

State of Washington

Department of Community Development
(agency name)

Administrative Order No. 88-06

(1) I, Chuck Clarke, director of
Department of Community Development

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

revising existing archaeological excavation permit rules to apply to the archaeological excavation and salvage of historic shipwrecks and aircraft on state owned aquatic lands.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 88-18-091
filed with the code reviser on Sept. 7, 1988. These rules shall take effect:
 thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
 at a later date, such date being _____

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, _____, find that
an emergency exists and that this order is necessary for the preservation of the public health, safety, or general
welfare and that observance of the requirements of notice and opportunity to present views on the proposed action
would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026¹ that "every agency shall incorporate the most specific, but
in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b),
or (c) as appropriate:

(a) This rule is promulgated pursuant to RCW 27.53.030, 060, 080; ch. 124, Laws of 1988,
and is intended to administratively implement that statute. Sec. 1, 3, 5, 6, & 7.

(b) This rule is promulgated pursuant to RCW _____
which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW _____

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public
Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register
Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code
Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED October 13, 19 88

STATE OF WASHINGTON
FILED

NOV 4 1988

CODE REVISER'S OFFICE
WSR 88-23-004

By Chuck Clarke
Director
Title

Chapter 25-48 WAC

ARCHAEOLOGICAL EXCAVATION AND REMOVAL PERMITAMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-010 PURPOSE. The purpose of this chapter is to establish application and review procedures for the issuance of archaeological excavation and removal permits as provided for in ((RCW 27.53.060 and 27.44.020)) chapters 27.44 and 27.53 RCW.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-020 DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Archaeology" means systematic, scientific study of man's past through his material remains.

(2) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 889-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(3) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(4) "Professional archaeologist" means a person has designed and executed an archaeological study as evidenced by a thesis or dissertation, and has been awarded an advanced degree such as an M.A., M.S., or Ph.D. from an accredited institution of higher education in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology; has a minimum of one year of field experience with at least twenty-four weeks of field work under the supervision of a professional archaeologist including no more than twelve weeks of survey or reconnaissance work, and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report produced by the individual on the field work.

(5) "Public lands" means lands owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state.

(6) "Site restoration" means to repair the archaeological property to its preexcavation vegetational and topographic state.

(7) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(8) "Archaeological resource" means any material remains of human life or activities which are of archaeological interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls, and ((griding)) grinding stones,

knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material.

(9) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(10) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

~~((10))~~ (11) "Director" means the (state-historic-preservation officer-as-provided-for-in-chapter-27.34-RCW) director of the department of community development or his designee.

~~((11))~~ (12) "Office" means the Washington state office of archaeology and historic preservation, department of community development.

~~((12))~~ (13) "Department" means the department of community development.

(14) "Suspension" means the abeyance of a permit under this chapter for a specified period of time.

~~((13))~~ (15) "Revocation" means the termination of a permit under this chapter.

(16) "Mitigation" means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(17) "Abandonment" means that the resource has been deserted and the owner has relinquished ownership rights with no retention, as demonstrated by a writing, oral communication, action, or inaction.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-030 SCOPE AND COVERAGE OF THIS CHAPTER. (1) This chapter is applicable to any person, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the state, county, or city, or a political subdivision of the state.

(2) This chapter is applicable to the alteration, digging, excavating, or removal of archaeological or historic archaeological resources which have been abandoned thirty years or more from public lands, the alteration, digging, excavating or removal of archaeological or historic archaeological resources from private lands where the landowner has requested the office to issue archaeological excavation and removal permits, and the removal of glyptic or painted records of prehistoric peoples or archaeological resources from Indian cairns or graves ~~((under-either-circumstance))~~.

(3) This chapter does not apply to the removal of artifacts found exposed on the surface of the ground ~~((not--to--the--excavation--and removal--of--artifacts--from--state-owned-shorelands-below-the-line-of~~

ordinary-high-water-or-within-the-intertidal-zone)) which are not historic archaeological resources except when there will be removal of glyptic or painted records of prehistoric peoples, or archaeological resources from Indian cairns or graves.

(4) This chapter is applicable as follows to the removal of sample artifacts as provided under WAC 25-46-060 (1)(d):

WAC 25-48-010.

WAC 25-48-020.

WAC 25-48-030.

WAC 25-48-050.

WAC 25-48-060 (1)(a), except for the requirements of a completed inventory form, (1)(d), (f), (g), (h), (m), (n), and (5).

WAC 25-48-090.

WAC 25-48-100.

WAC 25-48-105.

WAC 25-48-120.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-050 APPLICATION REQUIREMENTS AND FORMS. (1) Any person or entity covered by this chapter and described in WAC 25-48-030 proposing to excavate and/or remove archaeological or historic archaeological resources from public lands, or private lands where the landowner has transferred permit authority to the ((office)) department, or proposing to remove glyptic or painted records of prehistoric tribes or peoples, or archaeological resources from Indian cairns or graves shall apply to the office for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued.

(2) Each application for a permit from the ((office)) department shall be submitted on the archaeological excavation and removal permit application form approved by the ((preservation-officer)) director. These application forms may be obtained from the Office of Archaeology and Historic Preservation, Department of Community Development, 111 West 21st Avenue KL-11, Olympia, WA 98504; telephone (206) 753-5010.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-060 SUMMARY OF INFORMATION REQUIRED OF AN APPLICANT.

(1) Each application for a permit shall include:

(a) The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for excavation and recovery, proposed time of performance, locational maps, and a completed site inventory form.

(b) An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of specimens and recovered data consistent with the Secretary of the Interior's standards for archaeological curation.

(c) A professional, scientific research design demonstrating that the work will be performed in a scientific and technically acceptable manner taking into account current scientific research issues and cultural resource management plans.

((e)) (d) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in this chapter.

((d)) (e) The name and address of the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, if different from the individuals enumerated under ((e)) (d) of this subsection.

((e)) (f) Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

((f)) (g) A plan for site restoration following excavation activities and evidence of plans to secure bonding to cover the cost of site restoration.

((g)) (h) Evidence of ((approval-of)) an agreement for the proposed work from the agency or political subdivision with management responsibility over the land.

((h)) (i) Evidence of filing of the proposed work with the Washington archaeological research center.

((i)) (j) For amateur society application, evidence of review and recommendations from the Washington archaeological research center.

((j)) (k) A site security plan to assure the protection of the site and its contents during the public permit review and excavation process.

((k)) (l) A public participation plan detailing the extent of public involvement and dissemination of project results.

((l)) (m) A completed environmental checklist as required by WAC 197-11-100 to assist the office in making a threshold determination and to initiate SEPA compliance.

(n) Evidence of abandonment: Abandonment will be presumed where the applicant presents information that thirty or more years have elapsed since the loss of the resource. If it appears to the office from any source that the resource has not been abandoned or may not have been abandoned, and in the case of all United States government warships, aircraft, or other public vessels, the office will find that the presumption does not arise and will require proof of abandonment. Proof may be satisfied by submission of a statement of abandonment from the owner, his or her successors, assigns or legal representatives, or through final adjudication by a court of law.

(2) Where the application is for the excavation and/or removal of archaeological resources on public lands, the name of the Washington university, museum, repository or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard, preserve, and allow for the future scientific access to these materials as property of the state.

(3) Where the application is for the excavation and/or removal of archaeological resources on private land, the name of the university, museum, repository, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work and all collections in the event the landowner does not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific access to these materials.

(4) Where the application is for the excavation and/or removal of a historic archaeological resource that is an historic aircraft, the name of the Washington museum, historical society, nonprofit organization, or governmental entity that proposes to assume curatorial responsibility for the resource. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the resource and

all associated records, data, photographs and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific and public access to these materials.

(5) After review of the application, the office may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the office at the applicant's cost. A bond in an amount specified by the office may be required of the applicant to ensure payment of the professional expenses incurred by the office. Advance notice of any anticipated cost shall be given to the applicant.

NEW SECTION

WAC 25-48-085 APPLICATIONS FOR EXCAVATION AND REMOVAL OF PREVIOUSLY REGISTERED SHIPWRECKS AND HISTORIC AIRCRAFT. Where the completed application is for the excavation and/or removal of an historic archaeological resource that is a shipwreck or historic aircraft that has been registered with the department by an entity other than the applicant the office will:

(1) Notify the entity by certified mail, return receipt requested, that registered the historic archaeological resource with the department that it shall have sixty days from receipt of notice to submit its own permit application and exercise its first refusal right, or the right shall be extinguished.

(2) Notify the applicant that its permit application will not be acted upon until the entity that has registered the historic archaeological resource has exercised its right of first refusal by submitting a permit application or has allowed its right to be extinguished.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-090 ISSUANCE OF PERMIT. The office will normally act upon a permit application within sixty days of receipt of a complete permit application except in the case of an historic archaeological resource where the applicant is not the holder of the right of first refusal. Such applications shall be subject to the provisions of WAC 25-48-085. The director may issue a temporary permit immediately where delay could cause damage to an archaeological or historic archaeological resource or site. Said permit shall be valid only for thirty days. The office may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant, or in the case of an amateur society, or other group or organization, the individual proposed to be responsible for conducting the work, is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological methods and theory, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the minimum qualifications as a professional archaeologist.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data.

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of public lands concerned.

(4) Evidence is submitted to the office that any Washington university, museum, repository, or other scientific or educational institution proposed (~~in--the--application~~) as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records.

(5) Where the application is for an historic archaeological resource, a contract between the applicant and the department has been executed. Such a contract shall include but not be limited to the following terms and conditions:

(a) Historic shipwrecks:

(i) The contract shall provide for fair compensation to a salvor. Fair compensation means an amount not less than ninety percent of the appraised value of the objects recovered following successful completion of the contract.

(ii) The salvor may retain objects with a value of up to ninety percent of the appraised value of the total objects recovered, or cash, or a combination of objects and cash. In no event may the total of objects and cash exceed ninety percent of the total appraised value of the objects recovered. A salvor shall not be entitled to further compensation from any state sources.

(iii) The contract shall provide that the state will be given first choice of which objects it may wish to retain for display purposes for the people of the state from among all the objects recovered. The state may retain objects with a value of up to ten percent of the appraised value of the total objects recovered. If the state chooses not to retain recovered objects with a value of up to ten percent of the appraised value, the state shall be entitled to receive its share in cash or a combination of recovered objects and cash so long as the state's total share does not exceed ten percent of the appraised value of the objects recovered.

(iv) The contract shall provide that both the state and the salvor shall have the right to select a single appraiser or joint appraisers.

(v) The contract shall provide that the applicant agrees to allow the department access to all artifacts and data recovered from the historic shipwreck for purposes of scholarly research and photographic documentation for the period specified by the department.

(vi) The contract shall also provide that title to the objects shall pass to the salvor when the permit is issued. However, should the salvor fail to fully perform under the terms of the contract, title to all objects recovered shall revert to the state. If the salvor should fail to perform the contract terms specified in (a)(v) of this subsection and has disposed of the objects to which title has passed, the salvor shall be liable to the state for liquidated damages in the amount of the appraised value of the objects disposed of.

(b) Historic aircraft:

(i) The contract shall provide that historic aircraft belonging to the state of Washington may only be recovered if the purposes of the salvage operation is to recover the aircraft for a Washington museum, historical society, nonprofit organization, or governmental entity.

(ii) Title to the aircraft may only be passed by the state to one of the entities listed in (b)(i) of this subsection.

(iii) Compensation to the salvor shall only be derived from the sale or exchange of the aircraft to one of the entities listed in (b)(i) of this subsection or such other compensation as one of the entities and the salvor may arrange. The salvor shall not have a claim to compensation from state funds.

(c) Other historic archaeological resources:

The director, in his or her discretion, may negotiate the terms of such contracts.

(6) Evidence that the applicant agrees to mitigate any archaeological damage which occurs during the excavations and recovery operations.

(7) Evidence that the applicant agrees to allow the department access to all artifacts and data recovered from historic archaeological sites for purposes of scholarly research and photographic documentation for a period to be agreed upon by the parties.

(8) Evidence that the applicant agrees to allow the department to have the right to publish scientific papers concerning the results of all research conducted as project mitigation.

(9) After the granting of a permit and, when information filed with the office becomes inaccurate in any way, or additions or deletions are necessary, the applicant or permittee shall submit full details of any such changes and/or correct any inaccuracy, together with copies of any new required documents, with the office within fifteen days following the change. The office reserves the right to suspend or revoke a permit under the terms of WAC 25-48-110.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-100 TERMS AND CONDITIONS OF PERMITS. (1) In all permits issued, the office shall specify:

(a) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(b) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit.

(c) The name of any university, museum, repository, or other scientific or educational institutions in which any collected materials and data shall be deposited.

(d) Reporting documentation requirements and site restoration and mitigation requirements.

(2) The ((~~preservation-officer~~)) director may specify such terms and conditions as deemed necessary, consistent with this chapter, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under the permit. This may include sufficient bonding to cover cost of site restoration.

(3) The office may include in permits issued for archaeological work on Indian cairns and graves or glyptic or painted records such terms and conditions as may be requested by the concerned Indian tribe.

(4) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(5) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(6) The permittee may request that the office extend or modify a permit. Such a request will require compliance with all the provisions of this chapter.

(7) The permittee's performance under any permit issued for a period greater than one year shall be subject to review by the office, at least annually.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-105 PERMIT DENIAL. If a permit is denied, a written statement of the reasons for the denial will accompany the notice of permit denial to the applicant. A permit may be denied for failure to meet the standards required of an application under WAC 25-48-060.

NEW SECTION

WAC 25-48-108 RIGHT OF FIRST REFUSAL--DISCOVERY OF NEW TECHNOLOGY. (1) Any agency, institution, person, firm, or corporation which has been denied a permit because the historic archaeological resource would be destroyed beyond mitigation by their method of salvage shall have the right of first refusal for a permit at a future date should technology be found which would make salvage possible without destroying the historic archaeological resource.

(2) Such rights may be assigned, but it is the responsibility of the parties to the assignment to provide written evidence of the assignment to the department, including the correct name and mailing address of the assignee.

(3) Upon receipt of a complete permit application and determination that a new technology can salvage the resource, the director shall notify by certified mail, return receipt requested, the holder of the right of first refusal of a permit application that a new technology exists and the holder has sixty days from the receipt of the director's determination to submit its own permit application and thereby exercise its first refusal right, or the right shall be extinguished.

(4) If the person, firm, corporation, institution, or agency that possesses the first refusal right for a permit does not exercise its first refusal right within the sixty-day time period, the department shall send to that entity a notice by certified mail, return receipt requested, that the entity's right of first refusal has been extinguished.

AMENDATORY SECTION (Amending Order 11, filed 6/5/86)

WAC 25-48-120 APPEALS RELATING TO PERMITS. Any affected person may request a hearing to appeal a denial ~~((of a permit))~~, suspension, or revocation of a permit or extinguishment of a right of first refusal under WAC 25-48-108 to the ~~((preservation officer))~~ director. Said request must be in writing and filed with the ~~((preservation officer))~~ director within ~~((twenty))~~ twenty-one calendar days of receipt of notice of the denial, suspension, ~~((or))~~ revocation, or extinguishment.

NEW SECTION

WAC 25-48-125 LISTING OF AREAS WHERE PERMITS ARE REQUIRED TO PROTECT HISTORIC ARCHAEOLOGICAL SITES ON AQUATIC LANDS. The following is a list of those areas where permits are required to protect historic archaeological sites on aquatic lands:

Lake Washington.
Elliott Bay.
Columbia River Bar.