with Approval Authority" that eliminates the Museum as a named entity (OARs 736-051-0010 and 736-051-0070). The museum is a key entity with respect to the disposition of archaeological materials procured under state permits, as outlined in state statutes. This role is acknowledged throughout the proposed rule changes (Dispute Resolution; Archaeological Permits, Definitions and Process). Removing the Museum as an "Entity with Approval Authority" unnecessarily keeps the Museum blinded to a process for which it has statutory obligations, and I can think of no rationale for making this change.



Since the “Oregon State Museum of Anthropology” (OSMA) is the entity specified in state statutes, the addition in the Dispute Resolution Definitions that “‘State Designated Curatorial Facility’ means the UOMNCH incorporating the OSMA” is an important clarification.

TO: Oregon Parks and Recreation Department, ATTN. Katie Gauthier  
725 Summer St NE, Suite C,  
Salem, OR 97301

FR: Thomas J. Connolly, Ph.D.  
Director Emeritus, Archaeological Research Division, University of Oregon Museum of  
Natural & Cultural History (UOMNCH) and State Museum of Anthropology (OSMA)

**RE: Proposed OAR changes relating to the Issuance of Archaeological Permits**

Oregon Administrative Rules (OAR) delineate the procedures for implementing statutory directives outlined by Oregon Revised Statutes (ORS). ORS 390.235(3) specifies that “Any archaeological materials . . . recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology . . . .” The Museum is obligated, by statute, to curate archaeological materials or to approve an alternate curatorial facility.

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Since the “Oregon State Museum of Anthropology” (OSMA) is the entity specified in state statutes, the addition in the Dispute Resolution Definitions that “‘State Designated Curatorial Facility’ means the UOMNCH incorporating the OSMA” is an important clarification.



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Date comment received:**

June 30, 2022 10:54 AM

**Location (if provided):** ,

**Public comment:**

Firstly, the standards of the Oregon SHPO for permitting are unclear. Secondly, they are inconsistent with the rules of neighboring states. Thirdly, they prevent equity across the discipline and are designed to limit inclusivity and the opportunity for people of color, women, and working class people to achieve career aspirations in Oregon archaeology. The SHPO's decisions regarding permitting do not actively follow their own guidelines and there are several instances of Oregon archaeologists with foreign degrees holding permits, currently. They were "grandfathered" in, just a handful of years ago. If the SHPO is serious about their requirements these people will have their permitted status revoked. That said, I do not promote revocation, instead, the SHPO needs to let open the gates that are being kept shut and severely hindering the successes of archaeologists dedicated to work in the state. At the very least, they need to be consistent in their decision making and keep accurate records of individuals who have been allowed permitted status and those who have been denied for the sake of public transparency.



# Submit a public comment on a rule

Oregon Parks and Recreation Department

## Proposed rule change:

**Issuance of Archaeological Permits**

## Commenter name (if provided):

Pamela Endzweig

**Location (if provided):** Eugene, OR

## Public comment:

**TO:** Oregon

Parks and Recreation Department, ATTN. Katie Gauthier, Legislative Coordinator

**FR:** Pamela

Endzweig, Ph.D., RPA, Director of Anthropological Collections, University of Oregon Museum of Natural and Cultural History and Oregon State Museum of Anthropology (MNCH/OSMA)

**RE:** Proposed OAR changes relating to the Issuance of Archaeological Permits

Oregon

Administrative Rules (OAR) delineate the procedures for implementing statutory directives outlined by Oregon Revised Statutes (ORS).

## **1) Statutory role of the Oregon State Museum of Anthropology**

Following

earlier statutes (e.g. ORS 352.045), ORS 352.612 designates The Oregon State Museum of Anthropology “as the official depository for any material of an archaeological or anthropological nature that may come into the possession of the State of Oregon through the operation of ORS 358.935 (Forfeiture of seized objects in criminal prosecution), 390.235 (Permits and conditions for excavation or removal of archaeological or historical material) or 390.237 (Removal without permit) or as a consequence of gifts from the federal government, the Smithsonian Institution or from other public or private agencies. The University of Oregon, through the director of the Oregon State Museum of Anthropology, shall assume full responsibility for the custody and safekeeping of said collection.”

ORS

390.235(3) specifies that “Any archaeological materials . . . recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology . . . .” The Museum is obligated, by statute, to curate archaeological materials or to approve an alternate curatorial facility with approval from the appropriate Indian tribes.

## **2) Proposed changes with bearing on the MNCH/OSMA statutory State Repository role**

**a)**

### **Entities with Approval Authority**

In

the proposed revisions for ORS 736-051-000 through 736-051-0090, the OSMA (incorporated under the University of Oregon Museum of Natural and Cultural History) has been removed from the definition of “Entities with Approval Authority” [OARs 736-051-0010 (10) and 736-051-0070 (12)] without explanation nor mention in the Rules Summaries.

The

museum’s role in permitting is acknowledged throughout the existing rules and proposed

rule changes (Dispute Resolution, Arbitration, Archaeological Permits, Definitions and Process). Removing the Museum as an “Entity with Approval Authority” excludes the Museum from a process to which it has statutory obligations and responsibilities.

**b)**  
**Alternate Curation Facility**

In the proposed revisions for ORS 736-051-000 through 736-051-0090, the definition of “Alternate Curation Facility” [736-051-0010 (1)] is inconsistent with the statutory wording, which reads as follows, OSR 390.235 (3):

Any archaeological materials, with the exception of Indian human remains, funerary objects, sacred objects and objects of cultural patrimony, recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology **unless** [emphasis added]

(a)  
The Oregon State Museum of Anthropology with the approval from the appropriate

Indian tribe approves the alternate curatorial facilities selected by the permittee;

(b)  
The materials are made available for nondestructive research by scholars; and

(c)  
(A) The material is retained by a recognized scientific, educational or Indian tribal

institution  
for whose benefit a permit was issued under subsection (2)(a) of this section;

(B)

The governing board of a public university listed in ORS 352.002 (Public universities), with the concurrence of the appropriate Indian tribe, grants approval for material to be curated by an educational facility other than the institution that collected the material pursuant to a permit issued under subsection (2)(a) of this section; or

(C)

The sponsoring institution or firm under subsection (2)(c) of this section furnishes the Oregon State Museum of Anthropology with a complete catalog of the material within six months after the material is collected.

The

statute provides conditions, not “standards” in ORS 390.235 as is stated in the revised definitions (OSR 736-051-0010 (1) and 736-051-0070 (10)(b). Also, while the wording in the statute is admittedly unclear, I don’t read it as making non-destructive research a condition for an alternate curatorial facility. This may explain why is not mentioned in the 1994 definition, which reads as follows:

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.

**c) Standardize  
definitions**

736-051-0050

(2)(c): Add “incorporating the OSMA” to UOMNCH to maintain statutory reference. (cf. 736-051-0010 proposed change)

736-051-0070

(10)(a): Add “incorporating the OSMA” to UOMNCH to maintain statutory reference. (cf. 736-051-0010 proposed change)

### **3)**

#### **Miscellaneous**

736-051-0080

(5), (6), (9): The phrase “review authority” is used four times without definition. Does it differ from “approval” authority”?





# Submit a public comment on a rule

Oregon Parks and Recreation Department

## Proposed rule change:

**Issuance of Archaeological Permits**

## Commenter name (if provided):

David Ellis

## Location (if provided):

Portland, OR

## Public comment:

I am providing these comments only for myself and not in any official capacity. But they reflect my experiences and perceptions from almost 46 years as an archaeologist working in Oregon, as a former president of the Association of Oregon Archaeologists, and as a former member and chair of the Oregon Heritage Commission.

The proposed changes to the permitting process are long overdue. The current OAR is at least 20 years old, and the practice of archaeology in Oregon has evolved over that period. In addition, how SHPO staff have implemented the permit application process has varied over time, with new "interpretations" of permit requirements and enforcement of provisions previously ignored. The result has been increasing confusion over those requirements and resulting in uncertainty, debate, and contention.

I'm therefore pleased that some of the proposed changes attempt to reduce confusion in the permitting process, clarifying some requirements that have been a source of misunderstanding in the past.

## Date comment received:

July 1, 2022 11:10 AM

## Commenter email (if provided):

ellisdv@earthlink.net

However, in an attempt to provide more clarity, a substantial overhaul is proposed for OAR 736-051-0070. The proposed revisions include much greater specificity, especially a new OAR 736-051-0070 (22), which defines who is a “qualified archaeologist.” The present OAR (736-051-070 (19)) consists of just three subsections. The new (22) consists of 12 subsections. The new definition adds considerable specificity, presumably to provide clarity on qualifications.

A careful review of the new language, however, reveals that some of the specificity is likely to be a source of further confusion and contention. I outline below where I have identified potential problems.

)  
(a)(B) Accreditation of a college or university is conducted for the college/university as a whole and not for individual programs. Accreditation of individual programs is undertaken by discipline-specific agencies or organizations, if any exist. The U.S. Department of Education lists no agencies or organizations authorized to accredit programs in “archaeology, anthropology, history, classics, or other germane discipline[s] with a specialization in archaeology.” There is no evidence that professional organizations such as the AAA or SAA undertake any assessment of anthropology or archaeology programs that would constitute “accreditation.” How do programs therefore get “accredited”?

(22)(a)(C) The statement “Archaeology is a subfield of Anthropology” would appear to exclude programs not situated in an anthropology department. For example, a quick search indicates there are at least 25-30 American universities that offer post-graduate degrees in classical or Mediterranean archaeology that are independent departments and offer little or no required coursework in anthropology. This would appear to conflict with the statement that a degree in classics with a specialization in archaeology meets the “qualified archaeologist” requirements.

(22)(a)(D) Given these issues, how would an applicant offer “documented equivalency” for a post-graduate degree in a foreign educational institution? The term “documented equivalency” is not defined and therefore has a potential for subjective interpretation. The term “conventional” in reference to U.S. educational programs is also not defined and therefore also has a potential for subjective interpretation.

This

issue of “equivalency” is a very difficult one since American graduate programs in anthropology alone can and do vary. These variations can include the number of courses and credit hours required to graduate and receive the degree or whether a thesis is required. Those in programs with quarters can accumulate more hours than those with semesters; e.g., graduate students at UCLA must take 12 units (3 classes)/quarter; those at Berkeley take 12 units (3 classes)/ semester; so those at UCLA finish two years of coursework with 72 credit hours (18 courses), those at Berkeley finish with 48 credit hours (12 courses). How would one determine equivalency in this example? Are these considered equivalent simply because they require two years of coursework? This can obviously be a very subjective assessment.

22(b) The specified hours seem reasonable, but it would be helpful to know how they were defined. The SOI and RPA standards, for example, reference years or weeks of practical experience but not hours. How does a permit applicant demonstrate they have completed those hours? What documentation must an applicant provide? Transcripts? Copies of timesheets? “Certification” from another “qualified archaeologist”?

In sum, the

SHPO and its advisory committee deserve credit for their work in undertaking much-needed revisions to the archaeological permitting process. They have proposed some important improvements in that process. Nonetheless, the laudable effort to clarify who is a “qualified archaeologist”—which has been one of the most contentious issues for several years—has resulted in establishing some criteria that are of questionable validity and/or open to subjective interpretation. A more careful consideration of the practical application of these criteria would have been beneficial.

Unfortunately,

these issues have done a likely disservice to both SHPO staff and permit applicants. The former will have the challenge of equitably applying questionable requirements, and the former will be struggling with determining if they qualify as “qualified archaeologists.” It’s a guarantee for further confusion and disagreements.



# Submit a public comment on a rule

Oregon Parks and Recreation Department

## Proposed rule change:

**Issuance of Archaeological Permits**

## Commenter name (if provided):

Kurt Roedel

**Location (if provided):** , OR

## Public comment:

Good  
afternoon,

Please  
see the Oregon Department of Transportation Archaeology Program's attached  
comments on the proposed Oregon Administrative Rule Changes for Issuance of  
Archaeology Permits.

Thanks,

Kurt

ODOT/SHPO Archaeology Liaison

## Date comment received:

July 1, 2022 12:08 PM

## Commenter email (if provided):

kurt.roedel@odot.oregon.gov

## CLEAN COPY OF AMENDMED RULES

**Commented [KR1]:** Recommend rewriting using active voice throughout.

AMEND: 736-051-0000

RULE TITLE: Dispute Resolution Process

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

RULE TEXT:

(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.

**Commented [KR2]:** 'in' or 'under'? Under used above.

(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.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.124, ORS 390.240

AMEND: 736-051-0010

RULE TITLE: Dispute Resolution Definitions

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

RULE TEXT:

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;

(b) 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.

**Commented [KR3]:** Who is responsible for violations? The applicant, their employer, or both? Per revised 736-051-0080 3, applicants include past violations for permit applications. If the applicant is no longer employed by the company/agency sponsoring the archaeology work then they no longer have access to materials/resources recovered under the permit and are unable to comply with permit.

- (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 given that term 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, 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 that term 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 parties ~~an attempt is made by disputing parties~~ to resolve a ~~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, in ~~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.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240  
STATUTES/OTHER IMPLEMENTED: ORS 390.124, ORS 390.240

**Commented [KR4]:** What is the process to resolve a conflict in the event of opposing conditions from different approval authorities? Recommend including process identifying how SHPO determines acceptable/not acceptable conditions. Can approval authorities condition the permit for the applicant to modify sampling strategy, report text, require that the APE within a site be 100% excavated rather than sampled, modify draft/final report distribution entities/dates, level of edit approval, etc.?

**Commented [KR5]:** In a dispute?

AMEND: 736-051-0020

RULE TITLE: Disputes Covered by the Dispute Resolution Process

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.

RULE TEXT:

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;

(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 is able to include documentation supporting comments were requested and not addressed.

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

(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.

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 TITLE: Informal Dispute Resolution (Negotiation)

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.

RULE TEXT:

- (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.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

AMEND: 736-051-0040

RULE TITLE: Mediation

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.

RULE TEXT:

- (1) ~~The e~~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 ~~is 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 ~~the~~ 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~~ participating 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.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

AMEND: 736-051-0050

RULE TITLE: Arbitration

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

RULE TEXT:

(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.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

AMEND: 736-051-0060

RULE TITLE: Application for Archaeological Permit

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.

RULE TEXT:

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

**Commented [RKW\*O6]:** Arbitration panel should include landowner, as a permit reviewer. Others, such as AOA?

**Commented [KR7]:** The SHPO shall notify the SHPO?

**Commented [KR8]:** This is the first time this term is used. Suggest changing it to 'Appropriate Tribe' as previously defined.

(2) Per ORS 192.345, information pertaining to the location of archaeological 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 TITLE: Archaeological Permits: Definitions

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.

RULE TEXT:

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.

**Commented [KR9]:** Some terms in this section are worded differently than in Pages 1 and 2. Is this language supposed to be verbatim?

**Commented [KR10]:** Who is responsible for violations? The applicant, their employer, or both? Per revised 736-051-0080 3, applicants include past violations for permit applications. If the applicant is no longer employed by the company/agency sponsoring the archaeology work then they no longer have access to materials/resources recovered under the permit and are unable to comply with permit.

**Commented [KR11]:** What is the process to resolve a conflict in the event of opposing conditions from different approval authorities? Recommend including process identifying how SHPO determines acceptable/not acceptable conditions. Can approval authorities condition the permit for the applicant to modify sampling strategy, report text, require that the APE within a site be 100% excavated rather than sampled, modify draft/final report distribution entities/dates, level of edit approval, etc.?

- (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, 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;
- (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 (160 hours) of archaeological laboratory analysis or curating;

(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 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.

(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 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.

(23) “Recognized Educational Institution” means:

**Commented [KR12]:** Consider including volunteer, undergraduate, graduate course, internships, and participatory learning experiences in the 480 hours as long as time can be verified.

**Commented [KR13]:** Exploratory excavations is defined. Consider defining these terms.

**Commented [KR14]:** Can clearly or unequivocally?

**Commented [KR15]:** How is this determined?

**Commented [KR16]:** Can clearly or unequivocally?

**Commented [KR17]:** How is this determined?

- (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.

STATUTORY/OTHER AUTHORITY: ORS 390.235(1)(d)

STATUTES/OTHER IMPLEMENTED: ORS 358.920, ORS 390.235



AMEND: 736-051-0080

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

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.

RULE TEXT:

- (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 Oregon 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 Department 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;

**Commented [KR18]:** Consider including definitions.

**Commented [KR19]:** This doesn't account for qualified archaeologists employed by Agencies.

**Commented [KR20]:** Does this imply that tribal coordination (response from tribe) is required? Tribal coordination MAY assist if a response is received.

(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 and still pending 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 approval review authority over the archaeological permit application. In the event LCIS is not able to respond within 48 hours, the 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 approval 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 after SHPO and appropriate tribe clearance review, 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

**Commented [KR21]:** Where does SHPO/applicant/company obtain/confirm/track this information to ensure what is provided is accurate?

**Commented [KR22]:** Is there a mechanism to confirm violations are updated/resolved/removed?

**Commented [RKW\*O23]:** Check throughout document for consistency.

**Commented [KR24]:** Should there be some reference to appropriate conditions for inclusion, or objections that may need informal discussion/mediation/arbitration?

**Commented [KR25]:** Left off here.

**Commented [RKW\*O26]:** Ensure language described as 'tribal coordination' here is consistent with definition provided earlier.

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~~ transportation infrastructure failures, 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.

**Commented [KR27]:** Recommend inclusion of transportation infrastructure failures.

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

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

(B) 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 objections. 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 ~~ed~~Director or their designee will not proceed with the expedited review;

**Commented [KR28]:** Recommend tribes provide list of tribal holidays to SHPO annually to ensure these are known/observed...suggest they are added to SHPO calendar.

(C) 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 Oregon State Parks and Recreation 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.

**Commented [KR29]:** Suggest including all reviewers with approval authority, including landowner or land managing agency.

(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.

**Commented [KR30]:** For example, this statement would prevent applicants from changing screen size during fieldwork due to soil conditions, and require a new permit?

(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 sent out for a 10-day review to entities with approval authority.

**Commented [KR31]:** Suggest active voice. Director or designed will send out... There is no lon

STATUTORY/OTHER AUTHORITY: ORS 390.235, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.235

AMEND: 736-051-0090

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

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.

RULE TEXT:

(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 the SHPO. 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.

(6) 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.

**Commented [KR32]:** Consider refining, referencing SHPO guidelines and not a revision to the OAR. It is clear that the intention is that archaeological sites, once identified, are not adversely affected by using exploratory presence/absence excavations. However, there is too much ambiguity in ORS 358.905 defining what an archaeological site is to enforce this consistently. What is the threshold for this to be violated and does SHPO make that determination? SHPO has communicated that generally 10 artifacts in a localized area demonstrating a pattern of human behavior is indication of the presence of an archaeological site. Will this be maintained and the excavation of 15 artifacts constitute a violate to the OAR? How does one continue investigation of a larger area when a localized archaeological site is identified?

**Commented [KR33]:** Proposed language will have unnecessary effects on the ability to complete fieldwork in a timely fashion, and discounts the notion of qualified archaeologists. Preference is to eliminate "to establish the boundary of the site" from proposed rule.

What is the legal basis for restricting the ability to conduct probes on private beyond known site boundaries.

oExcavating delineation probes "outside" a known site locality (whether demonstrated by a surface manifestation or positive probes) does not have the intent of affecting the site.

•Since ORS 358.905 defines a site as "a geographic locality" and the fieldwork guidelines rely heavily on "landforms," specifically stating "artifacts do not have to lie within 30 feet or 30 meters of each other to be considered part of a single site," the revision would place an unrealistic burden on projects and consultants.

oIf a consultant intends to excavate a grid of presence/absence probes across a 100 ac APE – say within the Grande Ronde River Valley floor – and the first probe was positive, then the remaining 999 probes would have to be delayed since, under OR law and SHPO's guidance, the site could possibly encompass the entire APE as a single landform.

oIssue would be lessened if SHPO provided guidance for a reasonable offset from sites where presence/absence testing could continue.

**Commented [KR34]:** This isn't defined in the OAR.

**Commented [KR35]:** Same question as above. Flexibility to account for field conditions may be warranted.

(B) Approval from a new applicant is 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.

**Commented [KR36]:** Same comment as above. Active voice, etc.

STATUTORY/OTHER AUTHORITY: ORS 390.235, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.235



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Commenter name (if provided):**

Tara Gauthier

**Location (if provided):** Portland, OR

**Public comment:**

736-051-0080

(1) Does this include federal government projects on non-federal public land? Can the federal government be subject to a state permit requirement? This deserves broader discussion. How might this rule change address this?

**Date comment received:**

July 1, 2022 01:36 PM

**Commenter email (if provided):**

tara.r.gauthier@usace.army.mil



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Commenter name (if provided):**

Cayla Kennedy

**Location (if provided):** , OR

**Public comment:**

Good afternoon,

My name is Cayla Kennedy and I am an archaeologist with the US Army Corps of Engineers, at the Willamette Valley Project. I'm attaching my comments on the proposed rule changes, particularly regarding the new proposed rules for the Qualified Archaeologist qualifications. Thank you for the opportunity to comment on these changes.

Thanks,

Cayla Kennedy

Archaeologist

USACE, Willamette Valley Project

cayla.d.kennedy@usace.army.mil

**Date comment received:**

July 1, 2022 02:04 PM

**Commenter email (if provided):**

caylakennedy@gmail.com



AMEND: 736-051-0070

(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;

(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.

#### Issues:

Regarding requiring a specific “specialization in archaeology” – many graduate programs don’t have the verbiage even if they do provide archaeological training. This wording is vague in its application. Even if the term “specialization” could be applied to a “track,” “option,” “focus,” or “concentration”, some degrees offer generalized training including archaeology as part of the curricula. Other states requirements maintain a need for archaeological training, but not necessarily degree programs with a specific focus in archaeology. Some states also allow for degrees in history, anthropology, or other related fields combined with on-the-job training. This would eliminate graduates with generalized education or education in related fields who have more specific hands-on experience with archaeology in the workforce. Other states that allow degrees outside of archaeology include Idaho, Wyoming, Colorado and others that use the Secretary of the Interior standards. I’m including some examples of university programs in the western United States and a brief description of how they characterize their programs as supporting evidence.

#### **Universities offering training in Anthropology, pulled from departmental websites**

- Humboldt State University– MA in Applied Anthropology, no specialization but has training in archaeology
- California State Los Angeles – MA in Anthropology, lists archaeology as an “option”
- San Francisco State University – MA in Anthropology, lists archaeology as an “option”
- Washington State University – MA/PhD in Anthropology with “specialization”
- University of Washington – MA in Archaeological Heritage
- Western Washington University – MA in Anthropology, “specialization” in archaeology
- Portland State University – MA/MS in Anthropology, no specifics but does state that they teach archaeological methods

- University of Oregon – MA/MS/PhD in Anthropology with a “focus” in archaeology
- Oregon State University – MA/MS in Applied Anthropology with “four-field graduate training” and handbook mentions “specialization”
- Boise State University – MS in Applied Anthropology with “focus” in Cultural Resource Management
- University of Idaho – MA in Anthropology – no mention of specialization, but does mention archaeological methods as part of the training
- Idaho State University- MA/MS in Anthropology, takes classes in archaeology but no mention of specialization
- University of Nevada Reno – MA in Anthropology with archaeological “track”
- University of Nevada Las Vegas – MA in Anthropology with option to “concentrate” in archaeology, but encouraged to use a broader lens
- Utah State University – MS in Anthropology, “focus” in archaeology and CRM
- University of Utah – MA/MS in Anthropology with archaeology “track/concentration”
- University of New Mexico – MA in Archaeology and Public Archaeology
- New Mexico State University – MA in Anthropology with a “graduate minor” in archaeology
- Arizona State University – doesn’t offer MA/MS, just PhD in Anthro, called a “transdisciplinary context with flexible curricula”
- University of Arizona – MA in Applied Archaeology
- Northern Arizona University – MA in Anthropology with “concentration” in archaeology
- Colorado State University – MA in Anthropology, uses “specialization”
- University of Colorado – MA in Anthropology with “specialization” in archaeology



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Commenter name (if provided):**

Dustin Kennedy

**Location (if provided):** , OR

**Public comment:**

To whom it may concern,

Please find attached my comments regarding the suggested revisions to the Oregon Administrative Rules for Archaeological Permit Applications.

Please let me know if there are any issues with the attached document.

Thank you,

Dustin Kennedy

**Date comment received:**

July 1, 2022 02:53 PM

**Commenter email (if provided):**

dustingailkennedy@gmail.com

Oregon Parks and Recreation Commission

April 13, 2022

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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	

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**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

This page contains no comments

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

This page contains no comments

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.

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-  Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 1:25:40 PM  
Should this be revised to allow for radiocarbon dating or other special studies of curated samples? Some samples/artifacts are curated explicitly for that purpose (charcoal, botanical samples).
- 
-  Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 1:27:00 PM  
Who takes responsibility for violations? The signed applicant, their employer, or both? Per revised 736-051-0080 3(e-h), applicants will now need to include past violations for conditioned permit applications. If the applicant is no longer employed by the company/agency sponsoring the archaeological work then they may no longer officially have the ability to comply with permit requirements or conditions. They may not even know whether violations have occurred. The wording should allow for the applicant's responsibility to transfer to the employer as a co-applicant. The applicant should not be held responsible for violations when they no longer have the ability or access to the project's materials or resources.

(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.

Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 1:28:04 PM  
What is the process the applicant would take in the event that conditions from different approval authorities conflict? Does the applicant have to move it into dispute resolution still? What is SHPO's process for determining whether conditions are legitimate outside of ensuring they are consistent with Oregon Law. Can an approval authority condition a permit to require that the APE within a site be excavated/sampled more or less than standard practice, private landowner request draft/final report for review, co-authorship level of edit approval to archy reports, request that no destructive special studies occur like radiocarbon testing, etc.? What if the conditions directly conflict with the applicant's ability to evaluate a site for its' National Register of Historic Places eligibility?



(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.

Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 1:29:55 PM
What constitutes an unresolved comment and what if comments from individual approval authorities conflict? Is the applicant held to initiating the dispute resolution because they are the ones who are held accountable and are trying to complete a project?		
Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 11:07:24 AM
Will there be a process to resolve/remove/appeal violations?		
Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 1:01:03 PM
What if conditions and by extension comments conflict? This may have unintended consequences.		

(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.

[726-051-0050](#)

#### 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

Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 2:35:46 PM  
Will there be a goal to have an odd number of representatives on the arbitration panel so a majority vote could be an option if necessary? How do the disputing parties' representatives maintain their neutrality if they are also on the panel? The private landowner and/or land managing agency don't get to seat a representative on the panel? Is there an appeals process for either of the disputing parties?

Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 11:12:19 AM  
The definition of arbitration above states that a "neutral third party or a panel" will participate in this process and render a decision. What is the process for assigning a neutral third party?

(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

Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 11:17:12 AM  
The MNCH and county planning offices are being removed? MNCH has other responsibilities both in the dispute resolution process and in the ORS. Did they request to be removed? Doesn't this also connect to the counties complying with Oregon Goals and their ability to maintain an inventory of known resources within their county boundary? Or are they going to solely rely on SHPO's databases? I think there should be official documentation of these parties removing themselves from the process before these rules are adopted.

Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 1:40:46 PM  
I may be reading this wrong but exploratory excavations are performed on private lands without a permit also. And on federal lands under ARPA. Why is this being narrowly defined specifically in the bounds of a permit?

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

- 
- Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 1:44:40 PM  
 I believe that volunteer, internships, field schools, and participatory learning experiences for credit should all be included in the 480 hours and SHPO should develop a process to verify the quality/accuracy of these hours to their satisfaction (i.e. previous archaeological supervisor/teacher confirmation, passing grades for college credit, etc.). It is my experience that field schools, in particular, provide the best training opportunities to learn proper archaeological methods and critical thinking when interpreting archaeological resources. In the event that archaeological projects decrease or halt due to economic conditions then it could be near impossible for a Master's level archaeologist to obtain "professional" level experience; however, field schools etc. could still be available and a viable avenue to gain that experience. Including only professional level experience could create insurmountable barriers for archaeologists to become "qualified". Experience in hours doesn't necessarily translate to the quality of an archaeologist's work.
- 
- Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 1:45:56 PM  
 If exploratory excavations is defined data recovery and test excavations should also be defined. Aren't exploratory investigations also archaeological field research? They are an integral part of the process when identifying archaeological resources.
- 
- Author: Dustin Kennedy Subject: Comment on Text Date: 6/30/2022 5:11:10 PM  
 How does one unequivocally demonstrate this? How does SHPO verify this?

(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

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-  Author: Dustin Kennedy    Subject: Comment on Text    Date: 7/1/2022 2:36:31 PM  
Should a definition for tribal notification also be included then? Tribes often prioritize their limited resources to areas of their greatest concern and choose not to engage in a bilateral process of discussion etc. for every permit application or issue. In the event that an applicant doesn't receive comment back from a Tribe is it still considered Tribal Coordination? Or is that act of reaching out also considered Tribal Coordination?
- 
-  Author: Dustin Kennedy    Subject: Comment on Text    Date: 7/1/2022 11:40:52 AM  
Should this be revised to include precontact and postcontact?
- 
-  Author: Dustin Kennedy    Subject: Comment on Text    Date: 6/30/2022 5:11:24 PM  
Does this exclude agency archaeologists from obtaining permits and doing work themselves? Or non qualified archaeologist from monitoring under a qualified archeologist's permit?

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

Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 1:08:09 PM
Is this post Jan 2023? Does SHPO verify the accuracy? Or is this just self reporting? I believe that SHPO should be the one who holds/manages this information and makes it accessible as appropriate.		
Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 11:43:22 AM
Is this 10 years starting Jan 2023 or prior to? I recommend clarifying this.		
Author: Dustin Kennedy	Subject: Comment on Text	Date: 6/30/2022 5:11:43 PM
Revise by replacing "review" with "approval" throughout document.		
Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 2:41:19 PM
Tribal Coordination is defined earlier as part of the research design development and then redefined here as part of the post-application submittal period. I recommend just combining these into a single "Tribal Coordination" in the definition section and just referencing the term in these respective locations.		

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:

Author: Dustin Kennedy	Subject: Comment on Text	Date: 7/1/2022 2:15:24 PM
Natural events like slides or slope failures also if its determined to do the archaeological work safely?		
Author: Dustin Kennedy	Subject: Comment on Text	Date: 6/30/2022 5:11:55 PM
Oregon Parks and Recreation Department.		



(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.

Author: Dustin Kennedy Subject: Comment on Text Date: 7/1/2022 2:49:50 PM

This is too vague and would be more appropriately referenced in SHPO guidelines and not as a revision to the OAR. It is clear that the intention is to not adversely affect archaeological sites, once identified; however, there is too much ambiguity in ORS 358.905 defining what an archaeological site is to enforce this consistently. What is the threshold for this to be violated and how does SHPO make that determination? SHPO has previously communicated that generally 10 or more artifacts in an area demonstrating a pattern of human behavior is indication of the presence of an archaeological site. How does one continue investigation of a larger "geographic locality" when a localized archaeological site is identified? What are the parameters? Are post-contact and pre-contact sites/artifacts treated equally? Investigating "geographic localities" for the presences of archaeological sites is rarely cut and dry and often many other factors (landforms, disturbance, etc.) are considered in the field when making these kinds of determinations. I think this is an unnecessary addition that is both too ambiguous for an applicant to ensure compliance as well as SHPO to ensure consistent punishment. Is there a dispute resolution process if one is accused of violating this since there was no archaeological permit and associated approval authorities to weigh in? Or is it simply logged as a state statue violation? Who determines that? Can it be disputed? I believe that the more information one knows about a site, within reason of course, the better one can actually prepare a research design and apply for the permit. Archaeological methodology and documentation should still be followed during exploratory excavations so this should also be considered in the event of a potential violation. Some CRM firms excavated exploratory probes with similar vertical and horizontal control as test units. Does this factor into the decision of a violation. If there are cases of gross misconduct then there should be consequences. However, I believe that there should be more clarity/discussion before adopting this clause.



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Commenter name (if provided):**

Liz Oliver

**Location (if provided):** Portland, OR

**Public comment:**

Attached are a letter with my comments.

Thanks,  
Liz Oliver

**Date comment received:**

July 1, 2022 03:26 PM

**Commenter email (if provided):**

lizzie.oliver@gmail.com

State Historic Preservation Office  
Oregon Parks and Recreation Department  
725 Summer Street NE, Suite C  
Salem, OR 97301

To Whom It May Concern:

Thank you for the opportunity to comment the proposed Oregon Administrative Rule changes to govern how the state issues archaeological permits.

General Comments:

1. The current Oregon archaeological permit rules are limiting and rather than use this as an opportunity to make the process more equitable and allow for more inclusive access to archaeology, these rules double down and make the permit process more cumbersome and create additional educational and experiential requirements for people seeking a permit.

The current Oregon Revised Statutes (ORS) set a high bar for who is a “qualified archaeologist,” and the proposed rules want to make it even higher. If we as archaeologists wish to “decolonize” the field, then we must examine the legal and regulatory structures that may bar access to participation. The proposed rule revisions could have been an opportunity to increase equity and access to Oregon archaeology - while still maintaining professional standards - instead the proposed rules create additional hurdles by making the thesis topic of the necessary degree and the type of fieldwork required to be a qualified archaeologist more specific than before.

ORS 390.235(2)(a) states, “The State Parks and Recreation Department may issue a permit under subsection (1) of this section under the following circumstances: To **a person** conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;” The rules could create standards for when a person who does not meet the definition of “qualified archaeologist” may apply for a permit for the benefit of a scientific or educational institution.

In 2021, the State of Oregon published a “Diversity, Equity, and Inclusion Action Plan.” The Rulemaking Advisory Committee should consider the goals of this plan when updating the rules based on public feedback.

2. The rules use numerous terms when discussing Indian tribes (tribe, appropriate tribe, most appropriate Indian tribe, Indian tribe, federally recognized tribe). The rules should use consistent terminology throughout. ORS 358.905 and ORS 390.235 reference ORS 97.740 for definition of Indian tribe. I recommend retaining the definition in the law, rather than modifying it through the rule. OR 97.740 has a definition of Indian tribe that is inclusive of tribes with ceded lands or reservations lands that aren’t considered an “Oregon state tribe” or under the jurisdiction of LCIS. “Appropriate (Indian) tribe” should include tribes with ceded lands, reservation lands, and ancestral territory in Oregon.
3. Currently the SHPO application to be a qualified archaeologist includes the following language, “Please consider the intent of the statute is to identify individuals that possess the credentials and experience to lead an archaeological excavation, and produce a professional quality report of publishable quality. As such, field research supported by a thesis, dissertation, *or report*

*equivalent in scope and quality*, should relate to the types of archaeological excavation activities for which a permit is typically needed in Oregon, that meet the requirements of a post-graduate study." What is a report equivalent in scope to a thesis or dissertation is not addressed in the current or revised rules. This should be included in the new rules. It would also provide additional opportunities and access for individuals who do not meet the proposed burdensome thesis requirements to be a qualified archaeologist.

4. Definitions should retain the original definition in the law, and not reference parts of rules. The rules should clarify the law; adding language and referencing other parts of the rules can lead to more burdensome requirements.

For example, the rules definition of 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." (AMEND: 736-051-0070(22))

The "archaeological excavation" definition states, 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." (AMEND: 736-051-0070, (4))

When taken together, a qualified archaeologist is now someone who has education, fieldwork, laboratory or curation, and reporting experience specific to research that 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. An individual needs to have done research under a permit for nonfederal or public lands in Oregon to meet the definition of qualified archaeologist to get a permit.

I recommend sticking to the definitions in the ORS: "Qualified Archaeologist has the meaning in ORS 390.235(6)(b)," and then the terms used in ORS 390.235(6)(b) may be further defined in 736-051-0070.

Another example is AMEND: 736-051-0070(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." I recommend striking "requiring a permit on non-federal public lands." It is not part of the definition of exploratory excavation. This definition also should also cover permits on private lands, but as written it does not.

Comments on

AMEND: 736-051-0070

RULE TITLE: Archaeological Permits: Definitions

5. (22)(a)(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.
  - What disciplines count as "other germane disciplines"?

6. (22)(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;
  - (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."
    - This is a new barrier to access/qualification. Undergraduate and graduate experience should count towards hours.
    - This section states archaeological field research includes survey and excavation. This contradicts the new definition of archaeological field research, which is limited to the "hands-on analysis of a professionally excavated archaeological collection."
7. (22)(c)(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.
  - The rules define archaeology as "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" (AMEND: 736-051-0070 (22)(a)(C)). Why is archaeological field research limited to collection analysis? This will exclude a lot of thesis topics, and further restrict who can qualify as an archaeologist. I recommend a more expansive definition of archaeological field research that better aligns with the definition of archaeology.
  - Why only collections in an Oregon/federal facility? Does this exclude tribal facilities, other state facilities that may not meet federal standards or individuals who studied outside of the US? This definition is too restrictive.
  - This excludes the many collections that were found pre-1980. There is a lot of value in examining older collections. Why does Oregon promote curation for most if not all collections, if it does not also value the data from them enough to endorse a qualification from their study?
8. (24) "Recognized Scientific Institution" means a chartered museum, organization, or society with a commitment to the scientific method.
  - Will tribal facilities meet this definition?
  - The text of ORS 390.235 is "...benefit of a recognized scientific *or educational* institution with a view to promoting the knowledge of archaeology or anthropology;" The definition also should include educational institutions.

Comments on

AMEND: 736-051-0080

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

9. (2)(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;
  - The text of ORS 390.235 reads, “*To a person* conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;” Adding qualified archaeologist to this section is a missed opportunity to provide access to individuals who are working with or coordinating with a scientific or educational institution, have experience in the archaeology excavation but may not meet the high bar for specific thesis topics.
10. (3)(b) “...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;”
  - Is the intent of this section to require tribal coordination by a permit applicant? If yes, this does not compel an applicant to coordinate with tribes, it only states that tribal coordination may help in the development of a research design. Recommend stating tribal coordination is required if that is the goal.

Comments on

AMEND: 736-051-0090

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

11. (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. 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.
  - A permit for exploratory excavation on private land is not required, but given that 10 artifacts are considered an archaeological site in Oregon, this places a high burden on an individual(s) working on private lands. People could go into the field, excavate a single probe and be forced to stop work and wait 30+ days for a permit. The rules should allow for a process in which work can move forward in a single session, either through allowing additional probes to define a site's boundary or to require a permit for exploration up front that covers all the work necessary to complete a presence/absence survey.

Finally, I'm not sure who the RAC wants to permit to excavate an archaeological site in Oregon. It appears to be an individual whose graduate thesis analyzed collections excavated in Oregon to today's professional standards. If that the intent of these rules, it excludes many talented and capable archaeologists.

I have worked in the field of archaeology for almost 20 years. I have a Bachelor of Science in Anthropology with an archaeology concentration. I have a Masters of Archaeology & Heritage. I spent four years as a field tech doing survey and excavation across multiple geographic areas of the US. I have a full year of professional Phase III unit and feature excavation, covering several archaeological sites in three states. I have worked in Oregon 12 years, continuing to do field work, and I have extensive experience in tribal consultation. I meet the Secretary of Interior Professional Qualifications

Standards for Archaeology. I do not meet the current, nor the proposed regulations for an Oregon “qualified archaeologist.” I don’t say this because I believe I am entitled to this qualification.

I do wonder who else is excluded from obtaining an excavation permit if someone with years of academic training, field experience, and work with tribes does not meet the requirements. What is the intent of the Oregon Revised Statute? I believe it is to ensure that an individual who excavates a site has education and experience in archaeology, and that they consider tribal input and views before doing the work. The proposed rules appear to so narrowly define who may qualify in an attempt to regulate out the few people who may not act in good faith when getting a permit. But it also inadvertently excludes many others. Will archaeology students who wish to work in Oregon be required to only write theses covering the narrow topics defined in the proposed rules? Will professional archaeologists who went to school out of state or abroad be able to meet the requirements?

I strongly recommend the Rulemaking Advisory Committee reconsider the proposed rules and revise them again with an eye towards supporting equity, inclusion, and access to Oregon archaeology.

Thank you again for the opportunity to comment,

Liz Oliver  
Portland, OR



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Commenter name (if provided):**

Jaime Kennedy

**Location (if provided):** Eugene, OR

**Public comment:**

Questions and comments are the proposed rule changes are attached for your review.

**Date comment received:**

July 1, 2022 03:53 PM

**Commenter email (if provided):**

jaimeken@uoregon.edu





## UNIVERSITY OF OREGON

July 1, 2022

TO: Oregon Parks and Recreation Department, ATTN: Katie Gauthier  
725 Summer St NE, Suite C  
Salem, OR 97301

FR: Jaime Kennedy, PhD, Director, Archaeological Research Division  
Chris Ruiz, MA, MS, Interim Deputy Director, Research Division  
Andrew Boehm, PhD, Interim Deputy Director, Research Division

RE: Rulemaking: Issuance of Archaeological Permits  
Amendments to OAR 736-051-0000 to 736-051-0090

We have questions and request clarification on several proposed OAR changes and thank you for the opportunity to provide comment.

### **736-051-0010**

(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.*

Comment: The definition expansion of "applicant" to include "and the institution/company they represent" is unclear. As outlined elsewhere (736-051-0080-11(B)), a permit amendment that addresses a change in responsibility over the permit, requires approval from a new applicant. This suggests the institution is not included in the definition of "applicant".

Further, will the institution (employer) or the individual applicant responsible for permit violations? New rules outlined in 736-051-0080(3)(g-h) require applicants to include past violations and pending open permits on new permit applications. Who takes responsibility if the applicant is laid off, moves to another employer, retires, or their position terminated before the permit obligations are met? Does everyone employed by an institution then need to list their colleagues' violations on every permit application? In general, how will personnel changes be handled as they pertain to permit non-compliance/violations?

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

Comment: "Archaeological site" is loosely defined in ORS 358.905:

“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 archaeological objects with:

- (i) Each other; or
- (ii) Biotic or geological remains or deposits

### **MUSEUM OF NATURAL & CULTURAL HISTORY**

& Oregon State Museum of Anthropology · 1224 University of Oregon · Eugene, OR 97403-1224  
Collections (541) 346-5120 · Public Programs (541) 346-3024 · Research (541) 346-3033

This definition suggests that professional archaeologists have some responsibility in interpreting context to determine when archaeological objects constitute a site. Amended rules proposed in 736-051-0090(1)(b), regarding exploratory probing without a permit on private land, state: "if additional excavation is necessary to establish the boundary of the site...or conduct further archaeological investigations of the site, it will require a permit issued under this rule."

Since the definition of site is ambiguous, would an archaeologist be guilty of a violation if they resumed presence/absence investigations beyond what they reasonably assumed were the newly discovered site's boundaries if the investigations are on private land and no permit has been issued?

(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.*

Comment: Permit conditions may or may not be at odds with each other – is there a process the applicant should follow to determine how to fulfill all conditions if they receive conflicting instruction? Are there limits on conditions placed on the permit by an entity with approval authority or can they be anything and everything? Is the point of the rule changes to engage in more arbitration/mediation when questions like this arise?

As written in 736-051-0080(6)(B) SHPO will review any conditions to be added to the permit, but it is not clear whether OPRD will issue the permit "without conditions, issue the permit with conditions, or deny the permit" as set forth in 736-051-0080(8) as it pertains to expedited 48-hour review.

(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, and the most appropriate tribe(s).*

Comment: The Oregon State Museum of Anthropology (OSMA) has been eliminated from the definition of "Entity with Approval Authority", but OSMA is the designated state curatorial facility as stipulated by ORS 390.235. OSMA is obligated by the statute to curate archaeological materials or to approve an alternative curatorial facility. Removing OSMA as an "Entity with Approval Authority" excludes OSMA from a process to which it has statutory obligations. It is unclear as to why this change, and the change that removes county planning departments as entities with approval authority, is not included in the rule summary.

### **736-051-0070**

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

Comment: See comment above about ORS definition of archaeological site regarding 736-051-0020(7).

(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.*

Comment: See comment above about applicant vs. institution responsibility for permits and permit violations regarding 736-051-0020(2).

*(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.*

Comment: ORS 390.235 refers to OSMA. OSMA should be referenced along with UOMNCH to maintain statutory reference.

*(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:*

*(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;*

*(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.*

Comment: As written, this suggests that only paid experience as a field tech counts toward the hours of supervised experience. Why wouldn't enrollment in an accredited field school or graduate research count toward the experience requirement?

Private firms would need to first hire otherwise qualified archaeologists with terminal degrees to work for base pay until these criteria are met. Candidates with the same qualifications would be more apt to take jobs at agencies where they would be reasonably compensated for their training and education. These changes to the rules would negatively impact CRM firms and be a detriment to Oregon masters and PhD students who are unable to work locally.

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

Comment: How is excavation defined? Does it include "exploratory excavation"? How is survey defined? Is it limited to pedestrian survey or does it include "exploratory excavation"?

Clarification of these definitions are important because acquiring 240 hours of excavation experience might take years if "exploratory excavation" is not included (especially if field school and graduate project experience would not count toward the minimum requirements).

*(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.*

*(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.*

Comment: We do not understand why the definition of “archaeological field research” as it pertains to designing and executing an archaeological study is restricted to data recovery and test excavations. In practice, archaeological field research could include mapping, pedestrian survey, soil sampling, etc. This new definition seems overly restrictive.

Moreover, as written the language suggests the archaeological study must be Oregon based (i.e., “prior or after curation at a Oregon “State Designated”, “Alternate Curatorial Facility”, or federally approved facility”). Individuals who have clearly demonstrated that they can competently design and execute an archaeological study (as evidenced by a graduate thesis or dissertation or peer reviewed publication or lead or sole-authored report) should be able to meet the requirements for a “Qualified Archaeologist” regardless of state boundaries.

*(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**

*(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:*

*(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;*

Comment: If analytical methods are considered “part of the terms of an issued permit” would the applicant be expected to define/outline all possible analyses or otherwise be excluded from conducting them under the terms of the permit? The phrasing is unclear.

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

Comment: Does this suggest a formal coordination period with tribes be initiated in advance of the permit application? Will the applicant be expected to contact LCIS to determine the "appropriate tribes" with which to initiate coordination prior to the application submission?

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

Comment: It is unclear whether this disclosure will need to include violations for the individual applicant or both the applicant and institution? What is the process for tracking violations? Are the violations self-reported or will SHPO keep a record and verify? Will there be a public record made available on the SHPO website for the history, nature, and outcome of dispute resolutions?

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

Comment: Does SHPO have a process in place to notify the applicant once all permit obligations have been met? Otherwise, how does the applicant know when a permit is closed? If this is a requirement for a new permit application, all pertinent information about previously issued permits should be made available to the applicant.

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

Comment: See comment directly above regarding open permits.

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

Comment: Inconsistent language – “review authority” – is this synonymous with “Entities with Approval Authority” (see examples elsewhere in document under 736-051-0080)

#### **736-051-0090**

*(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:*

*(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. 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.*

Comment: See comment above about ORS definition of archaeological site regarding 736-051-0020(7).



# Submit a public comment on a rule

Oregon Parks and Recreation Department

**Proposed rule change:**

**Issuance of Archaeological Permits**

**Commenter name (if provided):**

Jo Reese

**Location (if provided):** PORTLAND, OR

**Public comment:**

We are submitting comments on the proposed revised rules for Issuance of Archaeological Permits. Please see the attached document.

We also have emailed the comments.

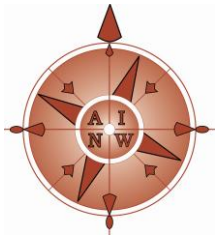
Jo Reese and John L. Fagan, AINW

**Date comment received:**

July 1, 2022 04:31 PM

**Commenter email (if provided):**

jo@ainw.com



# Archaeological Investigations Northwest, Inc.

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July 1, 2022

Oregon State Parks and Recreation Department  
Attn: Katie Gauthier  
725 Summer Street NE, Suite C  
Salem, Oregon 97301

Sent Via Email: [OPRD.publiccomment@opr.d.oregon.gov](mailto:OPRD.publiccomment@opr.d.oregon.gov)

Re: Rulemaking for Issuance of Archaeological Permits  
Amending OAR 736-051-0000 to 736-51-0090  
Public Comments

Dear Katie & others at Oregon State Parks and Recreation Department:

Attached are comments from both of us reviewing the proposed rule changes for archaeological permits. We founded our company, AINW, 33 years ago, and we are now the largest cultural resource management firm based in Oregon, having more than 30 employees in our Portland office. One of us, Jo, represented the Association of Oregon Archaeologists when the rules were revised to address changes in State law in the 1990s.

We understand that some revisions to the rules are needed because procedures have changed since the last time the rules were updated, nearly 30 years ago. For example, the rules state the State Historic Preservation Office (SHPO) will mail—not email—the permit and related notices; and the rules still use a former name for the state museum, now referred to as OMNCH.

However, the proposed rule changes go significantly beyond bringing the rules more up to date. The proposed changes reach well beyond what is stated in ORS 390.235 and 358.905. One of the proposed changes would require a permit to explore private land to determine if there is a site as soon as a site is recognized on a parcel or project area. This is not how the law reads and current practice is to work outside of where there is evidence of an archaeological site to determine the extent of the site; at that point, a permit would be obtained for work within the archaeological site, unless the site could be avoided. Another change that goes well beyond what is reasonable or based in State law is to require all archaeological work being done on private land under a permit to stop when “human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered” either in the field or during curation processing. This change is not well thought out, as a permit may be for a very large area and multiple work sites on a project, and this work stoppage means employees will be laid off for an indefinite amount of time and create delays for a project; the current stoppage procedures in this situation seem to be working well, and there is no explanation of the need for this change.

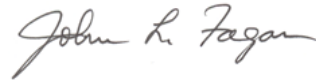
There are other examples of overreach in the permit rule changes. The effect of the significant changes of which there are several, is to slow and even interrupt archaeological fieldwork, creating delays and making it more costly. An unnecessary stop of work in-process in order to apply for and receive a permit would require a minimum of five to six weeks or more, especially since the economic hardship condition is proposed to be removed for an expedited process. Other proposed changes in the rules regarding who is eligible to obtain a permit restricts fully qualified professionals, which has an impact to the livelihood of individuals who are professionally qualified.

The amount of time to review the extensive changes proposed has not been adequate for review. Please accept our comments, presented on the following pages, on some of the more important areas. This is not an exhaustive list of comments. We request that the public comment period be extended so a more in depth review of these changes can occur.

Sincerely,



Jo Reese, M.A., RPA  
President/Senior Archaeologist



John L. Fagan, Ph.D., RPA  
VP/Senior Archaeologist



**References are to: 9a Attachment A: Clean Copy of Proposed Rules**

736-051-0020

(1) We request that the proposed added phrase that reads “including after its issuance” be deleted. This would mean that after the permit is issued, the door is open to changes. What is the point of having a 30-day review period if the reviewers can at any time ask for changes? This exceeds what is outlined in ORS 390.240, which is the “dispute” section.

736-051-0060

(2) This new wording (largely in yellow highlight, below), especially “ethical responsibilities,” is unclear and needs to refer to a definition or some other section. How is this a “rule”? An alternative would be to have the rules simply require that the applicant be a Registered Professional Archaeologist as there are strong ethical requirements for this professional registration.

(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

(2) The highlighted “and” should be “or.” This does not adhere to the three situations in 390.235(2). Does this proposed change mean an institution would be able to obtain a permit?

(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.

(4) Adding “private lands” (highlighted) in this section, as has been done under the proposed rules, widens the applicability beyond the law. The law, 358.920(1), applies the requirement of obtaining a permit for private land only when an archaeological site has been found. This change in the definition ripples through the new rules and broadens the requirement of obtaining a permit in a way not stated in State law.

(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.

(13) “Object” is added in the proposed rules. There is no legal basis to obtain a permit for an object under the definitions elsewhere.

(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.

(22) This section relates to who meets the qualifications to be a “Qualified Archaeologist” and can therefore obtain a permit. Much of this section is entirely new and exceptionally detailed, going well beyond the professional requirements outlined either in the law or in the Secretary of the Interior’s professional standards. It is overly restrictive. An example is:

(c)(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.

This means that a graduate student who prepared a thesis on an extensive collection in a museum that was not “professionally excavated,” would not be permissible under these rules. There are a lot of valuable collections that would be otherwise analyzed, but doing so, ends the professional archaeologists’ career in Oregon.

(a)(ii) This section limits graduate degrees to only those that are US accredited. This means those who are professionally qualified but have gotten a degree at a non-US institution would not be able to obtain a permit. This leaves out a lot of professionals who have degrees from institutions in other English-speaking countries, and elsewhere. I ask this be deleted and replaced with the current wording. Here is the proposed changed section.

(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.

**This is the current wording for a Qualified Archaeologist, the individual who can obtain a permit.** (Under the proposed rule changes, this section is now over a page long.)

(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.

#### 736-051-0080

(3)(f) We request this additional item that is to be included in the permit application be made “as of the time the rule is issued.”

(3)(6) We request this additional item that is to be included in the permit application be made “as of the time the rule is issued.”

(6) There should be a time period added for when the SHPO sends the application out for review. The current rule is for two days, and that has been entirely deleted. We ask that two business days be retained, or another reasonable time period.

(7) This topic is the Expedited Permit Application.

- The wording in the first sentence (in yellow highlight) is unclear and we cannot understand the intent. It appears to have gotten garbled during the track changes editing.
- “Object” (yellow highlight) is included but there is no legal basis to obtain a permit for an object under the definitions.
- The situation of an “economic hardship” has been deleted, but this is important to individuals when there is an unanticipated discovery, and we request that it be retained.

(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 10 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.

(7)(b) This makes no sense. Why would “prior review” be needed under an expedited process, and if it makes sense, then what is a prior review?

(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.

(9) Please add that the permit would be issued within the “first business day after the end of the review period.”

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

(10) Proposed wording:

(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.

(10) This proposed change is significant, unreasonable, confusing, and contrary to State law. It would require all archaeological work being done under a permit to stop when “human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered” either in the field or during curation processing. This change is not well thought out, as a permit may be for a very large area and multiple work sites on a project. The indefinite work stoppage means employees will be laid off for an undetermined amount of time and create delays for a project. The current work stoppage procedures in this situation, which are focused

on the discovery, is working well, and there is no explanation of the need for a change this broad, extensive, and unreasonable.

736-051-090

(1)(b)(i)

(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.

The proposed changes would require, on *private* land, that the site be recorded as soon as there is evidence of the site and that a permit be obtained for work outside of that area to further determine if the archaeological site extends beyond that spot. We suggest that a permit be obtained once the site is delineated, if additional work is needed. The proposed modification would be:

(b) If an archaeological site is identified **on private land and it's boundary is delineated**, all excavation must stop. . .

(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.



# Submit a public comment on a rule

Oregon Parks and Recreation Department

## Proposed rule change:

**Issuance of Archaeological  
Permits**

## Commenter name (if provided):

Michael Nixon

## Location (if provided): ,

## Public comment:

See comments attached.

Michael V. Nixon

Lawyer | Strategist | Consultant

## Date comment received:

July 1, 2022 04:59 PM

## Commenter email (if provided):

michaelvnixon@yahoo.com

# Michael V. Nixon

LAWYER | STRATEGIST | CONSULTANT

July 1, 2022

Oregon Parks & Recreation Department  
ATTN: Katie Gauthier  
725 Summer St NE  
Suite C  
Salem, Oregon 97301 via email [OPRD.publiccomment@oprd.oregon.gov](mailto:OPRD.publiccomment@oprd.oregon.gov)

RE: Proposed New OPRD Rules and Amendments to Existing Rules for Issuance of Archeological Permits, and Formal & Informal Dispute Resolution Processes.

Dear Ms. Gauthier,

The following comments on the above-referenced proposed rules are submitted on behalf of The Cultural & Natural Heritage Project, an unincorporated association based in Portland. I am also providing these comments having the background as a public representative member of the Oregon Parks & Recreation Department (OPRD) Archaeological Rules Advisory Committee who assisted in the composition and adoption of the new rules and rule amendments to implement Oregon Senate Bill 61 of 1993. It was welcome news to hear of Oregon Parks & Recreation Department (OPRD) and the State Historic Preservation Office (SHPO) undertaking the updating of the thirty-some year old rules on the issuance of archaeological permits. Many of the proposed changes are adroit updates and improvements, such as 1) providing the Native Nations a role in the permitting process; 2) amending the dispute resolution process rules; 3) retiring the rule regarding approval authority of the University of Oregon Museum; and 4) providing a process for debarment of noncompliant permittees. These are significant improvements and are a credit to those involved in their composition and presentation.

Most cultural resource management professionals, scholars, higher education administrators, and members of the public who are familiar with the current rules and their implementation have recognized that the current circa 1990-era rules have been surpassed by the state-of-the-art education, training, and experience in the field of cultural resources management. Turning to the heart of the major changes to the current rules – that is, who will be determined to be a “qualified archaeologist” and who will not be – the accomplishment embodied in the proposed rules is much less complete and deserves further refinement and improvement on this first generation of publicly proposed rule amendments. Furthermore, Oregon and the reputations of the state, OPRD, and Oregon Department of Justice, in national and international professional and academic communities have suffered from the effects of the overly-subjective methods and manner of applying the current rules in determining who is deemed to be qualified to receive a permit from OPRD SHPO as a professional archaeologist.

For example, consider the experience that professional archaeologists who have obtained graduate degrees and experience from specialized programs such as at Simon Fraser University, but yet have been denied permits arbitrarily, with fault being deflected by OPRD SHPO staff to a rigid reading of the language of the current rules and traditional practice within the insular subculture of OPRD SHPO.

The Heritage Resource Management (HRM) Professional Program at Simon Fraser University’s Department of Archaeology—like other leading, Master’s-level graduate programs (e.g., the [Johns Hopkins MA Program in Cultural Heritage Management](#) and the [University of Maryland Graduate Program in Cultural and Heritage Resource Management](#))—is designed and operated to prepare future

leaders in the essential global effort to conserve places, objects, and traditions inherited from the past and valued in the present.

The SFU Professional HRM Program's primary objective is to provide Bachelor's-level HRM practitioners with exceptional opportunities to obtain the knowledge, skills, perspectives, and research-focused graduate degrees required to advance both their careers and HRM policies, practices, and enterprises. This is the first online HRM professional graduate program to feature the complete written thesis that is a requirement in many jurisdictions for licensure, permit holding, or full professional accreditation.

The SFU HRM offering is a cohort-based, blended online program designed to support participation by students living outside the Vancouver metropolitan area of southwestern British Columbia, Canada. The Program explicitly accommodates professionals with family and employment obligations that would make it difficult to participate in on-campus graduate programs. The Program mobilizes advanced distance learning technologies to support high-quality learning environments. The HRM Program launched in Fall 2016 and has produced 15 MA graduates and 5 graduate certificate holders.

Explicitly cognizant of the persistent *skills gap* in higher education the SFU Program's admission requirements include at least one year of full-time HRM employment and demonstrated applicant capacities for report writing and client management. Students come to the SFU Program already possessing expertise in fieldwork methods and fully educated in the archaeology and culture history of one or more world regions. Although courses in archaeological methods and regional archaeology and prehistory are available in SFU Archaeology's catalogue, the HRM Program students do not take these courses because they do not need them. What the HRM students need and enroll to receive is advanced training in law and policy (ARCH 531), ethics and professional practice (ARCH 541), business and management (ARCH 551), and research design (ARCH 561). Each of the four required courses has been prepared and is delivered by a team of HRM-CRM professionals.

Following coursework completion, students advance to full candidacy and must prepare, present, and publicly defend a written thesis that adheres to SFU policies and international academic standards. The thesis requirement is explicitly framed as an opportunity for students to parlay prior experience, professional contacts, and distinctive access to unique data sets into a practice-defining and career-enhancing project. The thesis topic and structure are refined and customized to meet the specific mandates for the jurisdictions where students expect to practice following Program completion.

The SFU HRM Program is an explicit response to Several generations of university curricular experiments that have failed to respond to HRM industry, societal demands, and student interests in graduate training that enables full HRM career potential. The highly context- and jurisdiction-specific nature of HRM practice makes knowledge acquired in the field more valuable than classroom learning about field methods, material cultures, and regional culture histories.

SFU is continuing to answer demands from the CRM-HRM industry, from Bachelor's-level CRM practitioners, and from the discipline of archaeology to provide advanced training for those who already know how to do HRM archaeology. The HRM Program leapfrogs the need to train students in technical fundamentals and regional archaeologies in order to teach students **why** they do HRM the way they do it and **how** they can do it better and with expanding benefits to their careers, clients, employers, and public shareholders.

We recommend that the rules at Oregon Administrative Rules (OAR) 736-50-070, especially as pertaining to “qualified professional archaeologist” not be finalized as is because in the attempt to provide the clarity, predictability, consistency, and equitability that has been lacking at critical times, the problems are inadvertently but substantially compounded in the proposed iteration. These particular proposed rule changes must be improve to serve the necessary and desired purposes and effects.

Thank you all for your earnest efforts in making the overdue improvements and modernization of these rules, and for your thoughtful consideration of everyone’s comments.

Sincerely,

Michael V. Nixon