



Rulemaking: Archaeological Permit on Public Lands

**Public comments received
Sept. 1, 8:00 am through Sept. 9, 2022, 3:30 pm**



Submit a public comment on a rule

Oregon Parks and Recreation Department

Proposed rule change:

Archaeological Permit on Public Lands

Commenter name (if provided):

Daniel Pettit

Location (if provided): Salem, OR

Public comment:

Good afternoon,

Please find my attached comments for the proposed OAR rule changes for archaeological permits on public land.

Best Regards,
Danny

Date comment received:

September 9, 2022 03:17 PM

Commenter email (if provided):

Daniel.K.PETTIT@odfw.oregon.gov

Chapter 736

Parks and Recreation Department

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 director.

(2) The director may issue an archaeological permit to:

(a) 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;

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


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

(3) The director may authorize the State Physical Anthropologist, a “qualified archaeologist” at LCIS, to carry out activities regulated under ORS 97.740 through 97.750, ORS 358.905 through 390.920, or any combination thereof, through a written or  archaeological permit. The State Physical Anthropologist must:

(a) Relate both the sensitive nature and imminent threat to human remains, burials, funerary objects, sacred objects, and objects of cultural patrimony;

(b) Receive written or oral permission from the most appropriate Indian tribe(s), prior to any potential recovery or collection;

(c) Notify the landowner or land managing agency and receive written or oral approval for access prior to any potential recovery or collection; and


(d) Notify SHPO, and Oregon State Police of the location of any recovery or collection under a permit issued under this section. 

(4) An applicant for an archaeological permit pursuant to ORS 390.235 must submit an application to the director. 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 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 the applicant in developing research designs, which includes background information from any pertinent publications, gray literature, informants, tribes, ethnographies, historic properties of religious and cultural significance, traditional cultural

properties, known archaeological objects and sites, historic documents or National Register bulletins relevant to the objectives of the archaeological investigation and its location. The research design includes appropriate field and analytical methods to achieve any research objectives based on informed expectations, and is part of the terms of an issued permit;

- (c) The name and current contact information of the landowner or land managing agency;
 - (d) The state designated or approved alternate curation facility for archaeological objects, field forms, photographs, and other attendant data from the proposed archaeological investigation 
 - (e) A list of any tribes that the applicant 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 where terms or conditions have not been satisfied in the time allotted from the past ten years;
 - (i) As applicable, a contingency plan for any unanticipated discoveries of archaeological objects or sites during any stage of an archaeological investigation or related project or undertaking.
- (5) Upon receipt of a complete application, the director shall determine whether the application involves public lands.
- (6) After a request is made from SHPO, LCIS will provide the most appropriate Indian tribe(s) with approval authority over the archaeological permit application. In the event LCIS is not able to respond within 48 hours, SHPO will designate the most appropriate Indian tribe(s) based on past permits issued in the vicinity.
- (7) 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 SHPO sends the application 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 approval authority;
 - (c) At the request of any tribe with approval authority over a permit application, the applicant shall continue to coordinate with them during the 30-day review period under subsection (a). 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.
- (8) Any person who 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 director may grant the request upon a determination, in coordination with entities with approval authority, that the 30-day permit review period of this rule will result in an undue risk to public health, life or safety, or an undue threat to the archaeological object, site, human remains,

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

(a) If the director determines that an expedited review request is warranted, the following procedures apply:

(A) The applicant shall submit an expedited permit application for the director 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 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;

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

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

(c) The summary abatement of unsafe or dangerous condition where the 48-hour review delay constitutes an imminent and serious threat to public safety shall be allowed before the permit is issued with prior notification to the director and the tribes identified by LCIS.

(9) After considering the application, maps, research design, and recommendations for conditions, or objections received by entities with approval authority during consultation, the director 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, ORS 358.905 to 358.961, and ORS 390.235.

(10) The applicant and entities with approval authority will receive a copy of the approved signed permit from the director.

(11) All work under a permit issued by the director shall be suspended 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 Indian tribe(s), Oregon State Police, and SHPO.

(12) The director, in coordination with appropriate Indian tribe(s), may amend an archaeological permit where:

(a) An applicant may request one amendment to an archaeological permit.

(b) An amendment request may address anything in an issued permit, with the exception of field methods.

(c) An amendments request addressing permit deadlines and deliverables may be extended for no more than a one-year period.

(d) An amendment requesting a change in responsibility over an issued permit must be signed by both the current and proposed applicant. If either the proposed or current applicant is not available, the amendment requestor must contact the director to determine if a new permit is needed.

(e) The director will send amendment requests for a 10-day review to entities with approval authority.

Statutory/Other Authority: ORS 390.235, 390.240

Statutes/Other Implemented: ORS 390.235