

NOTICE OF PROPOSED RULEMAKING

CHAPTER 736

PARKS AND RECREATION DEPARTMENT

FILING CAPTION: Updating Archaeological Permit rule for minor revisions

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/31/2026 5:00 PM

HEARING(S):

DATE: 07/21/2026

TIME: 2:00 PM

OFFICER: Helena Kesch

REMOTE HEARING DETAILS

MEETING URL: https://us06web.zoom.us/webinar/register/WN_Bi2P7d1rTR-bUBrg-hV0vA

PHONE NUMBER: 503-881-4637

SPECIAL INSTRUCTIONS:

Must register in order to receive conference link. Register at:

https://us06web.zoom.us/webinar/register/WN_Bi2P7d1rTR-bUBrg-hV0vA

NEED FOR THE RULE(S):

The proposed rulemaking will update the archaeology permit rule. The permit rule previously underwent major updates that were implemented on July 01, 2023. Since that time OPRD staff have been monitoring the effectiveness of the new rule. Following a major permit dispute that occurred in 2024, staff determined that the rule requires revisions to the dispute resolution procedures to better define the steps for informal negotiations, mediation, and arbitration in the event of a permit dispute. Other minor modifications are proposed to definitions, permit application revision procedures, and Oregon Qualified Archaeologist requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 97.750, ORS 192.345, ORS 358.905, ORS 390.235

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

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

FISCAL AND ECONOMIC IMPACT:

Proposed amendments to OAR 736-051-0000 to 0090 are not expected to have fiscal or economic impact

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type

of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) LCIS and OPRD would likely be the agencies most affected by the proposed amendments. It is not likely that local

governments or members of the public would be economically affected by this rule.

2) The proposed rule revision involves a wide spectrum of Oregon businesses that need archaeology clearance for

projects but adverse impacts are predicted to be very small, if any. The impact of service and permit costs would be

minimal.

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

Small businesses were consulted as a part of the original 2022 rulemaking to consider broader changes to 736-051. The input was included in these proposed revisions.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT? Met with Oregon's federally recognized Tribes to seek advice and discuss the proposed minor rule revisions.

CONTACT:

Helena Kesch

503-881-4637

Helena.Kesch@opr.d.oregon.gov

725 Summer St NE

Ste C

Salem, OR 97301

RULES PROPOSED:

736-051-0000, 736-051-0010, 736-051-0020, 736-051-0030, 736-051-0040, 736-051-0050, 736-051-0055, 736-051-0060, 736-051-0070, 736-051-0080, 736-051-0090

AMEND: 736-051-0000

RULE TITLE: Dispute Resolution Process

RULE SUMMARY: Adding language to dispute resolution process to include conditions of a permit after its issuance.

RULE TEXT:

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

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

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

390.235;

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

(d) Conditions of a permit after its issuance.

(2) Throughout the dispute resolution process, the location of archaeological sites and objects will be kept from public disclosure pursuant to ORS 192.345(11) 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: Clarifying existing definition of "conditions" and adding "terms" to 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 Indian tribe(s), meeting standards in ORS 390.235;

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

(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(6)(b)) or person responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235 where;

(a) The qualified archaeologist or person obtains the permit for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) The qualified archaeologist obtains the permit to salvage archaeological objects from unavoidable destruction or;

(c) The qualified archaeologist obtains the permit for investigations sponsored by a recognized institution of higher learning, private firm, or an Indian tribe.

(3) "Appropriate Indian tribe" means the federally recognized Oregon Indian tribe or tribes identified 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 requirements from an entity with approval authority specific to property access, research, notifications, field methods, analyses, monitoring, curation, and

reporting, which become terms once the director issues a permit.

(10) “Director” means the Director of the Oregon State Parks and Recreation Department or their designee.

(11) “Entity with approval authority” means, as appropriate to the context, one or more of the following: The director, the private landowner as applicable or land managing agency, and the appropriate Indian tribe(s).

(12) “Funerary objects” have the meanings given that term in ORS 358.905.

(13) “Human remains” has the meaning given that term in ORS 358.905.

(14) “Indian tribe” has the meaning given that term in ORS 97.740.

(15) “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.

(16) “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.

(17) “Object of cultural patrimony” has the meaning given that term in ORS 358.905

(18) “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.

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

(20) “State designated curatorial facility” means the UOMNCH incorporating the OSMA.

(21) "Terms" means any obligations or requirements of an issued permit.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.124, ORS 390.240

AMEND: 736-051-0020

RULE TITLE: Disputes Addressed by the Dispute Resolution Process

RULE SUMMARY: Updating dispute resolution process to include timeline and adding language related to applicants ability to withdraw their application or request cancellation of their issued permit during certain time frame.

RULE TEXT:

OAR 736-051-0000 through 736-051-0050 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; or apply for an archaeological permit.

(1) Beginning July 1, 2023, after a permit application is sent for review, disputes may arise among or between entities with approval authority and applicants over terms, conditions, or objections, where:

(a) An entity with approval authority over an application for a permit objects to its issuance, based on one or more of the following;

(A) Due to any terms or conditions.

(B) In response to a failure of an applicant to comply with a prior permit, issued on or after July 1, 2023.

(C) Over a failure to address comments to a report intending to satisfy terms and conditions of a prior permit, issued on or after July 1, 2023. The entity with approval authority must provide documentation supporting failure to address comments.

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

(b) The applicant disagrees with any terms or conditions of a permit up to 30 days after its issuance, if fieldwork authorized under the permit has not started;

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

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

(a) An entity with approval authority objects to the choice of an alternate curatorial facility; or

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

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

(4) An applicant may withdraw their application or request a cancelation of their issued permit at any time during dispute resolution prior to the start of fieldwork including the excavation or alteration of an archaeological site, exploratory excavation, or removal of archaeological objects.

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: Updates to the informal dispute resolution (negotiation) to clarify roles, processes, and timelines for dispute resolution.

RULE TEXT:

- (1) If the applicant or an entity with approval authority objects to the approval or objection of a permit or any of its terms or conditions, they will notify the director in writing.
- (2) The director will initiate an informal process by which the disputing parties will attempt to reach agreement. By mutual agreement, the disputing parties may include the director, designees of the director, which may include the state archaeologist or other staff of the State Historic Preservation Office to serve as subject matter experts, or other third parties in this process requested by the applicant or entities with review authority, without compensation. Upon receipt of an objection to the permit, the director will notify all entities with review authority that the negotiation process has begun. Completion of the informal dispute resolution negotiation will last no more than 60 days.
- (3) At any time, a disputing party can terminate the informal dispute resolution negotiation and submit the dispute to mediation or withdraw the dispute by notifying all parties in writing.
- (4) If disputing parties reach a resolution within 60 days, the permit will be issued with the conditions agreed upon by the disputing parties.
- (5) If disputing parties have not reached a resolution within 60 days, the director may:
 - (a) Grant a 30-day extension if disputing parties mutually agree in writing to continue negotiations;
 - (b) Initiate mediation through a written order to disputing parties;
 - (c) Request that the applicant revise the permit application based on the discussions and any specific requests made during the dispute resolution process. If the application is revised it will be provided to the entities with review authority for an additional review period determined by the director, not to exceed 30 days. The permit may be issued sooner than the end of the review period if all entities with review authority have responded to approve or condition the permit.
 - (d) End the process by approving or denying the permit based on the objection(s) and condition(s) received.
- (6) If one or more parties refuse to enter mediation the director will end the process by approving or denying the permit based on the objection(s) and condition(s) received by the director at the close of the informal dispute process. If the permit is denied, the provisions in 736-051-0055 will apply.
- (7) The applicant may withdraw their application at any time during the informal negotiation process by notifying the director in writing. The permit will be canceled within 48 hours of receiving a request from the applicant.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

AMEND: 736-051-0040

RULE TITLE: Mediation

RULE SUMMARY: Clarification and updated language to the mediation process.

RULE TEXT:

- (1) Within 30 calendar days of service of the director's order or request from disputing parties to enter mediation, the director will provide the disputing parties with a list of potential mediators.
- (2) Within 10 calendar days of receipt of the list of potential mediators, each disputing party will notify the director if one or more of the mediators is acceptable. Disputing parties may also propose a mediator by written notification to the director.
- (3) Disputing parties may interview potential mediators. All parties will agree on the choice of mediator within 10 calendar days after the list of acceptable mediators is forwarded to the director.
 - (a) If the disputing parties fail to agree on the choice of mediator, the dispute process will end.
 - (b) The director will approve or deny the permit based on the objection(s) and condition(s) received at the close of the informal dispute process. If the permit is denied, the provisions in 736-051-0055 will apply.
- (4) The mediator will assist the disputing parties in preparing for mediation. Such preparations will include:
 - (a) A statement of the issues to be mediated;
 - (b) A list of the parties participating in the mediation. By mutual agreement, the participating parties may include the director, designees of the director which may include the state archaeologist, assistant state archaeologist, and/or the archaeology survey and inventory coordinator of the State Historic Preservation Office to serve as subject matter expert(s), or other third parties in this process requested by the applicant or entities with review authority, without compensation;
 - (c) An estimated completion date for the mediation process, not to exceed 60 days. The director may grant a 30-day extension if the disputing parties mutually agree in writing to continue mediation.
 - (d) A statement of what constitutes agreement. An understanding of what constitutes agreement will 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(11), 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) Any other procedural matters the disputing parties determine need resolution before mediation begins on the substantive issues.

- (5) The applicant will pay for the mediator's services if the services are not voluntary.
- (6) If the disputing parties come to a mutually agreeable decision during the mediation process, the director will issue the permit with the agreed upon conditions. The permit will be issued within 48 hours of the director receiving written notice of the agreed upon decision.
- (7) If the disputing parties cannot come to a mutually agreeable decision during the 60-day mediation period or 30-day extension, the mediation process will end.
- (8) If the disputing parties decide to end the mediation process, they may do so by notifying the director in writing. The director will approve or deny the permit within 48 hours based on the objection(s) and condition(s) received at the close of the mediation process.
- (9) The applicant may withdraw their application at any time during the mediation process by notifying the director in writing. The permit will be canceled within 48 hours of receiving a request from the applicant.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

AMEND: 736-051-0050

RULE TITLE: Arbitration

RULE SUMMARY: Clarifying and updating language in arbitration.

RULE TEXT:

- (1) If the mediation under OAR 736-051-0040 does not yield a result satisfactory to all parties, the disputing parties will notify the director in writing no later than 10 days after the conclusion of mediation, and the dispute will proceed to arbitration.
- (2) The director, who will serve as a member of the arbitration panel or appoint a designee to serve, will notify each of the following of the need to designate one representative to additionally serve on an arbitration panel:
 - (a) The LCIS;
 - (b) The governing bodies of the most appropriate Indian tribes or their representative;
 - (c) The state archaeologist, assistant state archaeologist, and/or the archaeology survey and inventory coordinator of the State Historic Preservation Office to serve as subject matter expert(s).
- (3) All panel members will be designated within 10 calendar days of receipt of director's notification.
- (4) By consensus, the panel will:
 - (a) Choose a chair who will be responsible for scheduling arbitration sessions, notifying parties with standing in the dispute, and convening the arbitration session; and
 - (b) Establish the procedural framework for the arbitration.
 - (c) Establish the timeline for arbitration, not to exceed 60 days.
- (5) The issues to be arbitrated are limited to those which could not be resolved by the mediation process as provided in ORS 390.240(1)(a) to (b).
- (6) If any of the disputing parties decline to participate in arbitration, the process will end, and the director will approve or deny the permit based on the objection(s) and condition(s) received by the director. If the permit is denied, the provisions in 736-051-0055 will apply.
- (7) Arbitration will occur through one or multiple meetings held between the selected panel, permit applicant, and disputing parties. The applicant and disputing parties will have the opportunity to present their arguments regarding the dispute. The arbitration panel will come to an agreement on the permit issuance and provide the director with their determination in writing. The director will either issue the permit with the recommended conditions or deny the permit within 48 hours of receiving written notice of the agreed upon decision.
- (8) If the arbitration panel fails to come to an agreement, the dispute process will end. The director

will approve or deny the permit based on the objection(s) and condition(s) received at the close of the arbitration process. If the permit is denied, the provisions in 736-051-0055 will apply.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

ADOPT: 736-051-0055

RULE TITLE: Denial of an Archaeological Permit

RULE SUMMARY: Explain process of archaeological permit denial

RULE TEXT:

(1) Within 48 hours (excluding Saturday, Sunday, and any state, federal, or tribal holidays), the director will serve written notice on the applicant of the denial of their archaeological permit and will include the specific reasons for denial.

(2) Within 30 days of the director's service of notification, an applicant may request a hearing to be administered by an administrative law judge assigned by the Office of Administrative Hearings.

(3) Requests for a hearing under section (2) must:

(a) Include a clear statement of the reason(s) for the request;

(b) Be made in writing and sent to the director.

(4) The director will instruct the Office of Administrative Hearings to conduct contested case hearings pursuant to OAR 137-003-0501 to 137-003-0700. The director will specifically instruct the administrative law judge to conduct the hearing under OAR 137-003-0595 in accordance with the purpose of protecting confidential material as provided in OAR 736-051-0000(2).

STATUTORY/OTHER AUTHORITY: ORS 97.740, ORS 97.750, ORS 192.345

STATUTES/OTHER IMPLEMENTED:

AMEND: 736-051-0060

RULE TITLE: Application for Archaeological Permit

RULE SUMMARY: Grammatical updates

RULE TEXT:

(1) OAR 736-051-0060 through 736-051-0090 establish procedures the department, must use in issuing archaeological permits on public and private lands.

(2) Under ORS 192.345(11), information pertaining to the location of archaeological objects and sites is confidential and exempt from public disclosure. Requirements outside those 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: Updates to term definitions

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(6)(b)) or person responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235 where;
 - (a) The qualified archaeologist or person obtains the permit for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;
 - (b) The qualified archaeologist obtains the permit to salvage archaeological objects from unavoidable destruction or;
 - (c) The qualified archaeologist obtains the permit for investigations sponsored by a recognized institution of higher learning, private firm, or an Indian tribe.
- (3) "Appropriate Indian tribe" means the Oregon federally recognized Indian tribe or tribes designated by the Legislative Commission on Indian Services (LCIS).
- (4) "Archaeological excavation" 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 requirements specific to property access, research, notifications, field methods, analyses, monitoring, curation, and reporting, by an entity with approval authority which become terms once a permit is issued.
- (10) "Curatorial facility" means either:
 - (a) The "state designated curatorial facility", which is the UOMNCH incorporating the OSMA; or
 - (b) "Alternate curatorial facility" means the institution meeting standards in ORS 390.235 approved by

UOMNCH and appropriate Indian tribe(s).

(11) “Destroy” means to injure in entirety.

(12) “Director” means the Director of the Oregon State Parks and Recreation Department or their designee.

(13) “Entity with approval authority” means, as appropriate to the context, one or more of the following: The director, the landowner or land managing agency, and the most appropriate Indian tribe(s).

(14) “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.

(15) “Funerary objects” has the meaning in ORS 358.905.

(16) “Historic cemetery” has the meaning given in ORS 97.772.

(17) “Human remains” has the meaning given that term in ORS 358.905.

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

(19) “Object of cultural patrimony” has the meaning given that term in ORS 358.905.

(20) “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.

(a) A “person” that is an individual may be an applicant for an archaeological permit as provided in ORS 390.235(2)(a), for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology.

(b) Any other “person” must have a qualified archaeologist as the applicant for a permit.

(21) “Private lands” means lands within the State of Oregon owned by a person, except “private lands” do 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.

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

(23) “Qualified Archaeologist” means a person that meets the ORS 390.235(6)(b) 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 a recognized educational institution 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.

(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 12 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 paid professional level or is experience gained from an archaeological field school sponsored by an accredited educational institution, tribe, or federal or state agency.

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

(c) A portion of the excavation must include the systematic removal and screening of sediment from square excavation units.

(d) Have designed and executed an archaeological study, as evidenced by a Master’s thesis or report equivalent in scope and quality, dealing with archaeological field research, of which they are the sole, or primary/lead author.

(A) Where “Master’s thesis or report equivalent in scope and quality” may include a PhD dissertation, peer reviewed publication, or report, where the document:

- (i) Presents a major piece of research in preparation for the demands of professional research and writing;
- (ii) Sets out a problem, clearly follows the theme or themes involved, includes review of relevant literature, and shows an ability to synthesize material in a way that brings it to bear on the chosen problem;
- (iii) Provides context to the research, why the topic is important, how the project will address the topic and the methods and materials required to conduct the project;
- (iv) Explains how the work addresses archaeological theory, laboratory analysis, archival research, fieldwork, description of materials analyzed, and quantitative methods;
- (v) Demonstrates the ability of the author to analyze and manipulate archaeological data to address the stated research questions; and
- (vi) Must be in a finished and polished format of sufficient caliber that it is ready to submit to a professional publication.

(B) Where a Master's thesis or report equivalent in scope and quality dealing with "archaeological field research" supports experience with excavation or removal of archaeological or historical material, and;

(i) Where "archaeological field research" in this context 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 curatorial facility, alternate curatorial facility, federally approved facility, or foreign institution.

(ii) Where the collection consists of archaeological objects which may be curated with associated data, such as excavation level forms, field maps, catalogs of archaeological objects, archaeological object inventories, sample collections, and photographs, conveying overall provenience.

(C) Where being the "sole author" demonstrates that the qualified archaeologist designed and executed the archaeological study.

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

(E) Where an applicant's direct supervisor or co-author may submit written testimony to the director supporting the applicant's role as the lead archaeologist responsible for designing and executing the study. It must be clear from the study which parts were not directly authored by the applicant.

(24) "Recognized educational institution" means:

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

(b) An accredited academic or higher education institution, with a department comprising archaeology faculty, through a graduate school program, that offers graduate degrees with a specialization in archaeology.

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

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

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

(28) “Tribal Coordination” means a bilateral process of discussion, cooperation, and decision-making about a proposed investigation to assist with the development of an 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: Clarifying process for applying for archaeological permit on public lands.

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 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

(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) 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 if needed, verbal archaeological permit, specific to situations where damage is occurring at that moment, or the threat of damage is imminent, and the expedited permit review process in (8) would delay the need for immediate action. The State Physical Anthropologist must:

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

(b) Receive written or verbal 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 verbal approval for access prior to any potential recovery or collection; and

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

(e) Within 30 days after recovery or collection due to occurring or imminent damage or threat, the State Physical Anthropologist will provide the director with a written account of the recovery, documenting subsections (a) to (d), to satisfy their permit requirements in lieu of sections (4) to (10).

(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, the director, 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.

(j) An inadvertent discovery plan specific to any burial, human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(5) Upon receipt of a complete application, the director, must determine whether the application involves public lands.

(6) After a request is made from the director, 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 business hours, the director will designate the most appropriate Indian Tribe(s) based on past permits issued in the vicinity.

(7) The director must provide the complete application to entities with approval authority for review.

(a) Entities with approval authority have 30 calendar days from the date the director 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 the director. The director must send copies of all responses to the applicant and entities with approval authority;

(b) Before issuing a permit, the director must 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 must 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 must 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 will not proceed with the expedited review and the permit will instead go through the regular permit review process;

(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 the director 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 must 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:

(a) Order the applicant to revise portions of their application to comply with one or more conditions;

(A) The director must provide the revised application to entities with approval authority when the director's order involves revising the identified landowners or land managing agencies, field methods, laboratory analysis, or curation facility. A new 30-day review period begins once the director sends the revised application to all entities with review authority.

(B) Entities with approval authority have 30 calendar days from the date the director sends the revised application to respond with their approval, approval with conditions, or objection. No response within 30-days means no conditions or objections were submitted to the director. The permit may be issued before the end of the review period if all entities with review authority have submitted a response to the director with approval or conditions to the permit. The director must send copies of all responses to the applicant and entities with approval authority.

(b) Issue the permit without conditions;

(c) Issue the permit with conditions; or

(d) Deny the permit.

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

(11) All work under a permit issued by the director must 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 the director.

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

(a) The applicant requests amendments to an active, issued archaeological permit.

(b) Amendment requests address anything in the issued permit, with the exception of field methods.

- (c) An amendment request to extend permit deadlines and deliverables may not exceed more than one year.
 - (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.
- (13) An applicant may withdraw their application or request a cancelation of their permit at any time prior to the start of fieldwork including the excavation or alteration of an archaeological site, exploratory excavation, or removal of archaeological objects.

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: Grammatical updates

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 that the director issues pursuant to this rule:

(a) The department does not require permits for archaeologists to conduct exploratory excavation to determine the presence of an archaeological site on private lands;

(b) If an archaeological site is identified, all excavation must stop and the archaeologist must record the site on a State of Oregon Archaeological Site Record and submit to the director.

(c) If additional investigation is necessary for an archaeologist to establish the boundary of the site, continue excavation of any exploratory probes, or conduct further archaeological excavations or collection of archaeological objects, it will require a permit that the department issues pursuant to this rule.

(2) A person who desires an archaeological permit on private lands pursuant to ORS 358.920(1)(a) and ORS 390.235 must submit a request to the director:

(a) A complete application for an archaeological permit on private lands must:

(A) Meet the same requirements provided for a public lands application in OAR 736-051-0080(3).

(B) Be accompanied by a copy of the landowner's written permission pursuant to ORS 358.920(5), and

(C) Include a written statement concerning the disposition of any recovered archaeological objects not covered by ORS 358.920(4)(b);

(b) The archaeological permit process for private lands is the same as OAR 736-051-0080 (2) to (12) relating to permits on public lands.

(3) Unless authorized by ORS 97.750, the department will not issue an archaeological permit on private lands for burials, human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(4) Disputes over an archaeological permit on private lands must be resolved pursuant as provided in OAR 736-051-0000 through 736-051-0050.

(5) The director, in coordination with appropriate Indian tribe(s) may amend archaeological permits where:

- (a) The applicant requests amendments to an active, issued archaeological permit.
- (b) Amendment requests address anything in the issued permit, with the exception of field methods.
- (c) An amendment request to extend permit deadlines and deliverables may not exceed more than one-year.
- (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, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.235

