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PERMANENT ADMINISTRATIVE ORDER

PRD 6-2022

CHAPTER 736

PARKS AND RECREATION DEPARTMENT

FILED

11/21/2022 4:27 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Issuance of archaeological permit process amendments

EFFECTIVE DATE: 07/01/2023

AGENCY APPROVED DATE: 11/16/2022

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RULES:

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

AMEND: 736-051-0000

RULE TITLE: Dispute Resolution Process

NOTICE FILED DATE: 04/28/2022

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

RULE TEXT:

(1) 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 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(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

NOTICE FILED DATE: 04/28/2022

RULE SUMMARY: Rules clarified for Dispute Resolution process. Alphabetizing the definitions and reordering to provide better clarification. Expanding and or 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 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 terms from an entity with approval authority for property access, research, notifications, field methods, analyses, monitoring, curation, and reporting.

(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.

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 Covered by the Dispute Resolution Process

NOTICE FILED DATE: 04/28/2022

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:

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; 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;

(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 that has 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 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)

NOTICE FILED DATE: 04/28/2022

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 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, without compensation. Completion of the informal dispute resolution negotiation shall 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.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

AMEND: 736-051-0040

RULE TITLE: Mediation

NOTICE FILED DATE: 04/28/2022

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) Entities with approval authority shall compile and maintain a list of potential mediators.
- (2) Within 10 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 10 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 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 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(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) 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

NOTICE FILED DATE: 04/28/2022

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

RULE TEXT:

(1) If the mediation under OAR 736-051-0040 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, a member of the arbitration panel, shall notify each of the following of the need to designate one representative to additionally serve on an arbitration panel:

(a) The LCIS;

(b) State designated curatorial facility;

(c) The governing bodies of the most appropriate Indian tribes;

(3) All panel members shall be designated within 10 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 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 as provided in ORS 390.240(1)(a)-(b).

(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

NOTICE FILED DATE: 04/28/2022

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 department, shall 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 are 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

NOTICE FILED DATE: 04/28/2022

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(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 terms relating to 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 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 professional level, as opposed to that obtained as a volunteer, or for undergraduate or graduate school credit.

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

(c) Have designed and executed an archaeological study, as evidenced by a Master'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) Involves a proposal that is reviewed by faculty and 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 and 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.
- (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

NOTICE FILED DATES: 04/28/2022, 08/30/2022

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. The rule adds a process to authorize the state physical anthropologist to obtain a permit.

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 SHPO 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 SHPO, 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 SHPO with a written account of the recovery, documenting a-d above, to satisfy their permit requirements in lieu of sections 4-10.

(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, 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.

(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, 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 business 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 amended 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

AMEND: 736-051-0090

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

NOTICE FILED DATE: 04/28/2022

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 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 shall record the site on a State of Oregon Archaeological Site Record and submit to SHPO.

(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)-(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 shall 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 amended 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

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