

Oregon Parks and Recreation Commission

November 16, 2022

Agenda Item:	9b	Action
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Public Comment Allowed: **No**

Topic: Adoption of Archaeological Permits, Division 51

Presented by: John Pouley, State Archaeologist and
Christine Curran, Deputy State Historic Preservation Officer

Background: Oregon Revised Statute (ORS) 390.235 is titled: “Permits and conditions for excavation or removal of archaeological or historical materials”. The associated Oregon Administrative Rule (OAR) 736-051-0000 to 0090 defines the process governing the issuance of archaeological permits. The primary intent of ORS 390.235 is to identify who may apply for a permit, and whose approval is required prior to issuance.

The revisions to the Archaeological Permits rule focus on: defining specific terms, updating out of date processes, and addressing inconsistencies with ORS 390.235, ORS 358.905 and ORS 358.920 (Prohibited Conduct). According to ORS 390.235(1)(d), rules governing the issuance of archaeological permits are to be developed with the advice of the Legislative Commission on Indian Services (LCIS) and Oregon tribes. Seeking that advice began in July 2021, continuing through October 2022.

Comments to the current rule were first solicited from Oregon tribes and LCIS, followed by two tribal forums. Lisa Sumption, Oregon Parks and Recreation Department (OPRD) Director, and State Historic Preservation Office (SHPO) Staff, made themselves available for Government-to-Government Consultation and technical meetings as requested. A Rule Advisory Committee (RAC) held three six-hour meetings between February and March 2022. The RAC included representatives from Oregon tribes, state agencies including LCIS and the University of Oregon Museum of Natural and Cultural History (UOMNCH), federal agencies, local planning departments, and professional archaeologists. The Oregon Parks and Recreation Commission (the Commission) opened rule making at their April 13, 2022 meeting.

The first public comment period opened May 2nd, and continued through July 1st 2022. A public hearing was held on May 25th, 2022 with presentations from SHPO staff to the public. No formal comments were provided by the public at the hearing, but attendees noted that comments would be submitted prior to the close of the public comment period.

During the first public comment period, LCIS successfully hired a State Physical Anthropologist (SPA). In part, the job of the SPA is to recover human remains, funerary objects, sacred objects, and objects of cultural patrimony when necessary at the request of the most appropriate tribes.

Based on discussions relating to a public comment concerning the SPA, a need to address imminent danger to (e.g.,) eroding human remains was included in the rule revision. The addition made it possible for this position only, to be able to obtain written or verbal permissions in order to conduct recoveries when the normal 30-day or expedited 48-hour permit review periods would result in loss or damage. This addresses a very rare occasion the previous rule did not consider. To accommodate adding this change to the rule, a second public comment period specific to this section (OAR 736-051-0080) was scheduled for the month of September 2022.

Results from both rounds of public comment are analyzed below:

The first public comment period yielded input from 17 people. Five people responded to the second public comment period. The majority of comments were thoughtful. The number of people submitting comments is considered low, suggesting there is strong support for the rule revision. Support backed by the early and on-going outreach that included input from tribes and LCIS, three RAC meetings (which are still available to watch on-line), a public hearing, a two-month public comment period, followed by a second one-month public comment period.

All public comments received were entered into a spreadsheet matrix. The matrix provided a space for SHPO response, and a description of any action taken.

Staff Response to the first Public Comments: Of the 17 individuals: ten are Oregon “qualified archaeologists”, five are professional archaeologists that currently are not approved “qualified archaeologists”, one is a lawyer, and one is anonymous. Collectively, the 17 individuals comprise a city archaeologist, eight state agency archaeologists, which includes two that have recently retired, federal agency archaeologists, and three private contractors, in addition to the lawyer and anonymous.

Entities with Approval Authority

According to ORS 390.235, before issuing a permit, the Director or their designee shall consult with the landowning or land managing agency, LCIS, and the most appropriate tribe(s). In the current rule, land managing agencies and UOMNCH are identified as reviewers of all permits. However, statute does not give UOMNCH that authority, which is why it was removed from the revised rule. The defined roles UOMNCH have relating to being the state repository and with tribes having approval over alternate curatorial facilities remains. Land managing agencies have approval authority in statute, but only for public lands. The revised rule addresses that distinction.

Oregon “Qualified Archaeologist”:

Comments relating to the Qualified Archaeologist definitions and terms suggest there can be confusion around the intent of the statute. The statute is not defining a professional archaeologist, or what constitutes a worthwhile archaeological study, but rather the education and experience an archaeologist needs to support they can fully execute the terms and conditions of a State of Oregon Archaeological Permit.

Regarding the statutory requirement for education, ORS 390.235(6)(b)(A) states that a “qualified archaeologist” must 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”. Staff have trouble from “qualified archaeologist” applicants that have specific degree types, that are difficult to demonstrate they involve “a specialization in archaeology”.

For example, some institutions began to offer types of resource management degrees (e.g., Cultural Resource Management, Heritage Management, Environmental Management, etc.). For some of these degrees, it is possible for the student to choose a path that demonstrates a “specialization in archaeology”. However, at times, the courses will (e.g.,) focus on laws that can relate to archaeological sites, but do not demonstrate a specialization in the discipline of archaeology if no other courses were taken.

Another difficult degree type are what Staff call “shortcut” degrees. These are “post-graduate degrees” that can be obtained for a fraction of the cost and time commitment of a more traditional Masters or PhD program. Combined with an increase in fake, fraudulent or for-profit degrees nationwide and abroad, these are a real concern to Staff. Typically, they lack graduate level archaeology courses, or possibly only include one. Relating to this issue, one comment relates to how Staff interpret the phrase in ORS 390.235(6)(b)(A) “with a specialization in archaeology”.

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

Staff do adhere to a rigid reading of the language in statute, as it is clear that the graduate degree must involve a “specialization in archaeology”. The “specialized programs” at Simon Fraser University (SFU) in British Columbia go through the same review as any other degree program. As discussed below, the Qualified Archaeologist Application places the burden on the applicant to demonstrate they meet the requirements of ORS 390.235.

For the SFU example, the program in question involves one archaeology course, a law and policy course, an ethics course, and a business management course. Consider any other degree offered by an institution where a student chooses an elective in archaeology. For both the specialized SFU program and a student with an (e.g.,) English degree, if both completed one archaeology course, neither would qualify as having a specialization in archaeology.

Staff interpret the purpose and intent of the statute qualifications as a graduate degree that specializes in archaeology, as opposed to English, Chemistry, Ethics, etc. Institutions that offer post graduate degrees specializing in archaeology are easy to apply against the “qualified archaeologist” criteria in statute, as they clearly have a focus in the discipline. It should not be a difficult decision by Staff. It is only when it is not clear that Staff question whether the degree involves a specialization in the discipline of archaeology. Again, the structure of the Oregon Qualified Application places the burden on the applicant to make their case for each of the statutory requirements.

For several years, the “qualified archaeologist” application has offered sample text for applicants to show them what Staff look for in their statement justifying their post-graduate degree involves a “specialization in archaeology”. By including sample text, SHPO is making it clear what Staff are looking for from the applicant. Staff strive to not be arbitrary or capricious, or deflect fault. Adding examples for how an applicant can support they meet the statutory requirements is related to that objective. The example text in the “qualified archaeologist” application supporting a post-graduate degree has a “specialization in archaeology” follows:

Example: I received a Master of Arts in Anthropology in 2010. The program I followed at the university is designed for students interested in obtaining a graduate degree with an archaeology focus. The program offered a regional focus as well, based on research interests of archaeology faculty. The regional focus of my studies primarily involved the Plateau culture area, although I additionally took graduate level courses that focused on the Great Basin and Arctic. The attached transcripts provide support that my graduate coursework involved archaeology (e.g., Anth 513 Lithic Analysis; Anth 530 Archaeological Method and Theory; Anth 543 Prehistory of the Plateau and Basin; Anth 535 Cultural Resources Management; Anth 562 Evolutionary Method and Theory in Anthropology and Archaeology; Anth 570 Sediments in Geoarchaeology; Anth 573 Zooarchaeology). In addition, all three of my committee members (John Doe Ph.D, Jane Doe Ph.D, and Judy Smith Ph.D), are archaeology professors at the university. Each of them is listed as a reference, and their contact information is included in my attached resume

The courses described in the example are from an actual post-graduate archaeology Master of Arts. Only the courses (7) demonstrative of a “specialization in archaeology” are included in the example. Staff do not have a specific number of archaeology courses in mind when reviewing this part of the application, or from any submitted transcripts. However, it is difficult to justify a post-graduate degree has a “specialization in archaeology” if it lacks courses in the discipline, or includes only one. Specific to this topic, additions to the revised rule include definitions to terms in statute. These include “Oregon qualified archaeologist”, “post-graduate degree”, “specialization in archaeology”, and “archaeology” (OAR 736-051-0070[23][a]).

Impacts to Local Governments

One comment to the revisions from a local government (city) relates to Staff making changes to be consistent with ORS 390.235. As mentioned above in the section on Entities with Approval Authority, in the current rule, land managing agencies have approval authority for archaeological permits on public and private lands in Oregon. However, in statute, they were given approval authority for archaeological permit applications on public lands they manage, but not for private lands. The comment received made a case that private lands should still be applicable. Since the request would conflict with statute, Staff did not feel the rule could offer that authority.

Impacts to Small Businesses

One impact to small businesses relates to the process for when a permit is needed on private land. Currently, a permit is needed to excavate within an archaeological site on private land, but the definition of archaeological site does not adhere to that provided in ORS 358.905, which defines an archaeological site as consisting of “archaeological objects”. It does not provide a number, suggesting two archaeological objects meets the definition. At some point in the past, Oregon SHPO began using an arbitrary number (10) to define an archaeological site.

This is another attempt by Staff to make the rule more consistent with statute. The impact to small businesses is that they will have to apply for permits sooner, after recovering two objects versus 10. It may even necessitate applying for a permit in advance of fieldwork on private lands. While permit applications do not have an associated cost, the increase in the number of applications may involve additional time from contract archaeological firms.

In another example, one comment suggests the definition added in rule for “dealing with archaeological field research” is overly restrictive and would effectively end an archaeologist’s professional career in Oregon. On the same topic, a second comment on the same definition states: “We do not understand why the definition of “archaeological field research” as it pertains to designing and executing an archaeological study is restricted to data recovery and test excavations. In practice, archaeological field research could include mapping, pedestrian survey, soil sampling, etc.”

The phrase “dealing with archaeological field research” is in ORS 390.235 as a requirement that a thesis or report of equivalent scope and quality must address as part of the qualifications. Staff believe that if any thesis or report were to meet the qualifications, there would not be a need to use specific language in statute such as “dealing with archaeological field research”. That being said, it was not defined in statute or the current rule.

For context, the applicable statute (ORS 290.235) again is titled: “Permits and conditions for excavation or removal of archaeological or historical material”. Due to the broad and holistic nature of archaeology, Staff interprets the phrase “dealing with archaeological field research” as the applicant needing to demonstrate that they have written a thesis or report specifically with ties to an archaeological excavation, thereby supporting they possess that experience.

A report on an archaeological excavation is a requirement under an issued State of Oregon Archaeological Permit. The added specificity relating to an applicant’s qualifications in the phrase “dealing with archaeological field research”, as with the other requirements, relates to the intent of statute. The applicant must demonstrate they already possess that experience.

Relating to the second comment, mapping, or pedestrian survey would not demonstrate an ability to conduct and write-up an archaeological excavation. Mapping and pedestrian survey would fail to demonstrate experience with the varied analyses and field methods specific to an archaeological excavation. If an applicant is not able to demonstrate they have authored a report on an archaeological excavation, there would be no basis to support they possess those abilities. If the applicant is unable to demonstrate they have experience writing up an excavation, then, there is no support that they would be able to comply with the terms and conditions of a State of Oregon Archaeological Permit.

On a related topic, Staff in the past reached out to Oregon universities that offer graduate degrees with a specialization in archaeology for assistance determining whether or not a report is in fact, equivalent in scope and quality to a thesis. The combined information received has been part of the “qualified archaeologist” application for several years, and was added to the revised rule. That language is below, and is additionally relevant to the statement in statute: “dealing with archaeological field research” as interpreted by Staff, particularly under 4) and 5).

A thesis (and consequently a report equivalent in scope and quality) should: 1) present a major piece of research in preparation for the demands of professional research and writing; 2) set out a problem, clearly follow the theme or themes involved, include review of relevant literature, and show an ability to synthesize material in a way that brings it to bear on the chosen problem; 3) involve writing 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; 4) explain how the work addresses archaeological theory, laboratory analysis, archival research, fieldwork, description of materials analyzed, and quantitative methods; 5) demonstrate

the ability of the author to analyze and manipulate archaeological data to address the stated research questions; 6) must be in a finished and polished format of sufficient caliber that it is ready to submit to a professional publication.

For a thesis or report equivalent in scope and quality to meet the “dealing with archaeological field research” requirement, it demonstrates an applicant’s ability to comply with the terms and any conditions of an issued archaeological permit. A thesis or report submitted by an applicant, would clearly support that ability if it adhered to the above example. Staff have looked at other university requirements throughout the United States regarding coursework that focus on the aspects from the example in terms of what should be included in a thesis. While there is some variation across each graduate program specializing in archaeology, the majority of the standard 2-3 or more-year programs involve courses addressing: methods, theoretical paradigms, fieldwork, quantitative methods, analysis, manipulation of data, etc.

Staff Response to the second Public Comments: Of the five individuals: four are Oregon “qualified archaeologists”. Collectively, the five individuals comprise: three state agency archaeologists and two private contractor archaeologists.

Written and Verbal Approvals for the State Physical Anthropologist:

Comments asked for clarification on verbal permits in emergency situations. The initial language added to the rule draft was unclear on the imminent danger aspect and the need to act swiftly. To clarify the need, the following language was added to OAR 736-051-0080 (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) [expedited 48-hour review] would delay the need for immediate action.

Since the State Physical Anthropologist is the primary person to conduct such recoveries, adding the language above codifies the rare need to act swiftly where damage or complete loss could occur if additional time were needed to secure an expedited (48-hour review) permit. The necessary notifications address the process in the applicable ORS 97.750. To address documentation needs after recovery, OAR 736-051-0080 (e) was added. It states that 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”.

Inadvertent Discovery Plan for Burials, Human Remains, Funerary Objects, Sacred Objects and Objects of Cultural Patrimony: One comment asked to require an Inadvertent Discovery (ID) plan to permit applications. A subsection was added to the rule to address the comment, stating that an archaeological permit application must include (along with a-i): “(j) An inadvertent discovery plan specific to any burial, human remains, funerary objects, sacred objects, or objects of cultural patrimony”.

Rule Revision Summary: As a result of advice received, outreach, the RAC, and public comments, revisions were made. Definitions were added to the rule for terms in statute. These

include: “archaeological excavation”, “conditions”, “destroy”, “entity with approval authority”, “injure”, “post graduate degree”, “specialization in archaeology”, “archaeology”, “documented equivalency”, “Master’s thesis or report equivalent in scope and quality”, “archaeological field research”, and “recognized educational institution”. Each adds needed clarity relating to the intent of statute. At the request of tribes, a new term, “tribal coordination”, was defined and added to the requirements for a permit application. Processes relating to dispute resolutions, and applying for archaeological permits on public lands, and private lands, were updated. In addition, a process for the SPA to act quickly during emergency recovery situations was added to decrease the potential for loss, or added damage. The process requires making the statutory notifications in ORS 97.740-760 in lieu of following the archaeological permit application process outlined for standard and expedited permits.

Staff Recommendations: Based on the 15-month effort of seeking advice from Oregon Tribes (Entities with Approval Authority) and LCIS per statute, along with three all-day RAC meetings, a two-month public comment period, and an additional one-month public comment period, Staff recommend adopting the revision to OAR 736-051-0000 to 0090.

Prior Action by Commission: In April 2022, the Oregon Parks and Recreation Commission opened rule making governing the issuance of archaeological permits under Oregon Revised Statute (ORS) 390.235.

Action Requested: Staff recommends adoption of Archaeological Permits, Division 51 736-051-0000 to 736-051-0090.

Attachments:

Attachment A: Track Changes Comparison between the Current and Proposed Revision to OAR 736-051-0000 to 0090.

Attachment B: Clean Copy of the Revision to OAR 736-051-0000 to 0090

Attachment C: Public Comment Matrix.

Attachment D: Oregon State Historic Preservation Office Qualified Archaeologist Application.

Prepared by: John Pouley, Oregon State Archaeologist

736-051-0000

RULE TEXT:

736-051-0000

(1) OAR 736-051-0000 through 736-051044-0050 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, associated material objects, or funerary objects as identified in ORS 97.750.

(2) Throughout the dispute resolution process, it is the policy of the Oregon Parks and Recreation Department and the Oregon State Historic Preservation Office to use best efforts to protect the confidentiality of information pertaining to the location of archaeological sites and objects will that may be kept from public disclosure pursuant to ORS 192.345(11) and include provisions for protecting confidential information disclosed during the dispute resolution process.

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

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736-051-0010

RULE TITLE: Dispute Resolution Definitions

RULE TEXT:

~~736-051-0010~~

As used in OAR 736-051-~~00200000~~, 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.

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(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)(2) “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)(3) “Negotiation” means an informal process by which an attempt is made by disputing parties to resolve the dispute without the need for mediation or arbitration.

(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”(4) “Entity with Approval Authority” means, as appropriate to the context, one or more of the following: The Oregon Parks and Recreation Department, an appropriate Indian tribe, the Oregon State Museum of Anthropology, the state agency or local governing body charged with management of the public land in question.

(5) “Applicant” means a person who is applying for an archaeological permit pursuant to ORS 390.235.

(6) “Recognized Curatorial Facility” means the Oregon State Museum of Anthropology (OSMA).

(7) “Alternate Curatorial Facility” can mean one or more of the following:

(a) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued under ORS 390.905 et seq., if approved by OSMA with the concurrence of the appropriate Indian tribe;

(b) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe;

(c) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide an inventory of material to OSMA within six months of collection.

(8) “Human Remains” has the meaning given that term in ORS 358.905.

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

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STATUTORY/OTHER AUTHORITY: ~~(9) “Funerary Objects” have the meanings given that term in ORS 358.905.~~

~~(10) “Associated Material Objects” has the same meaning as section (9) of this rule.~~

~~(11) “Burial Goods” as found in ORS 309.240(1)(b), has the same meaning as section (9) of this rule.~~

~~(12) “Sacred Object” has the meaning given that term in ORS 358.905.~~

~~(13) “Qualified Archaeologist” has the meaning given that term in ORS 390.124, 235.~~

~~(14) “Professional Archaeologist” has the meaning given that term in ORS 97.740(6).~~

~~(15) “Archaeological Permit” means the permit issued under ORS 390.240, 235.~~

STATUTES/OTHER IMPLEMENTED: ORS 390.124, ORS 390.240

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AMEND: 736-051-0020

RULE TITLE: Disputes Covered by the Dispute Resolution Process

RULE TEXT:

OAD 736-051-0000 through 736-051-0050(16) "Archaeological Object" has the meaning given that term in ORS 358.905.

(17) "Indian Tribe" has the meaning given in ORS 97.740(4).

(18) "Appropriate Indian Tribe" means the Indian tribe designated by the Commission on Indian Services as having the greatest interest in the subject matter relating to the dispute.

736-051-0020

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

(1) Beginning July 1, 2023, after a permit application is sent for review, disputes ~~(1) Disputes~~ may arise among or between entities with approving entities and applicants over the terms, conditions, provisions or for approval authority and applicants over terms, conditions, or objections, or disapproval of an archaeological permit 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~~withholds that approval;

(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 ~~(b) An~~ 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 ~~anyover the~~ terms or; conditions or provisions of a the permit;

(c) The applicant disagrees with ~~an objection to their permit application under subsection (a), the terms,~~ conditions or provisions of the permit as established by an entity with approval authority;

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

(a) An entity that has approval authority ~~objects toover~~ the choice of ~~an a recognized or~~ alternate

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curatorial facility; ~~or withholds that approval;~~

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

~~(3) Disputes may arise over the disposition of human skeletal remains, associated material objects, or
funerary objects, sacred objects, or objects of cultural patrimony as described in ORS 97.740.750
where;~~

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 97.750, ORS 390.235, ORS 97.740

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AMEND: 736-051-0030
RULE TITLE: Informal Dispute Resolution (Negotiation)
RULE TEXT:

~~(a) The appropriate Indian tribe has denied consent within 30 days of the mailing of the request for consent;~~

~~(b) The professional archaeologist proposing the excavation (or the company or agency the archaeologist represents), disagrees with the terms, conditions or provisions of the Indian tribe's written consent, if any.~~

~~736-051-0030~~

~~(1) If the permit applicant or an entity with approval authority over an application for a permit objects to the approval or objection/disapproval of a permit or any of its terms or conditions, they or provisions, it 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 but they shall not be compensated. It is recommended that the informal dispute resolution negotiation shall last no more than 60 process be completed within 30 days.~~

~~(3) At any time, a disputing party can terminate the informal dispute resolution negotiation process and submit the dispute to mediation or withdraw the dispute by notifying all parties in writing.~~

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

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AMEND: 736-051-0040
RULE TITLE: Mediation
RULE TEXT:

736-051-0040

(1) ~~Entities~~The entities with approval authority ~~in consultation with the staff of the Dispute Resolution Commission (DRC),~~ shall compile and maintain a list of potential mediators.

(2) Within ~~10~~ten calendar days of receipt of a written request to mediate, the SHPO shall provide the disputing parties with a list of at least three potential mediators, including written credentials of each one.

(3) Within ~~10~~ten calendar days of receipt of the list of potential mediators, each disputing party shall notify the SHPO if one or more of the mediators ~~is~~would be acceptable.

(4) Disputing parties may ~~jointly~~ interview potential mediators. All parties shall agree on the choice of mediator within five working days after the list of acceptable mediators is forwarded to the SHPO.

(5) The mediator shall assist the disputing parties in preparing for ~~mediation~~the negotiation. Such preparations shall include:

(a) A statement of the issues to be mediated;

(b) A list of the parties ~~participating~~who will participate in the mediation;

(c) An estimated completion date for the mediation process. By mutual consent, deadlines may be established for ending or continuing the mediation process;

(d) A statement of what shall constitute agreement. An understanding of what constitutes agreement shall include adequate time for each disputing party's decision-making body to ratify ~~a~~and tentative agreement reached by the mediator and the disputing parties;

(e) ~~Throughout the dispute resolution process, the location of archaeological sites and objects will be kept from public disclosure pursuant to ORS 192.345(11), and include provisions~~Provisions for protecting confidential information about ~~site location~~, traditional or sacred ~~places and~~ practices, or other sensitive information associated with archaeological sites and objects;

(f) Provisions for payment of the mediator's services, if the services are not voluntary;

(g) Any other procedural matters the disputing parties determine need resolution before mediation begins on the substantive issues.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

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AMEND: 736-051-0050
RULE TITLE: Arbitration
RULE TEXT:

736-051-0050

(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 facilityHistoric Preservation Office;

(b) The Commission on Indian Services;

(c) The Oregon State Museum of Anthropology;

(d) The governing bodies of the most appropriatefederally recognized Indian tribes;

(e) The Dispute Resolution Commission.

(3) All panel members shall be designated within 10ten calendar days of receipt of SHPO's notification.

(4) By consensus, the panel shall:

(a) Choose a chair who shall be responsible for scheduling arbitration sessions, notifying all parties with standing in the dispute, and convening the arbitration session; and

(b) Establish the procedural framework for the arbitration.

(5) The issues to be arbitrated are limited to those which could not be resolved by the mediation process 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 terms, conditions or provisions on the approval of the permit application.

STATUTORY/OTHER AUTHORITY: ORS 390.124, ORS 390.240

STATUTES/OTHER IMPLEMENTED: ORS 390.240

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AMEND: 736-051-0060
RULE TITLE: Application for Archaeological Permit
RULE TEXT:

~~(7) The decision of the arbitration panel may be appealed pursuant to ORS 36.365.
736-051-0060~~

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

~~(2) Under ORS 192.345(11), It is the policy of the Oregon Parks and Recreation Department (OPRD)
and the Oregon State Historic Preservation Office (SHPO) that 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, cairns,
burials, human remains, funerary objects, sacred objects or objects of cultural patrimony is
confidential information that will be disclosed only as required by law.~~

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

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AMEND: 736-051-0070

RULE TITLE: Archaeological Permits: Definitions

RULE TEXT:

736-051-0070

As used in OAR 736-051-~~0080~~~~0060~~, through 736-051-0090 unless the context requires otherwise:

(1) “Alter” means to disturb or remove any part of an archaeological site, ~~or a feature within an archaeological site.~~

(2) “Applicant” means the qualified archaeologist (as defined in ORS 390.235(6)(b)) or person responsible who is applying 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~~Tribe” means the Oregon federally recognized Indian tribe or tribes designated by the Legislative Commission on Indian Services (LCIS) as having the greatest interest in the permit application.

(4) “Archaeological ~~excavation~~Site” means to apply a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains archaeological objects and the contextual associations of the objects with:

(a) Each other; or

(b) Biotic or geological remains or deposits. ~~Examples of archaeological 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~~sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.

(5) “Archaeological ~~Object~~” means an object has the meaning in ORS 358.905. ~~that;~~

(a) Is at least 75 years old;

(b) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and

(c) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.

(6) “Archaeological ~~permit~~Permit” means the permit issued under ORS 390.235.

(7) “Artifact” means the same as “Archaeological ~~site~~” has the meaning in ORS 358.905. ~~Object.~~

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(8) “Burial” has the meaning in ORS 358.905.

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(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.

Commented [S51]: When we use “means” it suggests an exclusive list -- I added “including those” to make it so there could be other conditions. But if the intent is that these are the only things that conditions could relate to, reject this insertion

(10) “Curatorial facility” means either:

(a) The “state designated curatorial facility”, which is the UOMNCH incorporating the OSMA; or

(b) “Alternate curatorial facilityAssociated Material Objects” means the institution meeting standards in ORS 390.235same as “Funerary Object.”

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(9) “Burial Goods,” as found in ORS 390.240(1)(b), means the same as “Funerary Objects.”

(10) “Curatorial Facility” means either a:

(a) “Recognized” curatorial facility, which is the Oregon State Museum of Anthropology (OSMA); or

(b) “Alternate” curatorial facility, which is defined as follows:

(A) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued, if approved by UOMNCH and OSMA with the concurrence of the appropriate Indian tribe(s). ; or

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(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(B) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education, 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 mostthe concurrence of the appropriate Indian tribe(s). ; or

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(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) “(C) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide a material inventory to OSMA within six months of collection.

(11) “Excavate” means to break the ground surface to remove any artifact or to remove an embedded artifact, feature or non-artifactual material in an archaeological site for the purposes of performing anthropological research.

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~~(12) “Exploratory Excavation” means digging into or otherwise disturbing the earth to determine whether or not an archaeological site exists at the excavation.~~

~~(13) “Funerary Objects” means any artifacts or objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with the individual remains either at the time of death or later.~~

~~(14) “Human Remains” means the physical remains of a human body, following death, including, but not limited to bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.~~

~~(15) “Object of Cultural Patrimony” means:~~

~~(a) An object having ongoing historical, traditional or cultural patrimony” has the meaning given that term in ORS 358.905. importance central to the native Indian group or culture itself, rather than property owned by an individual native Indian, and which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe. The object shall have been considered inalienable by the native Indian group at the time the object was separated from such group;~~

~~(20)(b) Does not mean unassociated arrowheads, baskets or stone tools for portions of arrowheads, baskets or stone tools.~~

~~(16) “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)(17) “Private landsLands,” means lands within the State of Oregon owned by a person, except “privatePrivate lands” ~~does~~, not include federal lands or nonfederal public lands, or any lands the title to which is:~~

~~(a) Held in trust by the United States for the benefit of any Indian tribe or individual;~~

~~(b) Held by an Indian tribe or individual subject to a restriction by the United States against alienation.~~

~~(22)(18) “Public landsLands,” 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(19) “Qualified Archeologist” means a person who has the following qualifications:~~

~~(a) A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline~~

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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 Twelve~~ weeks (480 hours) of supervised experience in basic archaeological field research, including both survey and excavation, and four weeks (160 hours) of archaeological of laboratory analysis or curating; and

(A) Where supervised archaeological field research means at the professional level, as opposed to that obtained as a volunteer, or for undergraduate or graduate school credit.

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

(c) ~~Have Has~~ designed and executed an archaeological study, as evidenced by a ~~Master’s~~ Master of Arts or Master of Science 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

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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)(20) "Recognized educational institutionEducational 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 schoolan accredited program, that offers graduate degrees with a specialization in archaeologyanthropology.

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

(26) "Remove(22) "Removal," means taking any material, whether archaeological artifact or not, embeddednon-artifactual remains on, imbedded, in or on the surface, or under the surface of the ground.

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~~(27)(23)~~ “Sacred object” has the meaning given that term in ORS 358.905.

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~~(28) “Tribal Coordination Object” 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, an archaeological object or other object that;~~

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

STATUTES/OTHER IMPLEMENTED: ORS 358.920, ORS 390.235

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AMEND: 736-051-0080

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

RULE TEXT:

~~(a) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy;~~
~~(b) Is used in connection with the religious or spiritual service or worship of a deity or spirit power; or~~
~~(c) Was or is needed by traditional native Indian religious leaders for the practice of traditional native Indian religion;~~

736-051-0080

(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 directorState Parks and Recreation Department.

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

~~(a) A person (2) A person who is considering a ground-disturbing project on public lands should contact the appropriate Tribe to inquire about the presence of archaeological sites and objects in the project area.~~

~~(3) An archaeological permit may be issued to:~~

~~(a) A qualified archaeologist in the employ of a person conducting an excavation, examination or gathering of such materialarchaeological objects for the benefitbenefits 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

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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 ~~A person who desires~~ an archaeological permit pursuant to ORS 390.235 must submit an application to the ~~director, Oregon Parks and Recreation Director or his or her designee,~~ The application must be complete and ~~include~~ be accompanied by:

(a) A map, such as a USGS 7.5 minute topographic at 1:24,000 scale, that clearly shows the location of the proposed work ~~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~~ proposed action;

(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)(b) A resume(s) or vita(s) for the person(s) in direct charge of field work. The resume or vita must demonstrate that the person(s) meets or exceeds the qualifications listed in OAR 736-051-0080(3);

(e) A research design that explicitly develops the rationale behind the proposed research, giving the theoretical orientation, justification for problem selection, logic and procedures for the research strategy. The design must define the universe of study, establish realistic minimal expectations and a realistic schedule of research and provide justified recovery procedures;

(d) The name, address, and current contact information ~~phone number,~~ of the landowner or land managing agency;

(d) The state designated or approved alternate ~~(e) A copy of the notice required under ORS 358.950(1), if the excavation is associated with a prehistoric or historic American Indian archaeological site;~~

(f) A ~~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;

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(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 uncovered during any stage of an archaeological investigation or related the 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, Director or his or her designee shall determine whether the application involves public lands, as defined in OAR 736-051-0070(16), are involved.

(6) After a request is made from SHPO, LCIS will provide In consultation with the most Commission on Indian Services, the SHPO shall identify the appropriate Indian tribe(s) with approval authority over to be mailed copies of the complete archaeological permit application. In the event LCIS is

(7) As soon as practicable, but generally, not able to respond within 48 business hours, SHPO will designate the most appropriate Indian tribe(s) based on past permits issued into exceed two working days; the vicinity SHPO shall mail copies of the complete application to the appropriate Indian tribe, if any, the land managing agency, Commission on Indian Services, Oregon State Museum of Anthropology, and the applicable local government planning department.

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

(a) Entities with approval authority have (8)(a) Before issuing a permit, the Director or his or her designee shall contact the appropriate Indian tribe, if any, the landowner or head of the land managing agency, the Director of the Oregon State Museum of Anthropology at the University of Oregon State Museum of Anthropology at the University of Oregon, the appropriate local planning commission, and the Commission on Indian Services;

(b) Notification shall consist of mailing the complete application and its attachments to appropriate state and local entities and the appropriate Indian tribe. The notification shall solicit comments, recommendations for conditions, or objections to the application. Notification letters shall include a highlighted confidentiality statement. Responses to the solicitation must be received within 30 calendar days from of 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. of the letter, 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 If the archaeological investigations, research design, permit site in question is associated with a prehistoric or historic native

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Indian culture, the applicant shall consult with the appropriate Indian tribe during the 30 day period. At a minimum, consultation shall consist of meeting(s) satisfactory to the tribal governing body and/or its designee, and shall include discussion of the proposed work, archaeological permit terms or conditions, reporting, tribal monitoring of the permit archaeological and project work, curation, inadvertent discovery contingency plans for discovery of remains and artifacts during the both archaeological investigations, or any associated work and project design or development, and curation of artifacts;

(8) Any(d) If an entity listed in subsection (a) of this section makes any objection or requests a condition to the application, the applicant shall contact the entity and attempt to resolve the issue. If the objection or request for condition is resolved by the applicant and the entity, they shall notify the SHPO in writing of the resolution. If the applicant and the entity cannot resolve the objection or request for condition within the 30 calendar days allowed for comment on the permit application, the Director or his or her designee shall determine what effect, if any, the objection or proposed condition shall have on the permit application.

(9)(a) Notwithstanding the provisions of section (8) of this rule, any person or entity who discovers/discovered an archaeological object, archaeological or historic site, human remains, or burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony, during construction, may request an expedited 48-hour permit review consultation process. The director may grant the request upon a determination, in coordination with entities with approval authority, may be granted whenever the Director or his or her designee, in consultation with the parties listed in subsection (8)(a) of this rule, determines that the 30-day permit review consultation period provided in subsection (8)(b) of this rule will result in extreme economic hardship to the person or entity making the request, or an undue risk to public health, life or safety, or an undue threat to the archaeological object, site, human remains, burial, funerary object, sacred object, or object of cultural patrimony site or burial. 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)(b) If the director/Director or his or her designee determines that an expedited review request/consultation process is warranted, the following procedures apply:

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

(B) During the following 48 hours (excluding Saturday, Sunday, and any state, federal, legal, or tribal holidays), entities with approval authority may respond to the permit application with their approval, approval with conditions, Director, or object. No response within 48 hours means the entity with approval authority did not condition his or object, her designee shall consult by telephone and/or facsimile with the persons or entities described in section (8) of this rule. If any entity with approval authority the head of the land managing agency or the tribal governing body of the appropriate Indian tribe objects in writing to an expedited review, the director/Director, or their his or her designee will not proceed with the expedited review;

~~(C) The applicant may proceed when the permit is issued with approval from the Director or his or her designee, to be followed by written notice as provided in section (12) of this rule.~~

~~(b)(e) For the purposes of this section, excluding burials, human remains, funerary objects, sacred objects, "extreme economic hardship" means a quantifiable and verifiable expenditure or any objects fiscal loss that is unreasonable for the requestor to bear under the circumstances, including but not limited to the following:~~

~~(A) The importance of cultural patrimony, the project or non-archaeological use that would be delayed during the consultation period;~~

~~(B) The additional costs that would be incurred during the consultation period;~~

~~(C) The total cost of the project;~~

~~(D) The degree to which expedited 48-hour consultation could achieve the same protection of the site as consultation over the standard 30 day permit reviews are only available if prior compliance application review period;~~

~~(E) Whether the requestor reasonably could have avoided the additional costs by appropriate Indian tribe(s), and SHPO has occurred anticipating the need for a permit and consultation at an earlier time.~~

~~(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)(40) After considering the application, maps, research design, vita and all comments, recommendations for conditions, or objections received by entities with approval authority during consultation, the director Director or his or her designee may issue the permit without conditions, issue the permit with conditions, or deny the permit. The permit does not relieve the applicant of compliance with other federal or state requirements, including, but not limited to, ORS 97.740 to 97.760, ORS 358.905 to 358.961955, and ORS 390.235 to 390.240.~~

~~(10)(11) For purposes of this rule, no permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe.~~

~~(12) The applicant and all parties defined in ORS 390.235(1)(f) shall be notified of the Director's decision by first class mail.~~

~~(13) Disputes among or between applicants and entities with approval authority will receive a copy of the approved signed permit from the director shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.~~

~~(11) All work under a (14) The permit issued by the director Department shall be reviewed and may be suspended in the event or revoked if human remains, funerary objects, or 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:~~

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

(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: Statutory/Other Authority: ORS 390.235, ORS & 390.240

STATUTES/OTHER IMPLEMENTED:

Statutes/Other Implemented: ORS 390.235

History:

PR 1-1995, f. & cert. ef. 1-3-95

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AMEND: 736-051-0090

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

RULE TEXT:

736-051-0090

(1) A person may not ~~knowingly and intentionally~~ excavate, injure, destroy, or alter an archeological site or object, ~~or remove an archeological object from private lands in Oregon unless that activity is authorized by a permit~~ that the director issues~~issued~~ pursuant to this rule:

(a) ~~The department does~~ Permits on private lands will not ~~require permits for archaeologists to conduct~~~~be required for~~ 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)(b) ~~The provisions of this rule do not apply to a person who unintentionally discovers an archaeological object that has been exposed by the forces of nature and retains the object for personal use, except for sacred objects, human remains, funerary objects or objects of cultural patrimony;~~

(c) ~~Collection of an arrowhead from the surface of private land is permitted if collection can be accomplished without the use of any tool.~~

(2)(a) ~~It is strongly recommended that anyone considering a development project on private lands on previously undisturbed ground contact the SHPO and the appropriate Tribe(s) to determine whether archaeological sites and objects are likely to be present in the project area. This contact will reduce the chance that the project will be delayed due to discovery of an archaeological site;~~

(b) ~~SHPO shall coordinate, along with the governing bodies of the Oregon Tribes and the CIS, joint efforts to create and disseminate informational materials that will be distributed to local governments, federal and state agencies, and permitting authorities on the requirements of ORS Chapters 97, 358 and 390, and these rules.~~

(3) ~~A person who desires an archaeological permit to excavate or remove objects on private lands pursuant to ORS 358.920(1)(a) and ORS 390.235 must submit a request to the~~ director Oregon State Parks and Recreation Director or his or her designee;

(a) ~~A~~ The application must be complete and meet the requirements of the public lands rule section OAR 736-051-0080(4). ~~In addition, an~~ application for an archaeological permit on private lands must:

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

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

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

(b) The archaeological permit process for private lands is the same as that found in OAR 736-051-0080 (2)-(6), (7), (8), (9), (10), (12) and (14) relating to permits on public lands. The SHPO must be satisfied that reasonable concerns of the appropriate Tribe(s) have been addressed by the applicant;

(3)(4) Upon receipt of an application, the Director or his or her designee may contact the landowner to verify the written permission, location and activities of the proposed activity.

(5) 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 not be issued if the activity includes burials, funerary objects, or human remains.

(6) If an applicant disputes the permit conditions, or the Director's denial of a permit, the dispute 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

STATUTES/OTHER IMPLEMENTED: ORS 390.235

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736-051-0000

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

736-051-0010

RULE TITLE: Dispute Resolution 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

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)

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
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

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

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

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).

Commented [SS1]: When we use “means” it suggests an exclusive list -- I added “including those” to make it so there could be other conditions. But if the intent is that these are the only things that conditions could relate to, reject this insertion

(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

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

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

STATUTES/OTHER IMPLEMENTED: ORS 390.235

Section	Comment	OPRD Response	Action Taken	Date Rcvd	Commenter
736-051-0000 (1)(c)	'in' or 'under'? Under used above.	Under is used based on an action related to the statute, while "in" relates to language included in statute.	None	7/1/22	Kurt Roedel, ODOT
736-051-0010 and 0070	Oregon Administrative Rules (OAR) delineate the procedures for implementing statutory directives outlined by Oregon Revised Statutes (ORS). ORS 390.235(3) specifies that "Any archaeological materials . . . recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology" The Museum is obligated, by statute, to curate archaeological materials or to approve an alternate curatorial facility. The proposed OAR changes include a change to the definition of "Entity with Approval Authority" that eliminates the Museum as a named entity (OARs 736-051-0010 and 736-051-0070). The museum is a key entity with respect to the disposition of archaeological materials procured under state permits, as outlined in state statutes. This role is acknowledged throughout the proposed rule changes (Dispute Resolution; Archaeological Permits, Definitions and Process). Removing the Museum as an "Entity with Approval Authority" unnecessarily keeps the Museum blinded to a process for which it has statutory obligations, and I can think of no rationale for making this change.	While OSMA/UOMNCH was previously included as an Entity with Approval Authority, they were not included in statute as having a role in reviewing permits. They still retain their statutory role of approving curatorial facilities.	None	6/29/22	Tom Connolly, formerly UOMNCH
736-051-0010 and 0070	In the proposed revisions for ORS 736-051-000 through 736-051-0090, the OSMA (incorporated under the University of Oregon Museum of Natural and Cultural History) has been removed from the definition of "Entities with Approval Authority" [OARs 736-051-0010 (10) and 736-051-0070 (12)] without explanation nor mention in the Rules Summaries. The museum's role in permitting is acknowledged throughout the existing rules and proposed 2 rule changes (Dispute Resolution, Arbitration, Archaeological Permits, Definitions and Process). Removing the Museum as an "Entity with Approval Authority" excludes the Museum from a process to which it has statutory obligations and responsibilities.	While OSMA/UOMNCH was previously included as an Entity with Approval Authority, they were not included in statute as having a role in reviewing permits. They still retain their statutory role of approving curatorial facilities.	None	7/1/22	Pam Endtzeig, UOMNCH
736-051-0010 and 0070	The rules use numerous terms when discussing Indian tribes (tribe, appropriate tribe, most appropriate Indian tribe, Indian tribe, federally recognized tribe). The rules should use consistent terminology throughout. ORS 358.905 and ORS 390.235 reference ORS 97.740 for definition of Indian tribe. I recommend retaining the definition in the law, rather than modifying it through the rule. OR 97.740 has a definition of Indian tribe that is inclusive of tribes with ceded lands or reservations lands that aren't considered an "Oregon state tribe" or under the jurisdiction of LCIS. "Appropriate (Indian) tribe" should include tribes with ceded lands, reservation lands, and ancestral territory in Oregon.	There are a couple instances where the wrong term is used, will clarify. However, the dispute resolution section applies to any federally recognized tribe since it also deals with the disposition of human remains and associated objects in addition to permits. The definition of tribe in sections 0060-0090 is redefined as pertaining to only federally recognized tribes of Oregon because as a state agency, issuing state permits, the governor sets which tribes we are able to consult with through LCIS which only represents Oregon Tribes.	Changed "Appropriate Tribe" to "Appropriate Indian Tribes" which is in statute. Changed "federally recognized Indian tribe" to "most appropriate tribes", as they have review authority and would be involved in the arbitration process. Based on the dispute resolution process, a "federally recognized tribe" could only be a disputing party (Indian Tribe referenced in OAR 736-051-0010).	7/1/22	Liz Oliver, USACE
736-051-0010, 0070, and 0080 (7)	The language in the existing statute clearly identifies the 'local governing body' charged with the management of the public land (i.e. local planning departments). Local governing body does not mean the same this as the 'owner' of the land (they are not interchangeable). Therefore the proposed deletions in these definitions and the defined processes related to notification of local planning departments are not consistent with statute and in fact conflict with the implementation other statutes relating to the responsibility that local planning departments have to ensure historic resources in their jurisdiction are protected- including but not limited to: ORS 197.307(5)(b); ORS 197.307(9)(b)(B); ORS 197.311(5)(a); ORS 197.467 and ORS 358.605. Revert definition of Entity with Approval Authority to what is currently enforced. Return language to section OAR 736-051-0080 (7). copies of the permit application shall be mailed to the "applicable local planning department".	Removed local planning departments as an entity with approval authority because they were never included in the statute as having a role. The term "local governing body charged with management of the public land..." means local entities of the state, outside of state agencies such as, school districts, public utilities, and cities/counties; but essentially meaning the landowner.	None	5/25/22	K. Fitzgerald, City of Salem, League of Oregon Cities
736-051-0010	Since the "Oregon State Museum of Anthropology" (OSMA) is the entity specified in state statutes, the addition in the Dispute Resolution Definitions that "'State Designated Curatorial Facility' means the UOMNCH incorporating the OSMA" is an important clarification.	Thank you for the comment	None	6/29/22	Tom Connolly, formerly UOMNCH
736-051-0010	Even after sitting in on the review committee meetings, it is unclear to me why the current proposed rules seek to present 'Definitions' in two separate sections within the proposed rules (the first addressing parts 736-051-0020 through 736-051-0050, and the second for 736-051-0060 through 736-051-0090. I realize that the original administrative rules had done likewise, but one concise set of definitions would make more sense to at least this reader.	Two definition sections were retained because specific definitions only apply to the dispute resolution section and certain terms only apply to the permit review and issuance. One example being Tribes.	None	7/1/22	Dennis Griffin, formerly OPD
736-051-0010 (1)	In the proposed revisions for ORS 736-051-000 through 736-051-0090, the definition of "Alternate Curatorial Facility" [736-051-0010 (1)] is inconsistent with the statutory wording, which reads as follows, ORS 390.235 (3): Any archaeological materials, with the exception of Indian human remains, funerary objects, sacred objects and objects of cultural patrimony, recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology unless [emphasis added] (a) The Oregon State Museum of Anthropology with the approval from the appropriate Indian tribe approves the alternate curatorial facilities selected by the permittee; (b) The materials are made available for nondestructive research by scholars; and (c) (A) The material is retained by a recognized scientific, educational or Indian tribal institution for whose benefit a permit was issued under subsection (2)(a) of this section; 3 (B) The governing board of a public university listed in ORS 352.002 (Public universities), with the concurrence of the appropriate Indian tribe, grants approval for material to be curated by an educational facility other than the institution that collected the material pursuant to a permit issued under subsection (2)(a) of this section; or (C) The sponsoring institution or firm under subsection (2)(c) of this section furnishes the Oregon State Museum of Anthropology with a complete catalog of the material within six months after the material is collected. The statute provides conditions, not "standards" in ORS 390.235 as is stated in the revised definitions (ORS 736-051-0010 (1) and 736-051-0070 (10)(b). Also, while the wording in the statute is admittedly unclear, I don't read it as making non-destructive research a condition for an alternate curatorial facility. This may explain why is not mentioned in the 1994 definition, which reads as follows: 7 "Alternate Curatorial Facility" can mean one or more of the following: (a) The scientific, educational, or Indian tribal institution for whose benefit a permit was issued under ORS 390.905 et seq., if approved by OSMA with the concurrence of the appropriate Indian tribe; (b) An educational facility other than the institution collecting the material, provided the action is approved by the State Board of Higher Education with the concurrence of the appropriate Indian tribe; (c) An educational facility or firm approved by OSMA with the concurrence of the appropriate Indian tribe, and with the requirement that the facility provide an inventory of material to OSMA within six months of collection.	The section pertaining to non-destructive research is in statute and cannot be changed at this time. Language added to this section only includes clarification around OSMA and the definition of Scholar.	None	7/1/22	Pam Endtzeig, UOMNCH
736-051-0010 (1)(a)	Should this be revised to allow for radiocarbon dating or other special studies of curated samples? Some samples/artifacts are curated explicitly for that purpose (charcoal, botanical samples).	This in statute and cannot be changed	None	7/1/22	Dustin Kennedy
736-051-0010 (1)(c)	The proposed rules have purposely removed the phrase "associated material objects" from the existing rules section, I believe this was done since the authors hope to capture all associated material objects under the existing definition of "Funerary Objects". However, funerary objects are confined to those objects seen as a part of a death rite or ceremony that have purposively been interred with individual human remains. Many Native Americans were killed during eighteenth and nineteenth century epidemics and nineteenth century wars that were never officially "buried" or underwent tribal death rites and ceremonies. For example, I recall Perry Chocktoot, Director of the Cultural and Heritage Department for the Klamath Tribes stressing his concern in the past for the need to protect and recover objects that a warrior was wearing when they were killed in battle (e.g., war shirt) or objects relating to human remains that had been abandoned along lake shores after being murdered. How would such objects fall under the current proposed rules if "associated material objects" was removed from the rule? I think this term should be replaced within the text since it is not synonymous with funerary objects.	The definition in the current rule just refers back to Funerary Objects, which is already defined in the rule.	None	7/1/22	Dennis Griffin, formerly OPD
736-051-0010 (2)	The definition expansion of "applicant" to include "and the institution/company they represent" is unclear. As outlined elsewhere (736-051-0080-11(b)), a permit amendment that addresses a change in responsibility over the permit, requires approval from a new applicant. This suggests the institution is not included in the definition of "applicant". Further, will the institution (employer) or the individual applicant responsible for permit violations? New rules outlined in 736-051-0080(3)(g-h) require applicants to include past violations and pending open permits on new permit applications. Who takes responsibility if the applicant is laid off, moves to another employer, retires, or their position terminated before the permit obligations are met? Does everyone employed by an institution then need to list their colleagues' violations on every permit application? In general, how will personnel changes be handled as they pertain to permit non-compliance/violations?	The institution and individual as the applicant are both required under statute. This new language is that the applicant is the primary for any permit issues or violations, if they are unable to carry out the terms for whatever reason then it will fall to the institution that sponsored the individual to carry out. It is not our intention that everyone at the institution need to list violations of past co-workers but the institution itself will now have violations that are its responsibility.	The qualified archaeologists is responsible for terms and conditions of a permit. Statute identifies the situations when a permit is needed, and "sponsorship" or "for the benefit of" does not suggest any responsibility to the work conducted under a permit. Based on statute, permits can be issued to "qualified archaeologists" 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) To a qualified archaeologist to salvage such material from unavoidable destruction; or (c) To a qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740 (Definitions for ORS 97.740 to 97.760). For private firms, statute states: "Private firm" means any legal entity that: (A) Has as a member of its staff a qualified archaeologist; or (B) Contracts with a qualified archaeologist who acts as a consultant to the entity and provides the entity with archaeological expertise.	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0010 (2)	Who is responsible for violations? The applicant, their employer, or both? Per revised 736-051-0080 3, applicants include past violations for permit applications, if the applicant is no longer employed by the company/agency sponsoring the archaeology work then they no longer have access to materials/resources recovered under the permit and are unable to comply with permit.	The institution and individual as the applicant are both required under statute. This new language is that the applicant is the primary for any permit issues or violations, if they are unable to carry out the terms for whatever reason then it will fall to the institution that sponsored the individual to carry out. It is not our intention that everyone at the institution need to list violations of past co-workers but the institution itself will now have violations that are its responsibility.	None	7/1/22	Kurt Roedel, ODOT

736-051-0010 (2)	Who takes responsibility for violations? The signed applicant, their employer, or both? Per revised 736-051-0080 3(e-h), applicants will now need to include past violations for conditioned permit applications. If the applicant is no longer employed by the company/agency sponsoring the archaeological work then they may no longer officially have the ability to comply with permit requirements and conditions. They may not even know whether violations have occurred. The wording should allow for the applicant's responsibility to transfer to the employer as a co-applicant. The applicant should not be held responsible for violations when they no longer have the ability or access to the project's materials or resources.	This new language indicates that the applicant is the primary for any permit issues or violations, if they are unable to carry out the terms for whatever reason then it will fall to the institution that sponsored the individual to carry out.	Language changed	7/1/22	Dustin Kennedy
736-051-0010 (5)	Archaeological Object – Given past controversies regarding how the definition of an archaeological object has been perceived [objects=1 versus objects equals >2], I think it would be good to quantify this fact. Whether an object signifies a single entity has been a controversial issue in past compliance efforts regarding state archaeological laws, and clarification of this fact, even if it appears redundant, should be considered here.	Definition for archaeological object is in statute, cannot be changed. It is OPRD's intention that past interpretation of the rule was inaccurate regarding a site = 10+ artifact. It is OPRD's intention with the rule change to correctly interpret an archaeological site to be 2+ objects.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0010 (7)	This definition suggests that professional archaeologists have some responsibility in interpreting context to determine when archaeological objects constitute a site. Amended rules proposed in 736-051-0090(1)(b), regarding exploratory probing without a permit on private land, state: "If additional excavation is necessary to establish the boundary of the site...or conduct further archaeological investigations of the site, it will require a permit issued under this rule." Since the definition of site is ambiguous, would an archaeologist be guilty of a violation if they resumed presence/absence investigations beyond what they reasonably assumed were the newly discovered site's boundaries if the investigations are on private land and no permit has been issued?	Cannot change definition, it is in statute. Staff and RAC did not identify any ambiguous terms in the statute that needed additional definition. Response to additional comment below (line 40)	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0010 (7)	Archaeological Site – In the same vein as the above comment, the definition of an archaeological site in ORS 358-905 states that such an area contains "archaeological objects and the contextual associations of the archaeological excavations". Much discussion has occurred since the passage of ORS 358-905 as to the number of artifacts needed to be considered "objects" (i.e., 2 or more with an object being a singular item) as well as the importance of plow-zone archaeology where contextual association may be lacking but the value of the artifacts remain. Since the later clarification is a matter specifically included in the statute definition, this may be something that is best addressed during future review of the statute itself. However, given the amount of discussion OPRD has had with LCIS, Oregon Tribes, and the professional archaeological community regarding the number of artifacts that would constitute "objects", some clarification in the current proposed rules should be included here. This is the purpose of revising existing administrative rules, to clarify inconsistencies or confusion in how current rules are interpreted.	Definition for archaeological object is in statute, cannot be changed. It is OPRD's intention that past interpretation of the rule was inaccurate regarding a site = 10+ artifact. It is OPRD's intention with the rule change to correctly interpret an archaeological site to be 2+ objects.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0010 (7)	"Archaeological Site" has the meaning given that term in ORS 358.905.	Make the change	Added: given that term	7/1/22	Kurt Roedel, ODOT
736-051-0010 (9)	Permit conditions may or may not be at odds with each other – is there a process the applicant should follow to determine how to fulfill all conditions if they receive conflicting instruction? Are there limits on conditions placed on the permit by an entity with approval authority or can they be anything and everything? Is the point of the rule changes to engage in more arbitration/mediation when questions like this arise? As written in 736-051-0080(6)(B) OPRD will review any conditions to be added to the permit, but it is not clear whether OPRD will issue the permit "without conditions, issue the permit with conditions, or deny the permit" as set forth in 736-051-0080(8) as it pertains to expedited 48-hour review.	conflicting conditions would follow dispute resolution procedure in section 736-051-0020. Expedited permits follow all procedures in section 736-051-0080 with the only difference being the review period.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0010 (9)	What is the process to resolve a conflict in the event of opposing conditions from different approval authorities? Recommend including process identifying how OPRD determines acceptable/not acceptable conditions. Can approval authorities condition the permit for the applicant to modify sampling strategy, report text, require that the APE within a site be 100% excavated rather than sampled, modify draft/final report distribution entities/dates, level of edit approval, etc.?	conflicting conditions would follow dispute resolution procedure in section 736-051-0020. They can request conditions or object to anything this in the permit application package. Conditions are considered at the discretion of OPRD. Will provide guidance in new documents around such instances.	None	7/1/22	Kurt Roedel, ODOT
736-051-0010 (9)	What is the process the applicant would take in the event that conditions from different approval authorities conflict? Does the applicant have to move it into dispute resolution still? What is OPRD's process for determining whether conditions are legitimate outside of ensuring they are consistent with Oregon Law. Can an approval authority condition a permit to require that the APE within a site be excavated/sampled more or less than standard practice, private landowner request draft/final report for review, co-authorship level of edit approval to archy reports, request that no destructive special studies occur like radiocarbon testing, etc.? What if the conditions directly conflict with the applicant's ability to evaluate a site for its' National Register of Historic Places eligibility?	conflicting conditions would follow dispute resolution procedure in section 736-051-0020. Expedited permits follow all procedures in section 736-051-0080 with the only difference being the review period.	None	7/1/22	Dustin Kennedy
736-051-0010 (10)	The Oregon State Museum of Anthropology (OSMA) has been eliminated from the definition of "Entity with Approval Authority", but OSMA is the designated state curatorial facility as stipulated by ORS 390.235. OSMA is obligated by the statute to curate archaeological materials or to approve an alternative curatorial facility. Removing OSMA as an "Entity with Approval Authority" excludes OSMA from a process to which it has statutory obligations. It is unclear as to why this change, and the change that removes county planning departments as entities with approval authority, is not included in the rule summary.	OSMA/UOMNCH was previously included as an Entity with Approval Authority, they were not included in statute as having a role in reviewing permits. They still retain their statutory role of approving curatorial facilities. Planning Departments and LCIS were also removed from Entities with Approval Authority for the same reason.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0010 (13)	"Indian Tribe" has the meaning given that term in ORS 97.740.	Make the change	Added: that term	7/1/22	Kurt Roedel, ODOT
736-051-0010 (14)	In a dispute?	Additional clarification not needed	None	7/1/22	Kurt Roedel, ODOT
736-051-0010 (15)	"Negotiation" means an informal process by which parties attempt to resolve a dispute without the need for mediation or arbitration.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0010 (17)	"Qualified Archaeologist" means a person that meets ORS 390.235 education and experience criteria related to archaeological collection and excavation, in support of their ability to comply with terms and conditions of a State of Oregon issued archaeological permit.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0020 (1)	We request that the proposed added phrase that reads "including after its issuance" be deleted. This would mean that after the permit is issued, the door is open to changes. What is the point of having a 30-day review period if the reviewers can at any time ask for changes? This exceeds what is outlined in ORS 390.240, which is the "dispute" section.	This section refers to all disputes that can at any point during the permitting process from initial application through eventual products of the permit. Entering into dispute resolution procedures does not "open" the permit.	None	7/1/22	Jo Reese and John Fagan, AIHW
736-051-0020 (1)	After a permit application is sent for review, including after its issuance, disputes may arise among or between entities with approval authority and applicants over proposed terms, conditions, or objections where:	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0020 (1)(a)(A)	(A) Based on proposed terms or conditions.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0020 (1)(a)(B)	It is good to see that some measures are finally being taken to penalize permit applicants who fail to meet the conditions of their archaeological permits. Since at least 2010, applicants, and the companies they work for, have been made aware when permit conditions (e.g., reports submitted to Tribes, LCIS & OPRD, artifacts curated, tribes consulted) have not been met but there has been no mechanism to use such failures to influence a permittee's ability to acquire future permits. This addition here is long overdue.	Thank you for the comment	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0020 (1)(a)(B)	Based on prior failure of the applicant to comply with terms or conditions of a permit issued on or after January 1, 2023.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0020 (1)(a)(C)	Based on unresolved comments to a report submitted for a permit issued on or after January 1, 2023. Where the entity with approval authority is able to include documentation supporting comments were requested and not addressed.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0020 (1)(a)(iii)	What constitutes an unresolved comment and what if comments from individual approval authorities conflict? Is the applicant held to initiating the dispute resolution because they are the ones who are held accountable and are trying to complete a project?	this is from old draft before rule went to public comment. It has already been removed.	None	7/1/22	Dustin Kennedy
736-051-0020 (1)(a)(iv)	Will there be a process to resolve/remove/appeal violations?	this is from old draft before rule went to public comment. It has already been removed.	None	7/1/22	Dustin Kennedy
736-051-0020 (1)(b)	The applicant disagrees with proposed terms or conditions of a permit;	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0020 (1)(b-c)	What if conditions and by extension comments conflict? This may have unintended consequences.	this is from old draft before rule went to public comment. It has already been removed.	None	7/1/22	Dustin Kennedy
736-051-0020 (2)(b)	The applicant disagrees with the choice of an alternate curatorial facility as made by an entity with approval authority.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0030 (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 its terms or conditions, they shall notify the State Historic Preservation Office (OPRD) in writing.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0040 (1)	Entities with approval authority shall compile and maintain a list of potential mediators.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0040 (3)	Within ten calendar days of receipt of the list of potential mediators, each disputing party shall notify the OPRD if one or more of the mediators is acceptable.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0040 (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 OPRD.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0040 (5)(b)	A list of the parties participating in the mediation;	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0050	Will there be a goal to have an odd number of representatives on the arbitration panel so a majority vote could be an option if necessary? How do the disputing parties' representatives maintain their neutrality if they are also on the panel? The private landowner and/or land managing agency don't get to seat a representative on the panel? Is there an appeals process for either of the disputing parties?	According to ORS 390.240: The State Parks and Recreation Commission in consultation with the Mark O. Hatfield School of Government and the governing bodies of the Oregon Indian tribes shall adopt rules to establish mediation and arbitration procedures. [1993 c. 459 §15; 2001 c.104 §129; 2003 c.598 §42; 2003 c.791 §632.32a; 2005 c.817 §9]	It is assumed that the current rule addressed what is in statute, and the revision did not make any substantive changes since it appears to be determined through a separate process.	7/1/22	Dustin Kennedy
736-051-0050 (1)	If mediation does not yield a result satisfactory to all parties, the disputing parties shall notify the OPRD in writing, and the dispute shall proceed to arbitration.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT

736-051-0050 (2)	Arbitration panel should include landowner, as a permit reviewer. Others, such as ADA?	Per statute (ORS 390.240 [2]), the arbitration panel is determined by the governing bodies of Oregon tribes and the heritage commission. They could elect to include either party if they so choose.	None	7/1/22	Kurt Roedel, ODOT
736-051-0050 (2)	The OPRD shall notify the OPRD?	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0050 (2)	The definition of arbitration above states that a "neutral third party or a panel" will participate in this process and render a decision. What is the process for assigning a neutral third party?	Per ORS 390.240 (2) "The State Parks and Recreation Commission in consultation with the Mark O. Hatfield School of Government and the governing bodies of the Oregon Indian tribes shall adopt rules to establish mediation and arbitration procedures. [1993 c.459 §15; 2001 c.104 §129; 2003 c.598 §42; 2003 c.791 §§32,32a; 2005 c.817 §9]"	None	7/1/22	Dustin Kennedy
736-051-0050 (2)(c)	Add "incorporating the OSMA" to UOMNCH to maintain statutory reference. (cf. 736-051-0010 proposed change)	Make the change	Change to State Designated Curatorial Facility	7/1/22	Pam Endzweig, UOMNCH
736-051-0050 (2)(d)	This is the first time this term is used. Suggest changing it to 'Appropriate Tribe' as previously defined.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0050 (4)(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	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0060 (1)	OAR 736-051-0060 through 736-051-0090 establish procedures the Director of the Oregon Parks and Recreation Department, or their designee, shall use in issuing archaeological permits on public and private lands.	Grammar change	None	7/1/22	Kurt Roedel, ODOT
736-051-0060 (2)	This new wording (largely in yellow highlight [sic, italicized] below), especially "ethical responsibilities," is unclear and needs to refer to a definition or some other section. How is this a "rule"? An alternative would be to have the rules simply require that the applicant be a Registered Professional Archaeologist as there are strong ethical requirements for this professional registration. (2) Per ORS 192.345, information pertaining to the location of archaeological objects and sites are confidential and exempt from public disclosure. Please consider ethical responsibilities towards confidential information about traditional or sacred places and practices, or other sensitive information associated with archaeological sites and objects. Requirements outside those identified in this rule from local processes or other rules that contradict any of the rules and responsibilities herein, are not enforceable under this process in part due to this exemption	this is from old draft before rule went to public comment. It has already been removed.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0070	Some terms in this section are worded differently than in Pages 1 and 2. Is this language supposed to be verbatim?	some intended to be the same, some intended to be different	It depended on the intent of the section. For example, the lengthy definitions under what constitutes an Oregon "qualified archaeologist" are appropriate to the section regarding applying for permits. However, that much detail is too much for mentioning of it as a type as the applicant in 0010	7/1/22	Kurt Roedel, ODOT
736-051-0070 (1)	See comment above about ORS definition of archaeological site regarding 736-051-0020(7)	Cannot change definition, it is in statute. No one has identified any ambiguous terms in the statute that needed additional definition to date.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0070 (2)	See comment above about applicant vs. institution responsibility for permits and permit violations regarding 736-051-0020(2).	The institution and individual as the applicant are both required under statute. This new language is that the applicant is the primary for any permit issues or violations, if they are unable to carry out the terms for whatever reason then it will fall to the institution that sponsored the individual to carry out. It is not our intention that everyone at the institution need to list violations of past co-workers but the institution itself will now have violations that are its responsibility.	Change made	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0070 (2)	The highlighted [sic, italicized] "and" should be "or." This does not adhere to the three situations in 390.235(2). Does this proposed change mean an institution would be able to obtain a permit? (2) "Applicant" means the qualified archaeologist (as defined in ORS 390.235) and the institution/company they represent responsible for the terms and any conditions of an archaeological permit pursuant to ORS 390.235.	The applicant cannot be in institution on their own, but an institution must sponsor the applicant.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0070 (2)	Who is responsible for violations? The applicant, their employer, or both? Per revised 736-051-0080 3, applicants include past violations for permit applications. If the applicant is no longer employed by the company/agency sponsoring the archaeology work then they no longer have access to materials/resources recovered under the permit and are unable to comply with permit.	Primary responsible person is applicant, if they are unable to carry out the terms then institution is responsible.	None	7/1/22	Kurt Roedel, ODOT
736-051-0070 (2)	Applicant status should transfer to company/agency/university in the event the archaeologist is no longer employed with said entity. OPRD could require a formal letter to remove the applicant from permits in these cases.	Only if the applicant requests the change. This would be an amendment and is addressed in section 736-051-0080 (11)	None	7/1/22	Dustin Kennedy
736-051-0070 (4)	Adding "private lands" (highlighted [sic, italicized]) in this section, as has been done under the proposed rules, widens the applicability beyond the law. The law, 358.920(1), applies the requirement of obtaining a permit for private land only when an archaeological site has been found. This change in the definition ripples through the new rules and broadens the requirement of obtaining a permit in a way not stated in State law. (4) "Archaeological Excavation" requires a permit on non-federal public and private lands and means to apply archaeological methods to break the ground surface to remove any buried or embedded archaeological object, feature, or non-archaeological material for the purposes of performing archaeological research	Make the change	Language removed	7/1/22	Jo Reese and John Fagan, AINW
736-051-0070 (4) and (22)	For example, the rules definition of Qualified Archaeologist "means a person that meets the ORS 390.235 education, fieldwork, laboratory or curation, and reporting experience specific to archaeological excavation and analysis, supporting their ability to comply with any terms and conditions of a State of Oregon issued archaeological permit." (AMEND: 736-051-0070(22)) The "archaeological excavation" definition states, archaeological excavation "requires a permit on non-federal public and private lands and means to apply archaeological methods to break the ground surface to remove any buried or embedded archaeological object, feature, or nonarchaeological material for the purposes of performing archaeological research." (AMEND: 736-051-0070, (4)) When taken together, a qualified archaeologist is now someone who has education, fieldwork, laboratory or curation, and reporting experience specific to research that requires a permit on non-federal public and private lands and means to apply archaeological methods to break the ground surface to remove any buried or embedded archaeological object, feature, or nonarchaeological material for the purposes of performing archaeological research. An individual needs to have done research under a permit for nonfederal or public lands in Oregon to meet the definition of qualified archaeologist to get a permit. I recommend sticking to the definitions in the ORS: "Qualified Archaeologist has the meaning in ORS 390.235(6)(b)," and then the terms used in ORS 390.235(6)(b) may be further defined in 736-051-0070.	Language is to restrictive	Language removed	7/1/22	Liz Oliver, USACE
736-051-0070 (9)	What is the process to resolve a conflict in the event of opposing conditions from different approval authorities? Recommend including process identifying how OPRD determines acceptable/not acceptable conditions. Can approval authorities condition the permit for the applicant to modify sampling strategy, report text, require that the APE within a site be 100% excavated rather than sampled, modify draft/final report distribution entities/dates, level of edit approval, etc.?	conflicting conditions would follow dispute resolution procedure in section 736-051-0020. They had request conditions or object to anything this in the permit application package. Conditions are considered at the discretion of OPRD. Will provide guidance in new documents around such instances.	None	7/1/22	Kurt Roedel, ODOT
736-051-0070 (10)	ORS 390.235 refers to OSMA. OSMA should be referenced along with UOMNCH to maintain statutory reference.	Make the change	Changed to include "incorporating OSMA"	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0070 (10)(a)	Add "incorporating the OSMA" to UOMNCH to maintain statutory reference. (cf. 736-051-0010 proposed change)	Make the change	Changed to include "incorporating OSMA"	7/1/22	Pam Endzweig, UOMNCH
736-051-0070 (12)	The MNCH and county planning offices are being removed? MNCH has other responsibilities both in the dispute resolution process and in the ORS. Did they request to be removed? Doesn't this also connect to the counties complying with Oregon Goals and their ability to maintain an inventory of known resources within their county boundary? Or are they going to solely rely on OPRD's databases? I think there should be official documentation of these parties removing themselves from the process before these rules are adopted.	While OSMA/UOMNCH was previously included as an Entity with Approval Authority, they were not included in statute as having a role in reviewing permits. They still retain their statutory role of approving curatorial facilities. Planning Departments and LCS were also removed from Entities with Approval Authority for the same reason. OSMA/UOMNCH still retain their roles as outlined in statute and dispute resolution.	None	7/1/22	Dustin Kennedy
736-051-0070 (13)	"Object" is added in the proposed rules. There is no legal basis to obtain a permit for an object under the definitions elsewhere. (13) "Exploratory Excavation" is a type of archaeological excavation inventory method for identifying the presence or absence of a buried archaeological object or site, not visible from the surface, requiring a permit on non-federal public lands.	There is a legal basis for needing a permit to conduct exploratory excavations on non-federal public lands. It is in ORS 390.235 (1) (a).	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0070 (13)	I may be reading this wrong but exploratory excavations are performed on private lands without a permit also. And on federal lands under ARPA. Why is this being narrowly defined specifically in the bounds of a permit?	1. ARPA is not applicable, it only applies to Federal lands and is issued by federal agencies. 2. A permit is not needed on private lands for exploratory excavations, but one is needed on non-federal public lands (ORS 390.235(1)(a)).	None	7/1/22	Dustin Kennedy
736-051-0070 (13)	Another example is AMEND: 736-051-0070(13). "Exploratory Excavation" is a type of archaeological excavation inventory method for identifying the presence or absence of a buried archaeological object or site, not visible from the surface, requiring a permit on non-federal public lands." I recommend striking "requiring a permit on non-federal public lands." It is not part of the definition of exploratory excavation. This definition also should also cover permits on private lands, but as written it does not.	Retained as is because this is specific to the language in sections 736-051-0060 - 0090. Definitions in section 736-051-0070 apply to section 736-051-0060 - 0090.	None	7/1/22	Liz Oliver, USACE
736-051-0070 (15)	"Historic Cemetery" has the meaning given in ORS 97.772.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT

736-051-0070 (22)	This section relates to who meets the qualifications to be a "Qualified Archaeologist" and can therefore obtain a permit. Much of this section is entirely new and exceptionally detailed, going well beyond the professional requirements outlined either in the law or in the Secretary of the Interior's professional standards. It is overly restrictive. An example is: (c)(i) Where "archaeological field research" means hands-on analysis of a professionally excavated archaeological collection or a portion of a collection from data recovery or test excavations in an archaeological site prior to or after curation at an Oregon "State Designated," "Alternate Curatorial Facility," or federally approved facility. This means that a graduate student who prepared a thesis on an extensive collection in a museum that was not "professionally excavated," would not be permissible under these rules. There are a lot of valuable collections that would be otherwise analyzed, but doing so, ends the professional archaeologists' career in Oregon.	There has been no change to the requirement to be a qualified archaeologist, those are written in statute. The statute definition of a qualified archaeologist is set by state law, SOI qualifications are set at the national level and the state has no input in those decisions. The additions to this section seeks to clarify ambiguous terms in the statute that were not previously defined. The definitions, for the most part, meet the current OPRD review standards and are just included to provide transparency for individuals seeking this status. If an individuals thesis does not meet the requirements there are alternative to meeting the requirement.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0070 (22)	Issues: Regarding requiring a specific "specialization in archaeology" -- many graduate programs don't have the verbiage even if they do provide archaeological training. This wording is vague in its application. Even if the term "specialization" could be applied to a "track," "option," "focus," or "concentration", some degrees offer generalized training including archaeology as part of the curricula. Other states requirements maintain a need for archaeological training, but not necessarily degree programs with a specific focus in archaeology. Some states also allow for degrees in history, anthropology, or other related fields combined with on-the-job training. This would eliminate graduates with generalized education or education in related fields who have more specific hands-on experience with archaeology in the workforce. Other states that allow degrees outside of archaeology include Idaho, Wyoming, Colorado and others that use the Secretary of the Interior standards. I'm including some examples of university programs in the western United States and a brief description of how they characterize their programs as supporting evidence.	Language around "specialization in archaeology" is in statute, cannot be changed at this time. Our office does allow for degrees that have an emphasis in archaeology if the school does not offer a specific specialization.	None	7/1/22	Cayla Kennedy, USACE
736-051-0070 (22)	The current Oregon Revised Statutes (ORS) set a high bar for who is a "qualified archaeologist," and the proposed rules want to make it even higher. If we as archaeologists wish to "decolonize" the field, then we must examine the legal and regulatory structures that may bar access to participation. The proposed rule revisions could have been an opportunity to increase equity and access to Oregon archaeology - while still maintaining professional standards - instead the proposed rules create additional hurdles by making the thesis topic of the necessary degree and the type of fieldwork required to be a qualified archaeologist more specific than before.	There has been no change to the requirement to be a qualified archaeologist, those are written in statute. The additions to this section seeks to clarify ambiguous terms in the statute that were not previously defined. The definitions, for the most part, meet the current OPRD review standards and are just included to provide transparency for individuals seeking this status. If an individuals thesis does not meet the requirements there are alternative to meeting the requirement. The addition to the language around fieldwork was added as a balance to changes in OPRD interpretation around the thesis requirement section	None	7/1/22	Liz Oliver, USACE
736-051-0070 (22)	Currently the OPRD application to be a qualified archaeologist includes the following language, equivalent in scope and quality, should relate to the types of archaeological excavation activities for which a permit is typically needed in Oregon, that meet the requirements of a post-graduate study. What is a report equivalent in scope to a thesis or dissertation is not addressed in the current or revised rules. This should be included in the new rules. It would also provide additional opportunities and access for individuals who do not meet the proposed burdensome thesis requirements to be a qualified archaeologist.	OPRD obtained information from Oregon universities that offer graduate degrees that specialize in archaeology to get input on what is needed for a thesis. The language is included in our "qualified archaeologist" application as a guide to show what one considered equivalent to a thesis.	None	7/1/22	Liz Oliver, USACE
736-051-0070 (22)	We recommend that the rules at Oregon Administrative Rules (OAR) 736-50-070, especially as pertaining to "qualified professional archaeologists" not be finalized as is because in the attempt to provide the clarity, predictability, consistency, and equitability that has been lacking at critical times, the problems are inadvertently but substantially compounded in the proposed iteration. These particular proposed rule changes must be improve to serve the necessary and desired purposes and effects.	We agree that this section is not perfect, however until there are statute changes all we can do is try to provide additional clarification around how the statute is interpreted by OPRD.	None	7/1/22	Michael Nixon, Cultural & Natural Heritage Project
736-051-0070 (22)(a)(A)	What disciplines count as "other germane disciplines"?	Germane disciplines include any that may apply with a specialization in archaeology. It was left open to be inclusive of potential degrees but examples include, geology, history, and classics. This language is in statute and cannot be changed	None	7/1/22	Liz Oliver, USACE
736-051-0070 (22)(a)(B)	Accreditation of a college or university is conducted for the college/university as a whole and not for individual programs. Accreditation of individual programs is undertaken by discipline-specific agencies or organizations, if any exist. The U.S. Department of Education lists no agencies or organizations authorized to accredit programs in "archaeology, anthropology, history, classics, or other germane discipline[s] with a specialization in archaeology." There is no evidence that professional organizations such as the AAA or SAA undertake any assessment of anthropology or archaeology programs that would constitute "accreditation." How do programs therefore get "accredited"?	Agreed. Some "accredited" institutions have programs with a disclaimer that they are not an actual graduate degree program. The institution is accredited, but the program does not go through their graduate school, or at times involve archaeology faculty. Other accredited institutions have archaeology graduate degree programs, and also abbreviated CRM Master's degrees with no archaeological courses. There is also an accredited institution with an on-line graduate degree where one would not have to take any archaeology courses, with more of a reliance on philosophy (as I recall). The point being, is that this is really difficult for OPRD reviewers. We are fine with variation in degrees and programs, but the statute is specific that there must be a specialization in archaeology as part of the qualifications relating to the degree. We are not able to change in rule what is stated in statute.	Language changed to: "[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." The issue is still complex, as accredited institutions with archaeology departments may also offer graduate degrees outside the department. To meet the intent of statute, it needs to be a clear that the graduate degree specializes in archaeology. The commission brief touches on this as well, by discussing "shortcut" degrees that have little comparability to the more standard archaeology focus post-graduate degrees in the country. There are a number of articles (e.g., U.S News and World Report) that raise concerns over bogus, or for profit degrees. For the State of Oregon, the issue was in the major newspapers a decade or so ago, when the new State Librarian had questionable or even false credentials. Staff take this serious, and rightfully question degrees that differ considerable from most approved qualified archaeologists.	7/1/22	David Ellis
736-051-0070 (22)(a)(C)	The statement "Archaeology is a subfield of Anthropology" would appear to exclude programs not situated in an anthropology department. For example, a quick search indicates there are at least 25-30 American universities that offer post-graduate degrees in classical or Mediterranean archaeology that are independent departments and offer little or no required coursework in anthropology. This would appear to conflict with the statement that a degree in classics with a specialization in archaeology meets the "qualified archaeologist" requirements.	Archaeology is a subfield of anthropology, along with cultural, biological, and linguistics. The definition is provided, because the word "archaeology" had not previously been defined. It was not intended to mean only from anthropology departments, but more of a statement on the origin and differentiation of the discipline. Archaeology is holistic, so there is overlap with other disciplines, but that does not mean all other disciplines immediately qualify for a permit. Statute specifies other degree types as well, with the qualifier being that they must involve a specialization in archaeology.	None	7/1/22	David Ellis
736-051-0070 (22)(d)	This issue of "equivalency" is a very difficult one since American graduate programs in anthropology alone can and do vary. These variations can include the number of courses and credit hours required to graduate and receive the degree or whether a thesis is required. Those in programs with quarters can accumulate more hours than those with semesters; e.g., graduate students at UCLA must take 12 units (3 classes)/quarter; those at Berkeley take 12 units (3 classes)/ semester; so those at UCLA finish two years of coursework with 72 credit hours (18 courses), those at Berkeley finish with 48 credit hours (12 courses). How would one determine equivalency in this example? Are these considered equivalent simply because they require two years of coursework? This can obviously be a very subjective assessment.	For a foreign degree equivalency we are specifically looking for the accreditation aspect and that the foreign degree would be considered equivalent to an advanced degree at an American institution.	None	7/1/22	David Ellis
736-051-0070 (22)(d)	Given these issues, how would an applicant offer "documented equivalency" for a post-graduate degree in a foreign educational institution? The term "documented equivalency" is not defined and therefore has a potential for subjective interpretation. The term "conventional" in reference to U.S. educational programs is also not defined and therefore also has a potential for subjective interpretation.	We defined this in new rule. Use of the term "conventional" is meant to lead the readers thinking to the generally accepted degree in the states	None	7/1/22	David Ellis
736-051-0070 (22)(a)(i)	This section limits graduate degrees to only those that are US accredited. This means those who are professionally qualified but have gotten a degree at an non-US institution would not be able to obtain a permit. This leaves out a lot of professionals who have degrees from institutions in other English-speaking countries, and elsewhere. I ask this be deleted and replaced with the current wording. Here is the proposed changed section. (i) Where "specialization in archaeology" means the program, coursework, and graduate faculty adhere to departmental requirements for the equivalency of a post-graduate degree in the discipline of archaeology, and the applicable curriculum was appropriately accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education.	Section 736-051-0070(a)(D) speaks to foreign degrees. The office will look at the requirements and apply them on a case-by-case basis looking for intent.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0070 (22)(b)(A)	As written, this suggests that only paid experience as a field tech counts toward the hours of supervised experience. Why wouldn't enrollment in an accredited field school or graduate research count toward the experience requirement? Private firms would need to first hire otherwise qualified archaeologists with terminal degrees to work for base pay until these criteria are met. Candidates with the same qualifications would be more apt to take jobs at agencies where they would be reasonably compensated for their training and education. These changes to the rules would negatively impact CRM firms and be a detriment to Oregon masters and PhD students who are unable to work locally.	The RAC recommended this term and OPRD agreed that field work should mean professional field work done outside of the "degree program". Individuals should have worked in a professional setting prior to being able to retain an archaeological permit. It is our understanding that most individuals will have worked in a professional setting prior to completion of an advanced degree.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0070 (22)(b)(A)	Consider including volunteer, undergraduate, graduate course, internships, and participatory learning experiences in the 480 hours as long as time can be verified.	The RAC recommended this term and OPRD agreed that field work should mean professional field work done outside of the "degree program". Individuals should have worked in a professional setting prior to being able to retain an archaeological permit. It is our understanding that most individuals will have worked in a professional setting prior to completion of an advanced degree. Verification of this kind would cause administrative burden to OPRD and applicants	None	7/1/22	Kurt Roedel, ODOT
736-051-0070 (22)(b)(A)	This is a new barrier to access/qualification. Undergraduate and graduate experience should count towards hours.	The RAC recommended this term and OPRD agreed that field work should mean professional field work done outside of the "degree program". Individuals should have worked in a professional setting prior to being able to retain an archaeological permit. It is our understanding that most individuals will have worked in a professional setting prior to completion of an advanced degree.	None	7/1/22	Liz Oliver, USACE
736-051-0070 (22)(b)(A)	This section states archaeological field research includes survey and excavation. This contradicts the new definition of archaeological field research, which is limited to the "hands-on analysis of a professionally excavated archaeological collection."	Difference based on context. One refers to basic archaeological field research, one is supervised archaeological field research, and one is a thesis dealing with archaeological field research	None	7/1/22	Liz Oliver, USACE

736-051-0070 (22)(b)(A)	I would suggest the inclusion of the phrase "[i.e., field school]" at the end of this section so that the note regarding undergraduate or graduate school credit has a clearly understood reference.	Believe the author meant 736-051-0070(22)(b)(A). Think this term is already clear, examples are not needed.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0070 (22)(b)(B)	How is excavation defined? Does it include "exploratory excavation"? How is survey defined? Is it limited to pedestrian survey or does it include "exploratory excavation"? Clarification of these definitions are important because acquiring 240 hours of excavation experience might take years if "exploratory excavation" is not included (especially if field school and graduate project experience would not count toward the minimum requirements).	Any supervised archaeological excavation and any supervised archaeological survey will be accepted.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0070 (22)(b)(I)	I believe that volunteer, internships, field schools, and participatory learning experiences for credit should all be included in the 480 hours and OPRD should develop a process to verify the quality/accuracy of these hours to their satisfaction (i.e. previous archaeological supervisor/teacher confirmation, passing grades for college credit, etc.). It is my experience that field schools, in particular, provide the best training opportunities to learn proper archaeological methods and critical thinking when interpreting archaeological resources. In the event that archaeological projects decrease or halt due to economic conditions then it could be near impossible for a Master's level archaeologist to obtain "professional" level experience; however, field schools etc. could still be available and a viable avenue to gain that experience. Including only professional level experience could create insurmountable barriers for archaeologists to become "qualified". Experience in hours doesn't necessarily translate to the quality of an archaeologist's work.	The RAC recommended this term and OPRD agreed that field work should mean professional field work done outside of the "degree program". Individuals should have worked in a professional setting prior to being able to retain an archaeological permit. It is our understanding that most individuals will have worked in a professional setting prior to completion of an advanced degree. We agree that hours does not equal quality, however statute was written based upon hours and cannot be changed.	None	7/1/22	Dustin Kennedy
736-051-0070 (22)(c)	Changes made to this section of the Rules are very problematic. A question that has come up in the past in trying to review a permit applicant's qualifications is how does one judge report equivalency. Nothing in the proposed rule seeks to clarify this problem. Instead, the inclusion of a peer reviewed publication as being equivalent in scope and quality to a Master's thesis makes such a comparison much more difficult. It is quite easy today to have an article reviewed and accepted in a peer-reviewed publication with it having little archaeological substance, and it is difficult to recall seeing many articles that attempt to reference the design and execution of an archaeological study (comparable to the range and scope of a thesis as noted in statute [390.235(g)(b)]). Past Oregon OPRD guidance has stressed that reports considered equivalent in scope and quality needed to have the following sections: Introduction, Research Questions or Problem Orientation, Background and Prior Research (Literature Review), Methods/Materials, Analyses, Results, Discussion/Conclusions, References Cited/Bibliography, Appendices. I rarely recall ever seeing a peer reviewed article that would mirror this. The current proposed rules are watering down this most-important component of who is qualified to obtain an archaeological permit and lead future state archaeological excavations. How would an article published about people's attitudes regarding a particular excavation fit this new standard? In addition, the importance of such a document having a sole author has been reduced to that of only being a primary or lead author. How does one measure such attributes? In an article with three authors, all may be considered equal in merit therefore any of the authors could be considered a primary author. How does the OPRD hope to quantify the role of a specific author in meeting the needs captured by the above requirement? I strongly feel that the watering down of this most-important component of the law is an approach to be avoided and suggest that the author's consider replacing it with the earlier language. State Administrative Rules are supposed to clarify the intention of the state statute they relate to, not water them down so that they lack any true meaning or the original intention of the statute they are trying to define. This current subsection is very problematic and does the opposite of what was originally intended. It is not necessary and counterproductive to the spirit of the statute.	These changes were made under consultation with the RAC and Tribes to be more inclusive to the different types of degree programs that are in effect today as opposed to when the statute and rule were written. It is no longer a given that someone studying archaeology at an accredited institution will write a thesis but they may write a seminal work that concludes a research project, in which they have proven that they can see research through to completion.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0070 (22)(c)(A)	We do not understand why the definition of "archaeological field research" as it pertains to designing and executing an archaeological study is restricted to data recovery and test excavations. In practice, archaeological field research could include mapping, pedestrian survey, soil sampling, etc. This new definition seems overly restrictive. Moreover, as written the language suggests the archaeological study must be Oregon based (i.e., "prior or after curation at a Oregon "State Designated", "Alternate Curatorial Facility", or federally approved facility"). Individuals who have clearly demonstrated that they can competently design and execute an archaeological study (as evidenced by a graduate thesis or dissertation or peer reviewed publication or lead or sole-authored report) should be able to meet the requirements for a "Qualified Archaeologist" regardless of state boundaries.	Oregon State Approved Facility is in Oregon. However, federally approved facility can be anywhere in the U. S.	Language updated	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0070 (22)(c)(A)	Exploratory excavations is defined. Consider defining these terms. (Data recovery or test excavations)	Only defining terms that are used in the rule and/or statute. Neither data recovery or test excavations are in the rule or statute.	None	7/1/22	Kurt Roedel, ODOT
736-051-0070 (22)(c)(A)	The rules define archaeology as "the study of the past based on: archaeological method and theory, the analysis or patterning of any surviving archaeological objects, sites, or features, anthropogenic soils, ethnographic, historic, or oral traditions, and any associated contextual relationships documenting the use of a place or places by people individually or collectively for any amount of time. Archaeology is a subfield of Anthropology" (AMEND: 736-051-0070 (22)(a)(C). Why is archaeological field research limited to collection analysis? This will exclude a lot of thesis topics, and further restrict who can qualify as an archaeologist. I recommend a more expansive definition of archaeological field research that better aligns with the definition of archaeology.	It was defined that way because of the "field research" portion of it. This definition is only seeking to clarify OPRD's current interpretation.	None	7/1/22	Liz Oliver, USACE
736-051-0070 (22)(c)(A)	Why only collections in an Oregon/federal facility? Does this exclude tribal facilities, other state facilities that may not meet federal standards or individuals who studied outside of the US? This definition is too restrictive.	Oregon State Approved Facility is in Oregon. However, federally approved facility can be anywhere in the U. S.	Language updated	7/1/22	Liz Oliver, USACE
736-051-0070 (22)(c)(A)	This excludes the many collections that were found pre-1980. There is a lot of value in examining older collections. Why does Oregon promote curation for most if not all collections, if it does not also value the data from them enough to endorse a qualification from their study?	Analysis of previously excavated collections that were archaeological excavated can be used to meet this qualification.	None	7/1/22	Liz Oliver, USACE
736-051-0070 (22)(c)(B)	Can clearly or unequivocally? How is demonstrates determined?	Looks for author to indicate where additional authors input would be included.	None	7/1/22	Kurt Roedel, ODOT
736-051-0070 (22)(c)(C)	Can clearly or unequivocally? How is demonstrates determined?	Will change "clearly".	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0070 (22)(c)(I)	If exploratory excavations is defined data recovery and test excavations should also be defined. Aren't exploratory investigations also archaeological field research? They are an integral part of the process when identifying archaeological resources.	Only defining terms that are used in the rule and/or statute. Neither data recovery or test excavations are in the rule or statute.	None	7/1/22	Dustin Kennedy
736-051-0070 (22)(c)(ii-iii)	How does one unequivocally demonstrate this? How does OPRD verify this?	Looks for author to indicate where additional authors input would be included.	None	7/1/22	Dustin Kennedy
736-051-0070 (24)	Will tribal facilities meet this definition?	Yes, this definition does not discount tribal scientific organizations	None	7/1/22	Liz Oliver, USACE
736-051-0070 (24)	The text of ORS 390.235 is "...benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology." The definition also should include educational institutions.	In statute, cannot change.	None	7/1/22	Liz Oliver, USACE
736-051-0070 (27)	Should a definition for tribal notification also be included then? Tribes often prioritize their limited resources to areas of their greatest concern and choose not to engage in a bilateral process of discussion etc. for every permit application or issue. In the event that an applicant doesn't receive comment back from a Tribe is it still considered Tribal Coordination? Or is that act of reaching out also considered Tribal Coordination?	Tribes requested a term between notification and consultation and OPRD agreed. They recommended using the term coordination as an informal work that goes both ways. Not to say that if the tribe is unresponsive we wouldn't see that as an attempt being made and not receiving feedback.	None	7/1/22	Dustin Kennedy
736-051-0080	(1) Does this include federal government projects on non-federal public land? Can the federal government be subject to a state permit requirement? This deserves broader discussion. How might this rule change address this?	Yes, it applies to federal projects on non-federal lands. That is how the statute and rule has been interpreted from its inception to date and the proposed rule change does not effect this.	None	7/1/22	Tara Gauthier, USACE
736-051-0080 (1)	Consider including definitions for archaeological, historical, prehistorical, and anthropological	Could define but these terms have never been disputed as being difficult to interperate and were not identified by OPRD, RAC, or Tribes as needing additional clarification. We do not feel it is needed.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (1)	A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public lands any material of an archaeological, historical, prehistorical, or anthropological nature without first obtaining a permit issued by the Oregon State Parks and Recreation Department.	Good comment, but not necessary to define historical, prehistorical, anth, etc. Each of these items must still fit in the definition of an "archaeological object" or "archaeological site".	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (1)	Should this be revised to include precontact and postcontact?	This is in statute, cannot be changed	None	7/1/22	Dustin Kennedy
736-051-0080 (1)(b)	A permit for exploratory excavation on private land is not required, but given that 10 artifacts are considered an archaeological site in Oregon, this places a high burden on an individual(s) working on private lands. People could go into the field, excavate a single probe and be forced to stop work and wait 30+ days for a permit. The rules should allow for a process in which work can move forward in a single session, either through allowing additional probes to define a site's boundary or to require a permit for exploration up front that covers all the work necessary to complete a presence/absence survey.	Yes, if an archaeologist goes out to do probes on private land without a permit there is a chance they will have to stop after the first hole. In Oregon previous interpretations of 10+ artifacts making an archaeological site has been found to be incorrect. Through the rule revision our office will be offering new guidance regarding the definition of an archaeological site meaning 2+ artifacts. Though there are not restrictions around getting a permit prior to beginning excavations if the archaeologist wishes. If you are going to be digging at an archaeological site you need to have a state issued permit reviewed by OPRD and the Tribes. If they want to take the risk that they will not find anything that is on the archeologist doing the work.	None	7/1/22	Liz Oliver, USACE
736-051-0080 (2)(a)	This doesn't account for qualified archaeologists employed by Agencies.	In statute, cannot change	None	7/1/22	Kurt Roedel, ODOT

736-051-0080 (2)(a)	The text of ORS 390.235 reads, "To a person conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;" Adding qualified archaeologist to this section is a missed opportunity to provide access to individuals who are working with or coordinating with a scientific or educational institution, have experience in the archaeology excavation but may not meet the high bar for specific thesis topics.	In statute, cannot change	None	7/1/22	Liz Oliver, USACE
736-051-0080 (2)(a)-(c)	Does this exclude agency archaeologists from obtaining permits and doing work themselves? Or non-qualified archaeologist from monitoring under a qualified archaeologist's permit?	In statute, cannot change	None	7/1/22	Dustin Kennedy
736-051-0080 (3)	A qualified archaeologist who desires an archaeological permit pursuant to ORS 390.235 must submit an application to the Oregon Parks and Recreation Department Director or their designee. The application must be complete and include:	Make the change	Language changed	7/1/22	Kurt Roedel, ODOT
736-051-0080 (3)(6)	We request this additional item that is to be included in the permit application be made "as of the time the rule is issued."	[assuming author meant 736-051-0080(3) either g or h] Was considered in previous drafts. RAC and Tribes suggested removal and OPRD agreed.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0080 (3)(b)	If analytical methods are considered "part of the terms of an issued permit" would the applicant be expected to define/outline all possible analyses or otherwise be excluded from conducting them under the terms of the permit? The phrasing is unclear.	The terms of what is required for a permit application are fairly ambiguous, as they need to be to account for all the different type of permits that may be sought. This language is just to clarify that items written into the research design will be considered terms of the permit and the applicant can be held accountable if they are not followed.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0080 (3)(b)	Does this imply that tribal coordination (response from tribe) is required? Tribal coordination MAY assist if a response is received.	This does not state that applicants are "required" to coordinate prior to submitting a permit application. It was included so that tribes would know if any coordination had been done before they received the permit and with whom it was done since almost all permits are reviewed by more than one tribe.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (3)(b)	Is the intent of this section to require tribal coordination by a permit applicant? If yes, this does not compel an applicant to coordinate with tribes, it only states that tribal coordination may help in the development of a research design. Recommend stating tribal coordination is required if that is the goal.	This does not state that applicants are "required" to coordinate prior to submitting a permit application. It was included so that tribes would know if any coordination had been done before they received the permit and with whom it was done since almost all permits are reviewed by more than one tribe.	None	7/1/22	Liz Oliver, USACE
736-051-0080 (3)(e)	Does this suggest a formal coordination period with tribes be initiated in advance of the permit application? Will the applicant be expected to contact LCIS to determine the "appropriate tribes" with which to initiate coordination prior to the application submission?	This does not state that applicants are "required" to coordinate prior to submitting a permit application. It was included so that tribes would know if any coordination had been done before they received the permit and with whom it was done since almost all permits are reviewed by more than one tribe.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0080 (3)(f)	It is unclear whether this disclosure will need to include violations for the individual applicant or both the applicant and institution? What is the process for tracking violations? Are the violations self-reported or will OPRD keep a record and verify? Will there be a public record made available on the OPRD website for the history, nature, and outcome of dispute resolutions?	The institution and individual as the applicant are both required under statute. This new language is that the applicant is the primary for any permit issues or violations, if they are unable to carry out the terms for whatever reason then it will fall to the institution that sponsored the individual to carry out. It is not our intention that everyone at the institution need to list violations of past co-workers but the institution itself will now have violations that are its responsibility. The intention is for the individual to be self-reporting. We do not intend to post them on a transparency site but can make them available through public records request. The intention is that if an individual is undertaking the responsibility of holding a permit they should be aware of whether or not it has been completed or violated.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0080 (3)(f)	We request this additional item that is to be included in the permit application be made "as of the time the rule is issued."	this section is from old draft before rule went to public comment. It has already been removed.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0080 (3)(f)	Is this post Jan 2023? Does OPRD verify the accuracy? Or is this just self-reporting? I believe that OPRD should be the one who holds/manages this information and makes it accessible as appropriate.	Initially OPRD had proposed post Jan 2023 and it was removed at the request of the Tribes and RAC. The intention is for the individual to be self-reporting. We do not intend to post them on a transparency site but can make them available through public records request. The intention is that if an individual is undertaking the responsibility of holding a permit they should be aware of whether or not it has been completed or violated	None	7/1/22	Dustin Kennedy
736-051-0080 (3)(f)	Are you seeking an applicant to disclose any prior state or federal law violations that would have occurred after January 1, 2023 (see 736-051-0020(1)(a)(B)) or those that may have occurred through past failure to comply with earlier state archaeological permits as well? Oregon OPRD has documented, and shared with permit applicants, and on their web page, many past state permit violations that could apply to future permit applicants if this disclosure is left open-ended. Consider clarifying what the intention of this section is.	All past violations.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0080 (3)(f)-(h)	Where does OPRD/applicant/company obtain/confirm/track this information to ensure what is provided is accurate? Is there a mechanism to confirm violations are updated/resolved/removed?	The intention is for the individual to be self-reporting. We do not intend to post them on a transparency site but can make them available through public records request. The intention is that if an individual is undertaking the responsibility of holding a permit they must be aware of whether or not it has been completed or violated.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (3)(g)	Does OPRD have a process in place to notify the applicant once all permit obligations have been met? Otherwise, how does the applicant know when a permit is closed? If this is a requirement for a new permit application, all pertinent information about previously issued permits should be made available to the applicant.	The intention is for the individual to be self-reporting. We do not intend to post them on a transparency site but can make them available through public records request. The intention is that if an individual is undertaking the responsibility of holding a permit they must be aware of whether or not it has been completed or violated.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0080 (3)(g)	A list of all open and still pending archaeological permits issued to the applicant;	The information is for reviewers.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (3)(g)-(h)	Is this 10 years starting Jan 2023 or prior to? I recommend clarifying this.	10 years from the date of the permit application.	None	7/1/22	Dustin Kennedy
736-051-0080 (3)(h)	See comment directly above regarding open permits.	It is the applicants burden to notify when the terms of the permit have been completed. This has not changed from current rules, we are just asking applicants to keep track.	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0080 (3)(h)	Define "outstanding archaeological permits"? Do you mean all permits that have not had a final report submitted to the appropriate agencies; archaeological collections have not been submitted to the appropriate repository, or some other criteria that has been left unresolved? This would be good to qualify since it is confusing as written. Here you note within a ten year period (see above comment). Does a similar timeline fit subsection (3)(f)?	Outstand meant the terms and conditions of the permit have not been met during the time allotted.	Language changed	7/1/22	Dennis Griffin, formerly OPRD
736-051-0080 (5)	Inconsistent language – "review authority" – is this synonymous with "Entities with Approval Authority" (see examples elsewhere in document under 736-051-0080)	Make the change	Language changed	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0080 (5)	This subsection states that "in consultation with the LCIS, the OPRD shall identify the appropriate tribe(s) with review authority over the archaeological permit application". I know that this is taken from the existing administrative rules; however, it does not reflect what is stated in current state statutes. ORS 97.750(2) states that LCIS designates what tribes are appropriate rather than the OPRD. The OPRD earlier had the responsibility to designate appropriate Tribes; however, this was changed in 1980, following the passage of House Bill 3196, with the LCIS being designated as the agency best suited to select the appropriate tribe(s) in cases of future permits. Statute 390.235(1)(d) does state that the State Parks and Recreation Director (OPRD), with the advice of the Oregon Tribes and LCIS, shall adopt rules governing the issuance of permits but it does not give the OPRD the authority to designate appropriate tribes. However, I am aware of the current process of tribal selection conducted between LCIS and the OPRD, and how the OPRD has been given permission by LCIS, in the event that LCIS is not able to respond within 48 hours, to select the most appropriate tribes based on past permits issued in the vicinity. This has served as a good, workable process and it is clearly stated in the revised rule. The initial section, however, should clarify that LCIS remains the designated authority to select the appropriate tribe(s) rather than how it is currently written.	Make the change	Language changed	7/1/22	Dennis Griffin, formerly OPRD
736-051-0080 (5)	In consultation with the LCIS, the OPRD shall identify the appropriate tribe(s) with approval authority over the archaeological permit application. In the event LCIS is not able to respond within 48 hours, the OPRD will designate the most appropriate tribes based on past permits issued in the vicinity.	If it is not in the research design stating under which circumstances you will change screen size then you would need a new permit.	Language changed	7/1/22	Kurt Roedel, ODOT
736-051-0080 (5)	Revise by replacing "review" with "approval" throughout document.	make the change to be consistent	Change made	7/1/22	Dustin Kennedy
736-051-0080 (5), (6), (9)	The phrase "review authority" is used four times without definition. Does it differ from "approval authority"?	Make the change for times when really intended to be Entity with Review Authority	All changed to "approval authority"	7/1/22	Pam Endzweig, UOMNCH
736-051-0080 (6)	There should be a time period added for when the OPRD sends the application out for review. The current rule is for two days, and that has been entirely deleted. We ask that two business days be retained, or another reasonable time period.	Time period was removed because it was ambiguous as the language suggested 2 days but did not require 2 days. It is OPRD's opinion that any time period in this section would be an administrative burden and we do not have the staff to ensure it can be met.	None	7/1/22	Jo Reese and John Fagan, AINW

736-051-0080 (6)	This proposed subsection lacks any timeline for how soon OPRD should seek to respond to a completed permit application to be sent out for review. Isn't this something that should be included so that the length of the permit process can be estimated by applicants and agencies having the need to acquire future permits? I don't think its inclusion would result in any problems for OPRD in responding, since they remain quite efficient in prioritizing permit application reviews; however, it does provide a level of transparency and clarity to both applicants and agencies as to the expected length of the process that will follow a permit's submission.	Time period was removed because it was ambiguous as the language suggested 2 days but did not require 2 days. It is OPRD's opinion that any time period in this section would be an administrative burden and we do not have the staff to ensure it can be met. As for people predicting when their permit will be issued, this is unknown until a complete permit application is accepted by our office. Most fluctuation in permit timelines happens during this initial step while OPRD reviews the permit application and may request changes as many times as is necessary to find the application package complete.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0080 (6)(b)	Should there be some reference to appropriate conditions for inclusion, or objections that may need informal discussion/mediation/arbitration?	This has always been at the OPRD's discretion, not proposing any changes	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (6)(c)	At the request of any tribe with approval review authority over a permit application, the applicant shall continue to coordinate with them during the 30-day review period. Tribal coordination may include, but is not limited to a discussion of the proposed archaeological investigations, research design, permit terms or conditions, reporting, tribal monitoring of the permit work, curation, inadvertent discovery contingency plans during the archaeological investigations, or any associated project design or development.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (6)(c)	Tribal Coordination is defined earlier as part of the research design development and then redefined here as part of the post-application submital period. I recommend just combining these into a single "Tribal Coordination" in the definition section and just referencing the term in these respective locations.	Tribal coordination is defined in section 736-051-0070 and then referenced several times in section 736-051-0080 to indicate several points there it should be revisited or completed.	None	7/1/22	Dustin Kennedy
736-051-0080 (7)	The proposed rule as written does not allow for inadvertent discoveries by local jurisdictions who are completing public infrastructure repairs. The model as presented in the rule is that the applicant or property owner completes the appropriate clearance review prior to beginning their project which is appropriate for public maintenance and construction projects where there is time to plan appropriately. However, the reality is that most local jurisdictions don't have the capacity to do the kind of comprehensive archaeological survey and study of their infrastructure needed - in order to ensure that they are fully aware of any potential archaeological resources that they may inadvertently discover while completing sometimes urgently required repair of public infrastructure. Often their only feasible alternative in these situations is to utilize this economic hardship clause. Should this hardship clause be removed, adding additional language to allow public jurisdictions to be able to utilize this expedited permit process in situations where urgent repair is needed will result in improved compliance with this statute and a reduction in the loss or damage to archaeological resources. Change language: Any person or entity who has completed (post) OPRD and appropriate tribe clearance review for a project, or inadvertently discovers, while repairing public infrastructure, an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony, may request an expedited 48-hour permit review. The request may be granted if the Director or their designee, in coordination with entities with approval authority determine the 30-day permit review period of this rule will result in an undue risk to public health, life or safety, or 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: repair of existing public infrastructure (ie, utilities within the right of way), 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.	The proposed language allows for expedited permits in situations where emergency repairs need to be made for life and safety concerns such as water main breaks, electrical outages, and sewer failures. Not all infrastructure repairs are emergencies or constitute a risk to life and safety and should not be open to the expedited procedures.	None	5/25/22	K. Fitzgerald, City of Salem, League of Oregon Cities
736-051-0080 (7)	This topic is the Expedited Permit Application. • The wording in the first sentence (in yellow highlight [sic, italicized]) is unclear and we cannot understand the intent. It appears to have gotten garbled during the track changes editing. • "Object" (yellow highlight) is included but there is no legal basis to obtain a permit for an object under the definitions. • The situation of an "economic hardship" has been deleted, but this is important to individuals when there is an unanticipated discovery, and we request that it be retained. (7) Any person or entity who post OPRD and appropriate tribe clearance review discovers an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony, may request an expedited 48-hour permit review. The request may be granted if the Director or their designee, in coordination with entities with approval authority determine the 30-day permit review period of this rule will result in an undue risk to public health, life or safety, or 10 an undue threat to the archaeological object, site, human remains, burial, funerary object, sacred object, or object of cultural patrimony. Examples of situations creating undue risk to public health, life or safety include: hazardous material spills, breach of regional flood control facilities, and pipeline failures. Examples of creating undue threat to an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony include: erosion, susceptibility to theft, prolonged exposure to the elements, and proposed construction related activities.	1. the intention of the first line is to ensure that due diligence was done prior to work that uncovers a resource that requires a permit. 2. an object was included here to allow for an expedited permit when only an object is found. 3. Economic hardship was an ambiguous term that could mean anything. It is often used as a reason to request expedited review and for at least the last 7 years an expedited permit has never been granted on that basis alone, it is near impossible to prove.	Change to first sentence made based on this and previous comment	7/1/22	Jo Reese and John Fagan, AINW
736-051-0080 (7)	The expedited review section is unclear and needs clarification. As written, it states that once OPRD and appropriate Tribes have completed their review (which assumes that a permit has already been issued), an expedited permit can be requested. If a permit has already been issued, expedited status should no longer be required. Why would one be concerned about future discovery of an archaeological object if OPRD and Tribes have already reviewed a permit? Normally expedited review is requested following a discovery, but before OPRD or Tribes have seen a permit application (e.g., discovery of an eroding burial). I understand that the key to the expedited review process is captured in subsection (7)(b) where the discovery of burials, funerary objects, sacred objects, and objects of cultural patrimony are considered prime examples for expedited review. All other cases will no longer be considered for expedited status unless the project has earlier been reviewed and obtained OPRD concurrence (e.g., discovery of feature during earlier approved project which requires a change in methodology from earlier permit or approved process). Given this, the expedited review process has generally been summarized well, except for the opening sentence of the subsection.	The review is not of the permit, but of the project relating to compliance.	Language changed to: (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.	7/1/22	Dennis Griffin, formerly OPRD
736-051-0080 (7)	Any person or entity discovers an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony after OPRD and appropriate tribe clearance review, may request an expedited 48-hour permit review. The request may be granted if the Director or their designee, in coordination with entities with approval authority determine the 30-day permit review period of this 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, transportation infrastructure failures, and pipeline failures. Examples of creating undue threat to an archaeological object, site, human remains, burial, historic cemetery, funerary object, sacred object, or object of cultural patrimony include: erosion, susceptibility to theft, prolonged exposure to the elements, and proposed construction related activities.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0080 (7)	Natural events like slides or slope failures also if its determined to do the archaeological work safely?	Already covered in this section	None	7/1/22	Dustin Kennedy
736-051-0080 (7)(a)	Summary Abatement. In certain situations, it is unsafe for a public jurisdiction to wait 48 hours to repair public infrastructure. The language within this section is not clear and objective making it difficult for local jurisdictions to clearly understand under what circumstances repair work is allowed when a truly serious life/safety situation is occurring. In many cases waiting 48 hours (and longer if it is a weekend/holiday)- is not reasonable and would in fact be dangerous to the community. Therefore, a provision clarifying that the abatement of an unsafe or dangerous condition should be allowed before the permit is issued provided appropriate notification is given to the OPRD, LCIS and the tribes. Add caveat: (2) 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 or their designee and the tribes identified by LCIS.	Make the change	Change made	5/25/22	K. Fitzgerald, City of Salem, League of Oregon Cities
736-051-0080 (7)(a)(A)	The applicant shall submit an expedited permit application to the Director or their designee to send out to entities with approval authority for review; During the following 48 hours (excluding Saturday, Sunday, and any State, Federal, or Tribal holidays), entities with approval authority may respond to the permit application with their approval, approval with conditions, or objections. No response within 48 hours means the entity with approval authority did not condition or object. If any entity with approval authority objects in writing to an expedited review, the Director or their designee will not proceed with the expedited review; Recommend tribes provide list of tribal holidays to OPRD annually to ensure these are known/observed...suggest they are added to OPRD calendar.	Grammer change	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (7)(a)(B)		OPRD does not currently maintain any kind of calendar. Will be reaching out to tribes to request a list of tribal holidays and make sure they are accounted for. Intention is that when applicants and tribes are notified of the permit issuance date those things will be taken into account already.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (7)(b)	This makes no sense. Why would "prior review" be needed under an expedited process, and if it makes sense, then what is a prior review? (b) For the purposes of this section, excluding burials, funerary objects, sacred objects, or any objects of cultural patrimony, expedited 48-hour permit reviews are only available if prior review by the most appropriate tribes, and OPRD has occurred.	This was supposed to refer to prior project review. Need to add clarifying language	Language changed	7/1/22	Jo Reese and John Fagan, AINW
736-051-0080 (7)(b)	For the purposes of this section, excluding burials, funerary objects, sacred objects, or any objects of cultural patrimony, expedited 48-hour permit reviews are only available if prior review by appropriate tribes, and OPRD has occurred.	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0080 (9)	Please add that the permit would be issued within the "first business day after the end of the review period." (9) The applicant and entities with review authority will receive a copy of the approved signed permit from the Director or their designee the first business day after the end of the review period.	Can be an administrative burden for us during times when those with signing authority are not available or it is impossible to issue since an archaeologist is not available (holiday weeks).	None	7/1/22	Jo Reese and John Fagan, AINW

736-051-0080 (10)	This proposed change is significant, unreasonable, confusing, and contrary to State law. It would require all archaeological work being done under a permit to stop when "human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered" either in the field or during curation processing. This change is not well thought out, as a permit may be for a very large area and multiple work sites on a project. The indefinite work stoppage means employees will be laid off for an undetermined amount of time and create delays for a project. The current work stoppage procedures in this situation, which are focused July 1, 2022 Page 6 Rulemaking for Issuance of Archaeological Permits Amending OAR 736-051-0000 to 736-51-0090 Public Comments on the discovery, is working well, and there is no explanation of the need for a change this broad, extensive, and unreasonable. All work under a permit issued by the Oregon State Parks and Recreation Department shall be put on hold in the event human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered during the investigation, including post-fieldwork curation processing. For such discoveries, the permit holder must contact the LCIS, appropriate tribes, Oregon State Police, and OPRD. Suggest including all reviewers with approval authority, including landowner or land managing agency.	current language revokes the permit if these items are found. The change no longer revokes the permit but suspends until consultation happens. This does not negate that consulting parties may elect to allow work to continue in other areas but the intention is that all work will stop until parties are notified and further movements are communicated.	None	7/1/22	Jo Reese and John Fagan, AINW
736-051-0080 (10)		This is based on tribal position paper on human remains and statute.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (10)	Oregon Parks and Recreation Department.	Make the change	added or their designee, and made it consistent throughout the document	7/1/22	Dustin Kennedy
736-051-0080 (11)	This subsection states that a permit can be amended with the approval of the applicant. Who else would seek to amend a permit? This is an important new section to include in the Rules but it could be written clearer. For example, "A permit applicant can request an amendment to their existing archaeological permit under a number of conditions including: (a) & (b)." By exception of field methods are you meaning changes in the types of field methods to be used or the number (e.g., change from 50cm x 50cm probes to 1m x 1m test units; or change from two to ten units)? This comment applies to 736-051-0090(6) as well	individuals other than the applicant who work under the permit (co-workers) have requested changes to a permit in the past. We just want to be clear that the original applicant has to request the changes. Also wanted to be clear in the case where individuals have left a company but the company continues working under the permit. Any terms and provisions of the permit can be amended at any time except archaeological methodology, if there are changes to the archaeological methodology they will need to get a new permit. New permits will not require a number of units as they have in the past.	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0080 (11)(a)	For example, this statement would prevent applicants from changing screen size during fieldwork due to soil conditions, and require a new permit?	correct. If it is not in the research design stating under which circumstances you will change screen size then you would need a new permit.	None	7/1/22	Kurt Roedel, ODOT
736-051-0080 (11)(b)	Suggest active voice. Director or designed will send out... There is no lon	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0090	Local Planning Departments are responsible for compliance with Goal 5 and are responsible for identifying any 'conflicting uses' (as defined in OAR 660-023-0010) subject to local land use regulations that could adversely affect a significant Goal 5 resource. OAR 660-023-0010 "Resource Category" refers to the resource groups listed in Goal 5 which include sites listed on the National Register of Historic Places. Archaeological sites are a resource type identified by the National Register and therefore are Goal 5 resources that local jurisdictions are responsible for protecting. Local governments have the authority to designate archaeological sites locally as well. For example, the City of Hillsboro has listed two archaeological sites in their Goal 5 local historic inventory. If don't accept previous revision then add language: OAR 736-051-0080 (9)(a) The applicant and entities with review authority will receive a copy of the approved signed permit from the Director or his or her designee; and. (b) At the request of any local Planning Departments who are responsible for managing the development of lands and the protection of significant archaeological resources within their jurisdiction, and who are Certified Local Governments as defined by the National Park Service and recognized by the Oregon Parks and Recreation Department, the Director or his designee shall provide a copy of the approved archaeological permit authorizing work within their jurisdiction as well as notification of any permit amendments or extensions.	This would have to be addressed through a local government process. We are not able to assign tasks outside the rule and any associated statutes.	None	5/25/22	K. Fitzgerald, City of Salem, League of Oregon Cities
736-051-0090	Without planning department notification and the ability to comment/condition/appeal a proposed archaeological permit within their jurisdiction, it is not feasible for a local jurisdiction to ensure the protection of known significant archaeological sites for which they are responsible under Goal 5 and the associated implementing rules in OAR 660-023-0200.	The permit process does not align with Goal 5 initiatives. Archaeological permits do not have a direct correlation with historic properties that are part of Goal 5. Furthermore, allowing comments/conditions/objections from planning departments on archaeological field work is inappropriate since the majority of planning department staff do not have the appropriate background to reasonably comment/condition/object to archaeological work.	None	5/25/22	K. Fitzgerald, City of Salem, League of Oregon Cities
736-051-0090 (1)(b)	See comment above about ORS definition of archaeological site regarding 736-051-0020(7)	Presence/absence testing may be resumed if the archaeologist reasonably feels they are outside of the site. Discussed adding specific distance, but it is impossible to set a reasonable distance that works across the entire state so we are leaving it to professional judgement	None	7/1/22	Jaime Kennedy, Chris Ruiz, and Andrew Boehm; UOMNCH
736-051-0090 (1)(b)	Very important clarification in proposed rules. Thank you for its inclusion. Why is it not noted under 736-051-0080?	because they already have to have a permit in hand to look for a site under 736-051-0080 but they do not have to under 736-051-0090	None	7/1/22	Dennis Griffin, formerly OPRD
736-051-0090 (1)(b)	Proposed language will have unnecessary effects on the ability to complete fieldwork in a timely fashion, and discounts the notion of qualified archaeologists. Preference is to eliminate "to establish the boundary of the site" from proposed rule. What is the legal basis for restricting the ability to conduct probes on private beyond known site boundaries. o Excavating delineation probes "outside" a known site locality (whether demonstrated by a surface manifestation or positive probes) does not have the intent of affecting the site. o Excavating delineation probes "outside" a known site locality (whether demonstrated by a surface manifestation or positive probes) does not have the intent of affecting the site. o Since ORS 358.905 defines a site as "a geographic locality" and the fieldwork guidelines rely heavily on "landforms," specifically stating "artifacts do not have to lie within 30 feet or 30 meters of each other to be considered part of a single site," the revision would place an unrealistic burden on projects and consultants. o If a consultant intends to excavate a grid of presence/absence probes across a 100 ac APE – say within the Grande Ronde River Valley floor – and the first probe was positive, then the remaining 999 probes would have to be delayed since, under OR law and OPRD's guidance, the site could possibly encompass the entire APE as a single landform. Issue would be lessened if OPRD provided guidance for a reasonable offset from sites where presence/absence testing could continue.	This added at the request of the Tribes and RAC with OPRD approval. There have been numerous issues in recent years of archaeological sites being found on private lands not being reported to the Tribes or OPRD by professional archaeologists. There has also been significant issues with individuals continuing to work in an archaeological site under the purpose of doing site delineation when it is clear that they should have gotten a permit and consulted with OPRD and the tribes. These changes are in response to those incidents. Setting a set distance that work can continue has also not worked in the past because based upon the site and/or landform. Intentionally left vague to allow for reasonable professional judgement.	None	7/1/22	Kurt Roedel, ODOT
736-051-0090 (1)(b)	Consider refining, referencing OPRD guidelines and not a revision to the OAR. It is clear that the intention is that archaeological sites, once identified, are not adversely affected by using exploratory presence/absence excavations. However, there is too much ambiguity in ORS 358.905 defining what an archaeological site is to enforce this consistently. What is the threshold for this to be violated and how does OPRD make that determination? OPRD has communicated that generally 10 artifacts in a localized area demonstrating a pattern of human behavior is indication of the presence of an archaeological site. Will this be maintained and the excavation of 15 artifacts constitute a violation to the OAR? How does one continue investigation of a larger area when a localized archaeological site is identified?	Language was added to the rule here to give violations of this nature more weight. If it was just done through the guidelines then it is perceived as a lesser violation. Also writing it into the rule allows instances surrounding it to be subject to the dispute resolution clause 736-051-0000 - 0050. There have been numerous issues in recent years of archaeological sites being found on private lands not being reported to the Tribes or OPRD by professional archaeologists. Not all tribes feel that presence/absence excavations are not an adverse effect. The actual bar to classify an archaeological site is objects (meaning 2) which OPRD will be enforcing going forward. If they wish to continue investigations they can obtain a permit.	None	7/1/22	Kurt Roedel, ODOT
736-051-0090 (1)(b)(i)	This is too vague and would be more appropriately referenced in OPRD guidelines and not as a revision to the OAR. It is clear that the intention is to not adversely affect archaeological sites, once identified; however, there is too much ambiguity in ORS 358.905 defining what an archaeological site is to enforce this consistently. What is the threshold for this to be violated and how does OPRD make that determination? OPRD has previously communicated that generally 10 or more artifacts in an area demonstrating a pattern of human behavior is indication of the presence of an archaeological site. How does one continue investigation of a larger "geographic locality" when a localized archaeological site is identified? What are the parameters? Are post-contact and pre-contact sites/artifacts treated equally? Investigating "geographic localities" for the presences of archaeological sites is rarely cut and dry and often many other factors (landforms, disturbance, etc.) are considered in the field when making these kinds of determinations. I think this is an unnecessary addition that is both too ambiguous for an applicant to ensure compliance as well as OPRD to ensure consistent punishment. Is there a dispute resolution process if one is accused of violating this since there was no archaeological permit and associated approval authorities to weigh in? Or is it simply logged as a state site violation? Who determines that? Can it be disputed? I believe that the more information one knows about a site, within reason of course, the better one can actually prepare a research design and apply for the permit. Archaeological methodology and documentation should still be followed during exploratory excavations so this should also be considered in the event of a potential violation. Some CRM firms excavated exploratory probes with similar vertical and horizontal control as test units. Does this factor into the decision of a violation. If there are cases of gross misconduct then there should be consequences. However, I believe that there should be more clarity/discussion before adopting this clause.	Previous OPRD enforcement of what was classified as an archaeological site was inconsistent with the law. We are seeking to rectify this inconsistency during this rule change so that OPRD is in compliance with statute interpretation. Language was added to the rule here to give violations of this nature more weight. If it was just done through the guidelines then it is perceived as a lesser violation. Also writing it into the rule allows instances surrounding it to be subject to the dispute resolution clause 736-051-0000 - 0050. There have been numerous issues in recent years of archaeological sites being found on private lands not being reported to the Tribes or OPRD by professional archaeologists. There has also been significant issues with individuals continuing to work in an archaeological site under the purpose of doing site delineation when it is clear that they should have gotten a permit and consulted with OPRD and the tribes. These changes are in response to those incidents.	None	7/1/22	Dustin Kennedy
736-051-0090 (5)	Oregon Tribes isn't defined in the OAR	Make the change	Change made	7/1/22	Kurt Roedel, ODOT
736-051-0090 (6)(a)	Same question as above. Flexibility to account for field conditions may be warranted.	Agreed, it has been intentionally left vague. If there is a need for flexible methodology based upon field conditions and professional judgement the applicant can request that with their permit application.	None	7/1/22	Kurt Roedel, ODOT

736-051-090 (1)(b)(i)	(b) If an archaeological site is identified, all excavation must stop and the site will be recorded on a State of Oregon Archaeological Site Record and submitted to OPRD. (i) If additional excavation is necessary to establish the boundary of the site, complete the exploratory probe, or conduct further archaeological investigations of the site, it will require a permit issued under this rule. The proposed changes would require, on private land, that the site be recorded as soon as there is evidence of the site and that a permit be obtained for work outside of that area to further determine if the archaeological site extends beyond that spot. We suggest that a permit be obtained once the site is delineated, if additional work is needed. The proposed modification would be: (b) If an archaeological site is identified on private land and it's boundary is delineated, all excavation must stop... (i) If additional excavation is necessary to conduct further archaeological investigations of the site, it will require a permit issued under this rule.	This added by OPRD at the request of the Tribes and the RAC. There have been numerous issues in recent years of archaeological sites being found on private lands not being reported to the Tribes or OPRD by professional archaeologists. There has also been significant issues with individuals continuing to work in an archaeological site under the purpose of doing site delineation when it is clear that they should have gotten a permit and consulted with OPRD and the tribes. These changes are in response to those incidents.	None	7/1/22	Jo Reese and John Fagan, AINW
All	As we contemplate changes to the rule re: the issuance of archaeological permits, we need to consider how the State Physical Anthropologist will fit into this regulatory scheme. This is an entirely new position for the State of Oregon. It is anticipated that they will be heavily involved in archaeology projects around the state and, in particular, will be key in the analysis, handling, and repatriation of ancestral remains. Frequently, this is in the context of inadvertent discoveries and the ability to proceed expeditiously and respectfully is critical. In many instances, it will not be practical to apply for an archaeological permit in this context. suggest either an exemption or a "blanket" permit of some sort be considered for the State Physical Anthropologist position.	Agree; can't do a blanket permit because of landowners but could maybe do an exemption with a notification period	Added section 736-081-0080(3)	6/15/22	Patrick Flanagan, LCS
All	Firstly, the standards of the Oregon OPRD for permitting are unclear.	Not part of rule revision, would be updating the accompanying procedures post rule revision	None	6/30/22	Anonymous
All	Secondly, they are inconsistent with the rules of neighboring states.	Rules have to speak to the statute, cannot interpret rules based upon other states.	None	6/30/22	Anonymous
All	Thirdly, they prevent equity across the discipline and are designed to limit inclusivity and the opportunity for people of color, women, and working class people to achieve career aspirations in Oregon archaeology.	Portions of the rules are intended to be exclusionary as they set a professional standard. We do not feel that the rule is exclusionary on its own. We do feel that some of the statute could be more broad an inclusive, but we do not have the ability to change that.	None	6/30/22	Anonymous
All	The OPRD's decisions regarding permitting do not actively follow their own guidelines and there are several instances of Oregon archaeologists with foreign degrees holding permits, currently. They were "grandfathered" in, just a handful of years ago. If the OPRD is serious about their requirements these people will have their permitted status revoked. I do not promote revocation, instead, the OPRD needs to let open the gates that are being kept shut and severely hindering the successes of archaeologists dedicated to work in the state. At the very least, they need to be consistent in their decision making and keep accurate records of individuals who have been allowed permitted status and those who have been denied for the sake of public transparency.	Foreign degrees are allowed under 736-051-0070(22)(d). OPRD has not grandfathered in any qualified archaeologists at this point. Part of this rule revision is intending to grandfather in those already qualified. Other comments refer to internal OPRD procedures not rule. Though it is something we are working on.	None	6/30/22	Anonymous
All	Recommend rewriting using active voice throughout.	Make the change	Changes made to the extent possible	7/1/22	Kurt Roedel, ODOT

2nd public comment period

736-051-0080(1)	I am not able to find an updated version of the Oregon Administrative Rules for OAR-736-051-0070 through 0090 and am wondering if "Director" is defined. I know that this is meant to mean the Director of the Oregon Parks and Recreation, but am unsure if it is clarified as such in the definitions. It is not in the state's OARs as of 2021, but it may have been included in the recently approved revisions which are not currently available to the public.	Yes, the director is the OPRD director.	None	9/24/22	Dennis Griffin, Cultural Horizons
736-051-0080(2)(a)	2(a) changed from a qualified archaeologist employed by to a person for the benefit of; why? Who are you trying to let in that is not a qualified archaeologist? If you have a specific person in mind, such as a graduate student, use that term. The use of the term "person or person" in 736-051-0080 makes several sections confusing or inaccurate for me. As defined in 736-051-0070 a "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." The use of the term person, as defined in 736-051-0070, may fit for 736-051-0080 sections (1) and 2(a) but not (8). The use of the term in section 8 omits the other class of applicants, the qualified archaeologist, from a fast-track permit process. The current definition for a "person/person" does not include any connections to that entity's schooling and/or knowledge of archaeology or archaeological methodology just that they are working for the "benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology". A person requesting an archaeological excavation permit on public land, and private land for that matter, needs to have some connection with the archaeological discipline that is given to verify their professionalism. If the qualified archaeologist has requirements to meet to get a SHPO archaeological excavation permit; the 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 needs to have archaeological standard requirements to meet as well. For "the benefit" seems like a very vague comment, it implies that the person doesn't even need to be associated with or working for the scientific or educational institution. Do you mean working with or working for the scientific or educational institution; it used to say employed. THIS SUGGESTION STATES THAT A PERMIT MAY BE ISSUED TO A PERSON CONDUCTING AN EXCAVATION, EXAMINATION OR GATHERING OF SUCH MATERIAL FOR THE BENEFIT OF A RECOGNIZED SCIENTIFIC OR EDUCATIONAL INSTITUTION WITH A VIEW TO PROMOTING THE KNOWLEDGE OF ARCHAEOLOGY OR ANTHROPOLOGY." This is in contrast to the earlier rule which stated that such a "person" conducting work for a scientific or educational institution first needed to be a qualified archaeologist, which would infer that the person had obtained a level of training and scientific expertise in the gathering of such information. The exclusion of the need for a person to be a qualified archaeologist leaves this section open for interpretation and possible damage to future nonrenewable cultural sites. Under the definition of a recognized scientific institution (736-051-0070(21)), any chartered museum, organization or society with a commitment to the scientific method could be eligible to have a person (i.e., individual, partnership, public or private corporation, unincorporated association or other legal entity) acquire a permit and excavate a site on Oregon public lands. The OARs make no attempt to define what a "commitment to the scientific method" means nor how such a method is defined or to be employed. In the past, examples of chartered museums in Oregon are known to have supported the excavation, purchase and displaying of archaeological artifacts and human remains that were obtained in ways not supported by current professional standards. Some of these museums/excavators could have argued that they followed the scientific method (e.g. good notes were kept, soil profiles drawn, artifact provenience information recorded). The state's OARs are currently being refined because of the danger of having them be misrepresented in the future. The addition or subtraction of significant components within the rules used to better define the state's permit law should be done with caution, and any new terms or concepts that are added should be adequately defined so that the application of the rules truly clarifies the process rather than obfuscates it. In listening to the earlier recorded hearings regarding proposed changes to the existing OARs, the only discussion that may have touched upon the removal of the need for a permit applicant to be a qualified archaeologist dealt with how such a process was affecting archaeological graduate students wishing to conduct graduate level research. If the deletion of "qualified archaeologist" was made to allow a process for graduate students to personally be able to acquire permits in the future without having to have their professor apply for a permit in their name (as is the current process), I believe that such a change could be more succinctly spelled out in the rules so that the process and its intention is clearer. As it currently is	Person is part of the statute dictating who can apply for a permit. All of the language in this section is from statute with the exception of "a qualified archaeologist in the employ of..." Which was added to ensure that a person seeking a permit would need a qualified staff member or representative.	None	9/1/46	Tom Churchill, Archaeological Frontiers
736-051-0080(2)(a)	The language here seems a bit vague to me. For example, I understand that using the term "person" can be more inclusive and give students or other who for whatever reason don't qualify as "qualified archaeologists" an opportunity to apply. However, will there be requirements for these individuals to demonstrate their qualifications for leading excavations? How will these qualifications be conveyed and then evaluated? I'm also wondering about the language: "For the benefit of a recognized scientific or educational institution..." Does the person in question need to demonstrate a specific association with the institution? I get why you might not want to say "employed by" as researchers may be affiliated with but not employed by institutions, but I wonder if there is a way of requiring some kind of official affiliation to avoid people using more tenuous connections.	Person is part of the statute dictating who can apply for a permit. All of the language in this section is from statute with the exception of "a qualified archaeologist in the employ of..." Which was added to ensure that a person seeking a permit would need a qualified staff member or representative. All archaeologists that seek a permit need to be in the employ of or supported by a recognized institution. This is part of the application process.	None	9/24/22	Dennis Griffin, Cultural Horizons
736-051-0080(2)(b)	It might make sense to expand "archaeological objects" to "archaeological objects and data", as there may be cases where features or other materials that can't be physically be recovered are present, but it may make sense to still conduct data collection.	Permits are only required when there are archaeological sites present. There may be other information subsurface of archaeological value but it does not currently fit this statute	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(2)(c)	Also to a qualified archaeologist sponsored/employed by a local, state, or federal government (We have had federal archaeologists do surveys on state lands).	Language is in statute. Cannot change at this time.	None	9/9/22	Daniel Pettit, ODFW
736-051-0080(2)(c)	expand this to include government agencies?	Language is in statute. Cannot change at this time.	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(3)	Oral? Shouldn't there always be a written archaeological permit?	There is nothing in statute requiring a written permit. The administrative rules are to be developed with advice from LCIS and Oregon tribes. This is for rare instances of imminent threat to human remains, where the time to fill out a permit application and have it processed would result in continued loss or threat.	Language in bold added: 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.	9/9/22	Daniel Pettit, ODFW

736-051-0080(3)	Not sure why this is addressed as a separate entity and not just included in the list of permit applicants. Oral archaeological permit; how will these be verified? And how will the conditions and amount of work be defined? No condition mentioned of any documentation relating to the permit to be given back to SHPO; just to notify the location to SHPO. I understand the need for an easy and quick process between SHPO and the LCIS's Physical Anthropologist; however, their Physical Anthropologist should still need to follow a verifiable process for applying and completing the conditions of the permit as do the other archaeological permit applicants. This new section appears to be offered as a way to provide the new State Physical Anthropologist a way to quickly address the discovery and need for recovery of human remains on public lands without having to deal with the current permit application timeline that could delay such a recovery from two to five days under the existing expedited consultation process. I believe that the need for a quicker permit process to address the discovery of human remains is indeed needed; however, the current draft rules under review do not adequately address this need. It would be clearer if this subsection was noted as 2(d)(i) rather than as a completely new subsection. The state's physical anthropologist is still applying for a permit (whether in writing or orally), and it would be clearer if this need was kept under the subsection devoted to who can obtain an archaeological permit. The current draft Subsection (3), as written, creates several changes to the permit process that should be fully understood before such language is approved. These changes include: 1) the State Physical Anthropologist is being authorized a permit through a written or oral permit. Would such a person be considered an 'applicant' under such a new subsection, needing to follow other stipulations included in the existing rules? 2) What would a written or oral permit need to include to be considered complete? 3) What records would be kept regarding the permit and its findings? Currently, state law (ORS 358.950(5)) requires that at the conclusion of an investigation requiring excavation a report is required to be forwarded to the Commission on Indian Services and to the appropriate Indian Tribes(s). Will a report be submitted to the State Historic Preservation Office for a permanent record? Will any record (e.g., written permit application, archaeological site form, excavation report) from such permits be available in the future? Having conducted extensive research on the state's past archaeological permit history[1], I believe changes to the permit process and the records that such excavations create need to be carefully considered before they are approved. I recommend that Subsection (3) be listed under the existing Subsection (2) and noted as a distinct applicant type (Subsection 2)(d)(i). The further subsections under (3) could be included under 2)(d)(i). For at least the last 18 years, Washington State has had a similar State Physical Anthropologist conducting similar work following the discovery of human remains, on both public and private land. Their investigations have validated the need for a further expedited process in the current Oregon State process. I support the approval of a process to permit the State Physical Anthropologist to be able to almost immediately address the need to verify and recover discovered human remains. Such a process could include the inclusion of State Physical Anthropologist (SPA) should meet same qualifications as OPA archaeologists, and if not, outline qualifications needed for SPA.	This process is when recovery of ORS 97.740-760 defined items is needed immediately (e.g., human remains are being washed away at that moment), at the request of the most appropriate tribes, for later reburial. The process is for the respectful recovery in the instance of imminent threat. Verification is when the SPA must notify SHPO, the landowner/land managing agency, and OSP. The SPA qualifies as a person applicable to receive a permit under 2a and 2b, that defines who can get a permit. Section 3 details a special process for the SPA to more quickly and appropriately receive a permit. We heard from several tribes that they are unwilling to write a traditional archaeological report on sensitive recoveries and had in the past knowingly violated state law to ensure that human remains were appropriately cared for when the law does not meet their sensitive nature. Thus, an alternative option is proposed to address these concerns and consider the sensitive nature of the work.	(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.	9/1/46	Tom Churchill, Archaeological Frontiers
736-051-0080(3)		None		9/24/22	Dennis Griffin, Cultural Horizons
736-051-0080(3)		None		9/30/22	Kurt Roedel, ODOT
736-051-0080(3)	I wonder if some people will object to the inclusion of "oral" permit. Could language be included that makes it clear that this would be issued only in very time-sensitive cases? Just a clarification, is this something that needs to be done at the time of the permit request? Or as part of a report submitted after excavation? I assume this would be something that I would convey to SHPO at the time of requesting a permit anyway, as otherwise I would not be requesting the permit, but might be good to clarify.	The only parties that are privy to the process are those defined in statute. These include: SHPO, LCIS, OSP, and the Landowner/Land managing agency	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.	9/26/22	Elissa Bullion, LCIS
736-051-0080(3)(a)		None		9/26/22	Elissa Bullion, LCIS
736-051-0080(3)(a)	In some cases I might need to excavate contexts that are not confirmed, but are suspected to be human remains or burials. Does the current language cover this adequately?	If it is not confirmed to be emergent and human remains or associated objects, need to follow regular permit regulations	Language in bold added: 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.	9/26/22	Elissa Bullion, LCIS
736-051-0080(3)(a)	Suggest clarification on definition of oral archaeological permit, what information is needed to satisfy oral permit requirements?. How is this tracked/managed for all parties?	Imminent threat to human remains is the information needed. The only parties that are privy to that information per statute are already included in the process. These include: SHPO, LCIS, OSP, and the Landowner/Land managing agency	Language in bold added: 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.	9/30/22	Kurt Roedel, ODOT
736-051-0080(3)(a)		Oregon Tribes worked with legislatures to create a State Physical Anthropologist position (the second in the nation). That person is tasked with conducting recoveries of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in Oregon, at the request of tribes. At times, these sensitive remains and associated items are in immediate danger, and action is needed before a permit application can be completed and processed.	Language in bold added: 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.	9/30/22	Kurt Roedel, ODOT
736-051-0080(3)(c)	Is explanation needed for why an SPA can submit an oral permit, but others cannot?	(c) Notify the landowner or land managing agency and receive written or oral approval for access prior to any potential recovery or collection; and	None	9/30/22	Kurt Roedel, ODOT
736-051-0080(3)(d)	What constitutes oral approval? What information needs to be communicated with a landowner?	The intention is to provide them SPA with an easier way to recovery human remains and associated items that are being damaged, or there is an imminent threat of damage.	Language in bold added: 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.	9/9/22	Daniel Pettit, ODFW
736-051-0080(3)(d)	Is the intention of 3(a)-(d) to outline a permit process that is different for the state physical anthropologist than for other qualified archaeologists? Or is this in addition to the regular process outlined in 4?	ORS 97.740 only states that OSP must be notified. The rule only clarifies that task. It will be up to OSP to determine if any additional action for their part related to potential crime scenes is needed.	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(4)	Might need to alter this to convey that OSP needs to be notified and give approval before collection as well as they need to confirm that contexts of human remains are not forensic.	no OPRD is only empowered to issue one permit at this time (an archaeological permit) and can't have separate standards but we can provide an alternative expedited process.	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(4)	Do we need to come up with and codify separate requirements for permits that I would submit? Especially if they are expedited?	Agree	Added: (j) An inadvertent discovery plan specific to any burial, human remains, funerary objects, sacred objects, or objects of cultural patrimony.	9/26/22	Elissa Bullion, LCIS
736-051-0080(4)	I would strongly suggest that an inadvertent discovery plan for human remains be explicitly required for permits	This information will still have to be provided to our office, it will just be after the recovery has taken place	None	9/30/22	Kurt Roedel, ODOT
736-051-0080(4)(d)	What does this look like if it is an oral archaeological permit?	ORS 390.235(3) requires curation of archaeological materials with the exception of Indian human remains, funerary objects, sacred objects and objects of cultural patrimony. In the past, I have had a Tribe request that all artifacts found under an excavation permit be returned to the ground after excavation, and not curated, because the Tribe viewed removal of the artifacts as an adverse effect. It has been difficult to honor this request when state law requires curation from artifacts recovered from public lands. However, can the Tribe argue that all artifacts (even flakes/debitage) are sacred to the Tribe as a means of refusing curation? I realize this is a bit beyond the OAR comments, but it has been an issue I've struggled with over the past few years: How to honor the wishes of Tribes when it appears to contradict the requirements of ORS 390.235.	We understand this has been difficult in recent years. State law designates that archaeological objects recovered on state lands must be curated at the museum. Cannot change at this time	9/9/22	Daniel Pettit, ODFW
736-051-0080(5)	When is this done in the application process? Does this apply to oral permits? All permits? Just the State Physical Anthropologist? All excavation permits?	This is for all excavation permits section 3 is the only section for only the SPA	None	9/30/22	Kurt Roedel, ODOT
736-051-0080(6)	Again, when does this happen? What does it apply to? Can this occur after an oral permit is granted and the work undertaken?	This is for all excavation permits section 3 is the only section for only the SPA	None	9/30/22	Kurt Roedel, ODOT
736-051-0080(6)	Could we change the language to "In the event LCIS is not able to respond within 48 hours during the business week"? If I receive a permit on Friday afternoon, I usually will not address it until the following Monday.	Specify 48 business hours	Changed to 48 business hours	9/26/22	Elissa Bullion, LCIS
736-051-0080(7)(a)	This is different than approved expedited permits, which are provided to entities with approval authority.	It is captured in 10.	No change.	9/30/22	Kurt Roedel, ODOT
736-051-0080(8)	I am a bit confused by the language. Is this section referring to any person who already has a permit or is qualified to apply for a permit?	Person in this case mean the definition in section 736-051-0070 including an individual, company, etc.	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(8)(b)	this section seems to contradict the main language under 8 regarding who can apply for expedited permits regarding burials and human remains	There are instances where they do not need to have prior approval that is just one of the avenues to obtain a permit see section 736-051-0080(8)(c)	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(10)	This is true only for expedited permits? Regular permits are only sent to the applicant.	Yes, all permits are applicable to this section	None	9/30/22	Kurt Roedel, ODOT
736-051-0080(11)	Stopping all field work operations and/or laboratory work for an unknown amount of time is very vague and could be a burden expense to the applicant. What has happened to the prefieldwork tribal/applicant agreement about the procedures regarding human remains, funerary objects, sacred objects, or objects of cultural patrimony? This agreement document just needs to now include the new LCSI Physical Anthropology participation with the process. If a project is halted what is the procedure to restart the project and how long is this process going to take?	current language revokes the permit if these items are found. The change no longer revokes the permit but suspends until consultation happens. This does not negate that consulting parties may elect to allow work to continue in other areas but the intention is that all work will stop until parties are notified and further movements are communicated. This could include getting the SPA involved.	None	9/1/46	Tom Churchill, Archaeological Frontiers
736-051-0080(11)	I think it might be good to add some language here emphasizing that these contacts must happen IMMEDIATELY or at least ASAP after a discovery is made. Maybe something could be added as well noting that OSP, SHPO, and LCIS will communicate with the permit holder as the case proceeds, but not necessarily promising a specific timeline. Also, is there a reason that the language of permits being potentially revoked depending on the human remains/funerary find has been removed?	Did not designate a time frame as ASAP would be too arbitrary and any hard deadline would not be enforceable. This section was changed by OPRD with advice by the Tribes and RAC. If a permit was revoked when human remains were found there would never be an ability to recover human remains.	None	9/26/22	Elissa Bullion, LCIS
736-051-0080(11)(a)	I thought this was changing to unlimited amendments?	Not unlimited, but there is no stated limit.	Changes made for clarity.	9/30/22	Kurt Roedel, ODOT
736-051-0080(12)(c)	This subsection notes permit deadlines and deliverables. Why not include what deliverables are expected here, and to whom they should be submitted? I know that the Administrative Rules are supposed to only clarify what is in statute but there remains some confusion as to what is required for reporting, and to whom, and this may be a place that could help to clarify past questions.	It is unclear what the comment is in reference to. This section is in reference to amending an archaeological permit not deadlines or deliverables.	None	9/24/22	Dennis Griffin, Cultural Horizons

Oregon State Historic Preservation Office

Qualified Archaeologist Application

According to Oregon Revised Statute ([ORS 390.235](#)) only a qualified archaeologist may apply for an archaeological permit in the state of Oregon. Please note, not being approved as a qualified archaeologist does not prevent a person from being employed as an archaeologist in Oregon.

Name:

E-mail:

Instructions

Download the application and save it to your computer before filling out. Complete all applicable fillable boxes in the application and attach additional materials (as requested). Email the entire application to Arch.Qualifications@Oregon.Gov. For hard copies, mail to Oregon SHPO at 725 Summer Street NE, Suite C, Salem, OR 97301. Applications are reviewed by the Oregon SHPO monthly. Failure to complete the entire application may result in SHPO postponement of review. Inclusion of false information could affect any future attempts at becoming qualified or access to SHPO research materials. **Most fillable fields display example text when hovering the cursor over the box.**

According to ORS 390.235 a qualified archaeologist is an individual who meets four specific criteria:

Criterion 1: Education

According to ORS 390.235 "a qualified archaeologist possesses 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." In Table 1, include **one** degree that meets this requirement. In Box 1, provide a statement on the type of post-graduate degree you possess, and how it specialized in archaeology. You may attach copies of your transcripts to the application as supporting documentation.

Table 1 – Post Graduate Qualifying Degree

University	Degree (e.g., Master of Arts in Archaeology)	Year
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Box 1 – Supporting Statement

Criterion 2: Field Research

According to ORS 390.235 a qualified archaeologist has at least “twelve weeks of supervised experience in basic archaeological field research, including both survey and excavation.” In Table 2, please list your supervised experience and how it meets the statute (must include experience in both survey and excavation). “See attached resume” will not be accepted. Listing experience beyond 480 hours is not necessary.

Table 2 - Documentation of Twelve Weeks (480 Hours) of Supervised Field Experience

Date Range	Total Hours (in hours)	Supervisor	Company/Institution	Type of Experience (Survey or Excavation)
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Criterion 3: Laboratory Analysis or Curating

According to ORS 390.235 a qualified archaeologist has at least “... four weeks of laboratory analysis or curating.” In Table 3, please list your supervised experience. “See attached resume” will not be accepted. Listing experience beyond 160 hours is not necessary.

Table 3 - Documentation of Four Weeks (160 Hours) of Laboratory Analysis or Curation

Date Range	Total Hours (in hours)	Supervisor	Lab/Institution
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Criterion 4: Archaeological Study

According to ORS 390.235 “a qualified archaeologist has designed and executed an archaeological study, as evidenced by a Master of Arts or Master of Science thesis, or report equivalent in scope and quality, **dealing with archaeological field research.**” The State of Oregon in statute identifies the thesis, or report equivalent in scope and quality, to justify an archaeologists ability to conduct an excavation and produce a professional quality report. Based on the intent of the statute (Permit and Conditions for Excavation or Removal of Archaeological or Historical Materials), field research is **typically** tied with activities that require a permit in Oregon.

Field research may include, but is not limited to: analysis of a collection recovered from a formal archaeological excavation, underwater archaeological excavation, mitigation data recovery, geoarchaeological, lithic, or faunal analysis associated with a formal excavation, etc.

Oregon SHPO recognizes the importance of all graduate and professional level research. However, to be consistent with the intent of Oregon statute, only theses/dissertations or reports equivalent in scope and quality that relate to fieldwork, and that meet the requirements of a post-graduate study can be accepted. Such documents provide justification that the applicant has proven they can comply with the terms and conditions of a State of Oregon Archaeological Excavation Permit, which only “qualified archaeologists” are able to obtain.

- **Thesis/Dissertation**

If submitting a thesis/dissertation, attach a copy of the title page and abstract with your application. If necessary to support a relationship to archaeological field research, feel free to submit the entire document, or a link to the entire document.

- **Report Equivalent in Scope and Quality to a Master's Thesis**

Attach a copy of your report with your application. **You must be the sole author of the report.**

A field research report must be equivalent in scope and quality to a thesis/dissertation. Oregon SHPO reached out to universities for advice on what constitutes a thesis/dissertation (and by consequently, a report equivalent in scope and quality). The universities provided general outlines and statements on quality.

General outline: Introduction, Research Questions or Problem Orientation, Background and Prior Research (Literature Review), Methods/Materials, Analyses, Results, Discussion/Conclusions, References Cited/Bibliography, Appendices.

Statements on quality: A thesis (and consequently a report equivalent in scope and quality) should: 1) present a major piece of research in preparation for the demands of professional research and writing; 2) set out a problem, clearly follow the theme or themes involved, include review of relevant literature, and show an ability to synthesize material in a way that brings it to bear on the chosen problem; 3) involve writing 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; 4) explain how the work addresses archaeological theory, laboratory analysis, archival research, fieldwork, description of materials analyzed, and quantitative methods; 5) demonstrate the ability of the author to analyze and manipulate archaeological data to address the stated research questions; 6) must be in a finished and polished format of sufficient caliber that it is ready to submit to a professional publication.

Check the appropriate box below as it relates to your submission. In **Box 2**, briefly describe how your thesis/dissertation applied to archaeological research or briefly describe the problem or objective of your report, methods used to collect data, types of analyses conducted and results. Hover cursor over Box 2 for a written example.

Thesis/Dissertation. Please **submit your thesis title page and abstract** with your application. If necessary, you may also attach the full document or a link to the document.

Report. Please **submit your full report** with your application.

Box 2 - Explanation of Research

To the best of my knowledge, the information provided and attached documents contain an accurate account of my education and experience. I realize that any false or misleading statements included or attached to this application have the potential to affect any future attempts to apply for approval as an Oregon qualified archaeologist or to access SHPO records.

Signature:

OARRA Account

Access to Oregon Archaeological Records Remote Access (OARRA) is available to archaeologists who meet the criteria for a "qualified archaeologist." If you would like to receive an OARRA account upon approval of your Qualified Archaeologist application, check the box and sign below.

I understand that sharing this account or disseminating confidential information will result in the immediate termination of my account. *Please check box.*

Signature: